

# At-Will Employment

The Employer Is Free to Discharge  
An At-Will Employee FOR GOOD  
REASON, BAD REASON OR NO  
REASON AT ALL

BUT NOT FOR THE  
WRONG REASON!!

## **We've all seen situations like this!**

- Marty Manager was on a routine inspection of the facility when he came upon a strange lock on a door to an unused room. As the facility manager, his master key was supposed to unlock all of the doors. Marty called a locksmith to unlock the door and what did he find?

# A BUNK HOUSE FOR THE MIDNIGHT SHIFT!!

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# BEDROLLS, PILLOWS

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# SLIPPERS

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AN ALARM CLOCK! Wouldn't want to be late for quitting time!

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# All the Comforts of Home

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# They are At-Will Employees- I'LL FIRE THEM!!

- Marty, being the well-informed manager that he is knows that these employees are not union employees and do not have a written contract of employment with the company.



**As a well-trained manager, Marty knew to consult the company's lawyer before doing anything rash.**

- “We’ve got them cold, Larry,” Marty says. “The midnight crew is cooping in the abandoned room on top of the vent building. They are at-will employees and I’m going to fire them when they get to work tonight.”

# Larry Lawyer's Opinion: **FOLLOW THE ESTABLISHED PROCEDURES!**

- “But why?” Marty says. “At-will employees don’t have any rights!”
- Larry, who understands the risk of a discrimination or wrongful termination claim, advises Marty that, rather than simply firing the AT-WILL employees, he gather and document the evidence of wrong doing as with other disciplinary matters in order to avoid litigation.

## Larry's Reasons:

- Larry knew that if you terminate an employee for “no reason” or without following your normal disciplinary process, you are providing the ammunition for the employee to argue that the termination was for improper or even discriminatory reasons. You may be provoking a challenge to the termination which might not have otherwise occurred!
- Why is **Larry** concerned about litigation? What is **AT-WILL Employment**?

# At-Will Employment

- The common definition of at-will employment states that the employer is free to discharge employees “FOR GOOD CAUSE, BAD CAUSE OR NO CAUSE AT ALL.”

**BUT**

# TRAPS FOR THE UNWARY-

- BEWARE THE EXCEPTIONS!!!

# EXCEPTIONS TO AT-WILL EMPLOYMENT RULE- FIVE CATEGORIES

- Substantive Due Process Protection of Public Employees
- Statutory exceptions
- Public policy exceptions
- Implied contract exceptions
- Covenant of good faith and fair dealing exceptions

# Substantive Due Process/ Equal Protection

Substantive Due Process--embodies fundamental fairness, insurance that public employers act reasonably and not in an arbitrary or capricious manner.

Equal Protection-- Class-of-One Theory  
All persons similarly situated should be treated alike.

# Statutory Exceptions

- Most wrongful termination suits brought under statutory causes of action use the federal anti-discrimination statutes which prohibit firing an employee because of race, color, religion, sex, national origin, age, or handicap status or in retaliation for asserting or supporting rights protected by these statutes.

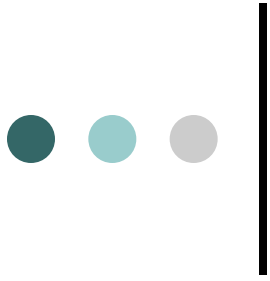


# Examples of Federal Statutory Exceptions

- ⑩ Title VII of the Civil Rights Act of 1964 (relating to discrimination on the basis of race, color, religion, sex, or national origin);
- ⑩ Equal Pay Act of 1963 (relating to discrimination on the basis of sex in payment of wages);
- ⑩ Age Discrimination in Employment Act of 1967 (relating to certain discrimination on the basis of age with respect to persons of at least 40 years of age);
- ⑩ Americans with Disabilities Act of 1990 (relating to certain discrimination on the basis of handicap status)

## Other Federal Laws

- Labor Management Relations Act
- Fair Labor Standards Act
- Occupational Safety and Health Act
- Vocational Rehabilitation Act of 1973
- Employee Retirement Income Security Act of 1974 ('ERISA')



- Energy Reorganization Act of 1974
- Clean Air Act
- Federal Water Pollution Control Act
- Consumer Credit Protection Act
- Civil Service Reform Act of 1978
- Judiciary and Judicial Procedure Act
- Railroad Safety Act

# Examples of State Statutes Limiting Employment-At-Will Doctrine

- **Civil Rights Laws**
- **Labor Relations Laws**
- **Minimum Wage and Maximum Hours**
- **Worker's Compensation**
- **Health and Safety**
- **'Lie Detectors'**
- **Political Activity**
- **Jury Duty**
- **Labor Laws/Retaliation Service Letter**
- **Whistleblowing**

# Public Policy Exceptions

Forty-three U.S. states recognize public policy as an exception to the at-will rule. Under the public policy exception, an employer may not fire an employee if it would violate the state's public policy or a state or federal statute.

- Exercising a statutory right
- Performing a public function
- Reporting Employer's unlawful conduct
- Refusing to commit an illegal act
- Eg: Refusal to pump bilge

# Implied Contract Exceptions

- At least thirty-eight U.S. states also recognize an implied contract as an exception to at-will employment. Under the implied contract exception, an employer may not fire an employee "when an implied contract is formed between an employer and employee, even though no express, written instrument regarding the employment relationship exists." Implied employment contracts are most often found when an employer's **personnel policies** or **handbooks** indicate that an employee will not be fired except for good cause or specify a process for firing.

# Examples

- Handbook- We value our employees and will terminate only for just cause.

# Covenant of good faith and fair dealing exceptions

- At least thirteen U.S. states have recognized a breach of an **implied covenant of good faith and fair dealing** as an exception to at-will employment.
- This exception for a **covenant of good faith and fair dealing** represents the most significant departure from the traditional employment-at-will doctrine. Rather than narrowly prohibiting terminations based on public policy or an implied contract, this exception — at its broadest — reads a covenant of good faith and fair dealing into every employment relationship. It has been interpreted to mean either that employer personnel decisions are subject to a “just cause” standard or that terminations made in bad faith or motivated by malice are prohibited.



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- Marty Follows Larry's Advice-He Gathers and Documents the Evidence

	Employee 1	Employee 2	Employee 3	Employee 4	Employee 5				
Exhibit #	# of Supporting Documents				Date	In	Out	In	Out
	In	Out	In	Out	In	Out	In	Out	
4	2/13/05	2:10	5:57	2:10	5:57	2:10	5:57	2:10	5:57
	Sick								
6								31	6:12
	Sick								
7	2/15/05	2:49	6:19	2:49	6:19	2:49	6:19	2:49	6:19
	Sick								
	2/18/05								
8	2/19/05	12:33	5:48	Comp	12:33	5:48	Sick	Sick	
9	2/20/05	1:47	5:46	1:47	5:46	1:47	5:46	Sick	Sick
10	2/21/05	1:11	5:49	1:11	5:49	Comp	Sick	Sick	
11	2/22/05	3:03	5:52	3:03	5:52	3:03	5:52	Sick	Sick
12	2/25/05	?	5:47	?	5:47	Training	Training	Sick	
13	2/26/05	1:43	5:52	1:43	5:52	Training	Training	Sick	
14	2/27/05	1:27	6:01	1:27	6:01	Training	Training	Sick	
15	2/28/05	Training	Training						
16	3/1/05	1:34	5:55	1:34	5:55	Training	Training	1:34	5:55
17	3/4/05	2:06	5:58	Comp	1:55	5:58	2:06	5:58	2:06