



The Myth of Employment at Will

It sounds simple, doesn't it? But it is not quite as easy as it sounds to terminate an employee simply because you don't like the way she dresses or he combs his hair. The list of illegal reasons for termination is growing. Some of the reasons a termination may be illegal include:

- Race, sex, national origin, religion, color, age, disability, genetic information, or retaliation for related protected activity.
- Various characteristics protected by state or local law, such as ancestry, marital status, sexual orientation, or appearance.
- The employee refused to break the law.
- The employee filed or is expected to file a worker's compensation claim or workplace safety complaint.
- The grounds for termination violate a "public policy" of the state.
- The employee exercised his or her rights to join or not join a union.
- The employee uses lawful products during nonworking hours.

Any time you terminate an employee you must anticipate that the reason you provide for the termination—as well as the real reason for termination—may be closely scrutinized to ensure that the actual reason the employee was terminated was not illegal. While you may offer a reason that is lawful on its face, any investigating agency will look behind the offered reason to determine the actual reason for the termination. Claiming the termination was lawful because the employee was an at-will employee will not avoid this scrutiny.

An employee who is terminated for an arbitrary or unfair reason will have a much easier time claiming—and possibly persuading an agency, judge, or jury—that the stated reason is false and that the employer's real reason was an illegal one. For example, you terminate an employee and tell the investigating agency it was because you could not tolerate the green shirt the employee wore to work every Monday. Most reasonable investigators would not consider this a reason to end an employment relationship and would begin looking for the actual reason for the termination. Often employers want to terminate employees because the employment relationship "just isn't working out." This is not a satisfactory reason for termination, and the investigator will look for the reasons why the relationship wasn't working out. Were those reasons legal and was the employee treated fairly compared to other employees in the same situation?

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Employment at Will

Under the concept of employment at will, an employer or an employee can terminate the employment relationship for any reason or no reason at all, as long as that reason is not illegal. Employment at will generally applies where there is no contractual relationship between the parties, such as an employment agreement or a collective bargaining agreement, which generally require "just cause" to terminate an employee. Illinois, Iowa, and Wisconsin all recognize employment at will.

MRA's Recommendation

Employers should not attempt to rely on the concept of employment at will to justify terminations. All termination decisions should be fair and should be based on documentation of the real reasons for the termination. All organization policies should be followed. This generally includes discussing the unacceptable behavior with the employee and providing him or her with an opportunity to improve.

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