

What is "At-Will" Employment?

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The "at-will doctrine" is a rule of contract law (which is state law). The rule is that an employee can quit at any time and an employer can fire an employee at any time and for any reason. Because this is a contract rule, the employer and employee are free to change it by agreement. But if their agreement is silent on the question, then the employee can be discharged without warning, without a hearing, and without a reason.

When the at-will doctrine is applied by a court, here is what happens as a matter of contract law:

- A job that is described as "permanent" does not mean that it will last forever. It means only that the job is not temporary or not seasonal.
- The employer can discharge the employee at any time and for any reason.
- The employer can discharge the employee for a really stupid reason. For example, simply because the employee asked for a day off.
- The employer can discharge the employee without any warning. For example, for the very first time the employee comes in 5 minutes late.
- The employer can discharge the employee without offering the employee any kind of "hearing" or chance to explain.
- The employer is not required to give an employee two-weeks notice, or any advance notice at all.
- The employer is not obligated to tell the employee the reason for the discharge.

Every state has a different approach, so the law will be different from one state to the next. It's pretty hard to find a state that follows the at-will doctrine without any exceptions; and it's hard to find a state that doesn't follow the doctrine at all. States tend to fall somewhere in between.

Because the at-will doctrine provides an employee no job protection at all, it is important to understand that there are a lot of exceptions. In some states there are so many "exceptions" that one might conclude that the state is not an "at-will state" at all.

Here are some exceptions:

- A contract between the employer and employee that provides greater protections for the employee.
- A collective bargaining agreement between a union and the employer that provides for discharge only if there is "just cause."
- Wrongful discharge in violation of public policy.
- Federal statutes that prohibit certain kinds of discrimination, allow for medical leaves, protect whistleblowers, or provide other protections.
- State statutes that are similar to the above federal statutes. (Some state statutes provide the employee with greater protections than the federal statutes provide.)
- An implied promise.
- Promissory estoppel.
- Employer's handbook, manual, or policies.
- Intentional infliction of emotional distress.
- Duty of good faith and fair dealing.

The simplest and most direct way to overcome the "employment at will" doctrine is to have an express contract.

The employment at will doctrine says that the employee can quit, and the employer can fire the employee, at any time and for any reason and without any prior notice.

This employment at will doctrine is a "default" rule of contract law. That means it applies whenever the employee and employer have not agreed on something else.

Therefore, the solution is simple: Agree on something else.

An express contract can be in writing or it can be oral. (Of course, it is easier to prove something that is in writing.)

Here are some things an employee might want to have in an express contract:

- The employee can be fired or otherwise disciplined only for "just cause" or "reasonable cause" or some such general language.
- A more detailed list of the grounds for discipline or discharge.
- Before the employee is discharged or disciplined, the employee has to have an opportunity to explain or have some kind of hearing.
- Discipline will be "progressive." For example, there should be a warning (rather than immediate discharge) for the first offense.
- If the employee is to be laid off, there must be advance notice and severance pay.

Here are some things an employer might want to have in an express contract:

- An agreement not to compete (non-competition agreement).
- An agreement not to use the employer's trade secrets, customer lists, and so on.
- An agreement to arbitrate disputes rather than take them to court.