

Employment at Will – A Workplace Reality

Few People Comprehend the Meaning of Their Work Status

By ADAM BASCH, Esq.

Most people never hear the term 'employment at will,' at least until they have been terminated from their employment for "no reason." However, they will hear it repeatedly as they speak to different attorneys about that outcome. As in most situations, an ounce of prevention is worth a pound of cure.

For a Blue state, Massachusetts is very Red in terms of the employer/employee relationship. Massachusetts follows the doctrine that the employment relation between the employer and the employee is 'at will.' This means that either party can end the relationship at any time, with cause or without cause, for any reason or no reason. The only limitation is that the reason for termination cannot violate public policy, i.e. termination based on race, color, greed, sexual orientation, etc.

The ability of an employer to summarily terminate an employee seems unjust in a modern and seemingly socially compassionate society. It resonates with the same reasoning that a person can be convicted of a crime without a trial. While this comparison may be accurate, it is nonetheless true that the first is the law of the land, and the second is not.

The most common misconception is that an employee can only be terminated for cause; that the employee most either be not performing his duties, or that he violated some other well-recognized principle. While it is understandable that someone would believe this to be true, it is not. An example is employee 'A' telling his

supervisor that employee 'B' was sleeping on the job. The supervisor immediately terminates employee 'B' without conducting any kind of investigation into confirming the truth of the allegations or even asking employee 'B' for his side of the story. While this is a harsh and possibly illogical

wants a guaranteed salary, benefits, or a severance package, he is free to include it in an employment contract. Usually the most difficult part of creating an employment contract is not preparing one, but getting an employer to sign it. As in all negotiations, each party's respective

each party's true intentions. All too often, a poorly drafted employment agreement leads to unnecessary litigation to determine its intention. It is much easier, and less expensive, to make sure an employment contract is clear and unambiguous.

Secondary only to family relationships, the employer/employee relationship may be the most significant long-term and life-changing relationship undertaken. While you have no control over who the members of your family are, and to some extent your relationship with them, you do have control over with whom you enter into an employer/employee relationship. This 'choice' should be taken very seriously. In modern times an employee must be concerned about job security. While a high paying job is great, it is only high paying if you are employed.

People are hired and fired every day. Although most are hired 'at will,' few people truly comprehend the meaning of their employment status, until it bites them at an inopportune time. The next time you make a move, consider if an employment contract suits your circumstances and would be mutually beneficial between yourself and your new employer.

Adam J. Basch, Esquire, is an associate with Bacon & Wilson, P.C. He is a member of the Employment and Litigation departments with expertise in the areas of employment law, construction litigation, personal injury, general litigation and commercial litigation; (413) 781-0560; abasch@bacon-wilson.com.

The most common misconception is that an employee can only be terminated for cause; that the employee most either be not performing his duties, or that he violated some other well-recognized principle.

outcome, it is the reality of what it means to be an employee at will.

So what is an employee at will to do to protect his job? Should he petition the courts to not uphold the doctrine? Should he petition the Legislature to change the laws? While these may seem like logical approaches, there is an easier way for an employee to do it ... don't be an employee at will.

One of the fundamental freedoms we enjoy is the freedom to enter into contracts. We can obligate ourselves to perform certain tasks for others and we can obligate others to perform for us. In the employment context, this is known as entering into an employment contract.

Just as any other contract, employment contracts are enforced according to their terms. If an employee wants to only be terminated for cause, the contract can simply state "termination only for cause." If an employee

bargaining power will determine the final terms of the employment relationship.

Surprisingly, it is often the employer that is most interested in entering into an employment contract. Depending on the particular business, having an employee execute an employment contract containing a non-compete and non-solicitation agreement prior to beginning employment may be crucial to the survival of the business. This may be an opportune time for both employee and employer to work collectively to draft an employment contract that satisfies both their needs.

When the terms of an employment agreement are in the process of being negotiated, it may be wise to consult an attorney. This will not only help to ensure your needs are being adequately represented, but will also ensure that the final employment contract captures