

At-Will is a Lazy Excuse for Terminating an Employee

Many managers mistakenly believe that “at-will” can be a carte blanche to get rid of a troublesome or unpopular employee. California law stipulates that employees are employed at will. This entails that either the employer or the employee may terminate employment at any time, with or without cause. Cause is defined under California law as "a fair and honest cause or reason, regulated by good faith on the part of the employer."

A fair and honest cause reason can be open to interpretation, but employers should not presume that they are safe from being sued for employment wrongs, such as discrimination, retaliation, violations of specific statutes (including those protecting whistle-blowers or employees who take family or medical leave) or for terminations that violate public policies set forth in statutes or regulations.

When managers come to me and say they want to terminate an employee and think they are protected under “at-will” I always caution them. At-will does not mean that you do not have to document employee performance, or have a legal reason for terminating the employee. It is never a good idea to tell an employee that "we are exercising our employment-at-will rights and terminating you." There are so many reasons for employee lawsuits, especially in California, employers should always document the reasons for terminating an employee. This includes providing verbal and written warnings, when appropriate, for poor job performance and less serious types of misconduct such as attendance policy violations. These warnings will help protect against a later claim that the termination was driven by an unlawful reason such as discrimination or retaliation.

Many CEOs and business owners believe that at-will allows them to terminate an employee simply because they don't like them. And while in their mind this may be the reason, the employee may be able to prove that there were other, illegal reasons for the termination. If this employee is a female, she may claim she was fired because of her gender and the employer has no written documentation to support otherwise. Saying that she wasn't a culture fit to the organization will not stand up in a court of law if there is no demonstrable effort on the part of the employer to give the employee a chance to improve her performance or change her behavior.

Employers should never be lazy and fall back on at-will alone as a reason for termination. These issues are not pleasant for managers to tackle, but documenting a performance improvement plan can go a long way in defending a potential costly wrongful termination or discrimination suit in the future.

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