

The Minefield of Hiring and Firing

From an employer's perspective, the ability to control and run his business is crucial, and this includes the right to fire or discharge employees of the business. If an employee has an "at-will" employment status, in most states, the employer may discharge the employee at any time for any cause or no cause. Due to the harshness of this doctrine over the past ten (10) to fifteen (15) years, the Courts have carved out several exceptions to the "at-will" status.

One of the exceptions is the "implied contract" exception where an employee reasonably relies on the employer's conduct coupled with oral and/or written promises which a Court construes as protecting the employee from being discharged. The "public policy" exception is used where the employer attempts to fire an employee for something he had a legal right to do (such as file a claim for worker's compensation) or refuse to do something he considered to be illegal.

In many instances, office manuals and policy handbooks are drafted to prevent inconsistent treatment of employees and bolster morals. Sometimes, however, a discharged employee claims the office manual as an "implied contract" and the manual becomes the focus of a breach-of-contract lawsuit.

Another minefield for employers in discharge situations is the explosion of discrimination claims which stems from the laws that have expanded the rights of employees, and the increased knowledge and awareness of the laws by the public. The laws generally prohibit employment discrimination in the terms and conditions of employment if the employee in question is a member of a protected group or class". Some of the laws are The Age Discrimination in Employment Act, The Civil Right Act, The Equal Pay Act and The American with Disabilities Act.

Today for employers, hiring and firing is a dangerous and complex territory, and a top priority of every business should be to minimize the risk of litigation in connection with the hiring and firing of its employees.

What are some of the things you can do to protect yourself as an employer:

-Review your company manual, policies and documents as they pertain to the hiring of employees and the fringe benefits available. Be particularly interested in the definition of what constitutes a permanent employee and if the "disclaimer" meets the request of the law.

-Review all documents and memoranda dealing with disciplinary action by the employer against the employee. These should be retained for future reference.

-Establish a grievance procedure for investigating employee complaints and firing.

-If you do not have a policy manual on hiring, firing, etc., you may wish to obtain one or have your attorney prepare one for you.

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Spring—2007

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