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Contact me with any questions or to discuss how we can assist your organization.

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The Fallacy of the Employment-At-Will Doctrine

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In theory, employment relationships may be terminated at any time by either the employee or the employer for any reason or no reason at all. This is known as the "employment-at-will" doctrine. Over the years, however, several expansive exceptions to the doctrine have developed, including:

- The existence of an employment contract, including collective bargaining agreements.
- The existence of an implied contract, such as a supervisor's oral promise that an employee will only be terminated for "just cause."
- Dismissals that violate state and federal laws, such as discrimination laws.
- Dismissals that violate "public policy," such as terminating an employee for filing a workers' compensation claim or for complying with a legal obligation.

The employment-at-will doctrine can be a technical legal defense against a wrongful-termination lawsuit. That said, we find that the employment-at-will doctrine can provide companies with a false sense of security when considering employee terminations. For example, a member sometimes calls asking whether they can terminate someone. We'll start to ask questions about why. The member will reply, "Why are you asking all these questions. The employee is employed at-will. I don't need a reason to terminate them, do I?"

But, think about this: If you terminate the employee and he files a lawsuit challenging your decision, how do you think the jury will react when the employee's attorney asks you, "Why did you fire the employee?" and you respond, "I didn't have a reason for terminating this employee. He was employed at-will, so I just terminated him."

Juries are skeptical of such explanations; rather than believing them, juries are more apt to conclude that the employer is hiding something and impose a judgment against the employer. Therefore, employers should always identify and document a reason for a termination for four reasons. First, identifying and documenting a reason for a termination ensures that there is not an illegal reason underlying the termination (e.g., the supervisor singled out employees of a different race or national origin). Second, identifying and documenting a reason creates a sense of stability and better employee morale. If employers identify a reason for a termination, employees know that the employer does not just act arbitrarily or unfairly. Instead, employees know that the employer acts only when justified and after careful consideration. Third, hiring is expensive. If you are going to terminate someone, you should have a good reason, because finding a replacement is costly. Finally, and most importantly for lawsuits, if an employee challenges your termination decision in court, you will have a valid termination reason to point to, increasing the likelihood of convincing a jury your action was fair and legal.

Members of Employers Council have access to our staff of employment law attorneys and senior HR professionals who are happy to help with terminations. Please call or email anytime.