



## WORDS ON WISE MANAGEMENT

### Does 'at-will employment' really mean what you think?

by Joseph Godwin

Many employers rely heavily on "at-will employment" to terminate unsatisfactory employees. In theory, if at-will employment applies, you can fire a worker *at will*, which means for a good reason, a bad reason, or no reason at all. However, if a termination decision is challenged, it can be difficult to show that a bad reason or no reason was not discriminatory, particularly if the affected employee belongs to a protected group.

At-will employment has definite limits. Even without a written employment contract, you can easily negate at-will-employment status. It could be as simple as telling an employee, "You will have a position around here as long as you work hard and do a good job."

Employers should be cautious. At-will employment does not cover terminations for illegal reasons such as discrimination and retaliation, and almost all terminations can face legal challenges. How you handle the termination is just as important as the decision itself. Imagine you are firing "a jury of your peers." What would you say to a group of people with the ability to pull huge sums of cash right out of your pocket? You probably would try to be as considerate and thoughtful as possible. You might attempt to avoid the situation entirely. You would certainly want the experience to reflect the best of your business and be professional, positive, fair, and impartial. You would want to err on the side of caution and make sure you know all the facts before sitting down to deliver the discharge decision.

As a matter of good business practice and to help protect your company's assets, you should have a consistent procedure for reviewing the circumstances of employee terminations, regardless of the reason. At a minimum, be sure the employee fully understands what he was supposed to do and how it was to be done. Always provide an opportunity for employees to respond and offer any defenses they may have. Finally, you should never act in haste. Other than an obviously dangerous person, there is rarely a need to fire an employee on the spot.

There are five reasons employers can easily lose if a termination is challenged because of discrimination or similar allegations and is reviewed by an outside authority such as the Equal Employment Opportunity Commission (EEOC):

- (1) **Lack of supporting evidence.** It may sound good to say an employee "made too many mistakes" or "wasn't reliable," but without written documentation, your opinion may be disregarded.
- (2) **Mitigating circumstances.** Sometimes employees really do have good reasons for the things they do, or maybe the situation really was an accident. If you fail to investigate and consider mitigating circumstances, it could appear to an outsider that you had discriminatory reasons for the termination.
- (3) **Failure to allow a defense.** Too many employers assume a supervisor's account is true and do not consider the employee's side. That looks like a rush to judgment to the EEOC.
- (4) **Harsh punishment for rule infractions.** Did you really fire an employee for not signing his time card? If the punishment seems harsh, government investigators will look for other reasons the employee was discharged.
- (5) **Management was partly at fault.** Managers have the right and responsibility to select and hire the persons they want, assign them work, train them, correct their errors, complete performance evaluations, reassign work, and organize tasks. If management has not fulfilled its responsibilities, should the employee take all the blame?

When you find yourself confronted with a problem employee, don't make a snap decision and "run him off." Don't rely on at-will employment to bail you out of a bad termination. Take your time, follow the steps, and make sure that whatever you do, you do it consistently, fairly, and without illegal prejudice.



*Joseph Godwin, a consultant for F&H Solutions Group, assists clients in a variety of compliance matters, with an emphasis on wage and hour issues. Contact him at 828-687-4071 or [jgodwin@fhsolutionsgroup.com](mailto:jgodwin@fhsolutionsgroup.com).* ♣