



The Employment Law Newsletter

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Cases To Watch

- Goonewardene v. ADP, LLC
- Frlekin v. Apple, Inc

What it Really Means to be Considered an “At-Will” Employee By Ryan J. Carlson

Many employees see the term “at-will” in their contract and immediately think that they have little or no rights when it comes to the employment relationship with their employer. A common question we receive is whether or not at-will employees can really be fired for *any* reason at all, legal or not. This installment of the Employment Law Newsletter will aim to clarify some common misconceptions that a lot of employees have with respect to the at-will nature of their employment.

First of all, where does at-will employment find its base in California law? The California Labor Code provides that employment for no specified term (specified term meaning employment of one month in duration or longer) may be terminated *at the will* of either party upon notice to the other party. On the other hand, employment for a specified term may only be terminated by the employer for the employee’s willful breach of his or her job duties, habitual neglect of job duties, or continued incapacity/inability to perform the job which he or she was hired to perform.

In layman’s terms, this means that you can only be terminated for these three specific reasons when your contract lays out that you are being hired for specific period of time longer than one month. Conversely, when your contract is for no specified term, the Labor Code creates a *presumption* of at-will employment, but that presumption can be rebutted. Just how that presumption is rebutted depends on the nature of your employment, and often times what your contract says.

One common way employees rebut the at-will presumption is by pointing out a provision in their contract which states that the employee may only be terminated for “just cause.” When such a provision does appear, it is usually closely followed by another provision defining what constitutes “just cause.” In many cases “just cause” can include a continuous and ongoing breach of duties,

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inability to perform job functions, unsatisfactory performance based on expressed standards, failure to maintain a professional or driver's license where same is necessary to perform the work, or engaging in conduct that is illegal or which violates established company policies. Another way to defeat the at-will presumption, especially in the context of public sector employees (teachers, judges, etc.), is to show that the position is a tenured one, or one that otherwise creates a vested property right – i.e. the right to continued public employment – which cannot be deprived without due process.

So, let's assume that your contract explicitly states that your employment is at will. That means your boss can fire you for any reason or no reason at all, right? *Wrong*. While at-will employment does give your employer substantial leeway to terminate employees as they wish, it does not grant them unfettered discretion to fire employees in ways that violate other areas of law. For example, equal protection laws such as those found in the United States and California Constitutions, prevent your employer from terminating you based on your race, religion, nationality, sex, or status as a member of some other protected class. Similarly, certain disability laws such as the California Fair Employment & Housing Act, or Family & Medical Leave Act, prevent your employer from terminating you simply for being injured or sick, or for requesting that certain accommodations be made to accommodate a recognized injury or disability. Finally, whistleblower protection laws like the California Whistleblower Protection Act, prevent your employer from terminating you in retaliation for engaging in protected activities such as, among other things, reporting your employer's violation of the law, or testifying against your employer when compelled by law to do so.

That is not to say that the aforementioned factors cannot lawfully contribute *in some way* to your employer's decision to fire you, but they certainly cannot be the *only* basis upon which you are fired; nor can they constitute even a *substantial factor* in your employer's decision to terminate. For example, a business is not required to continue employing a disabled at-will employee whose disability simply cannot be accommodated without posing an undue burden on the business. The business cannot, however, terminate that disabled at-will employee based solely on the fact that he or she is disabled.

Unfortunately, one thing from which at-will employment does not protect employees is the all-too-common unfair jerk of a boss. The at-will status of your employment does not prevent your superior(s) from firing you simply because they do not like you, or because they are having a bad day and need to take their frustration out on someone, or even because you are a fan of their favorite sports team's biggest rival. Nor does it require your employer to have a reason supporting your termination. While these reasons justifying termination, or lack thereof, are clearly *unfair* (and arguably involve really bad business decisions/practices), they are *by no means unlawful* in the at-will context.

Perhaps the most common reason why many labor and employment law firms turn down potential wrongful termination cases involving at-will employees, is because the reasons justifying the employee's termination are *unfair, albeit not unlawful*. Thus, when the recently fired at-will employee explains their situation during an initial consultation, and believes the *primary* reason for their termination to be their boss holding a grudge

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against them, their case is oftentimes rejected based solely on their at-will status. As unfair as this may seem, it is the reality that faces every at-will employee.

Do not, however, think that at-will status works only in favor of your employer. You too have rights enabling you to terminate your employment for any reason or no reason at all. As much as your boss can fire you because your boss is a jerk, you can quit your job for the exact same reason. You can also quit for no better reason than you simply want to quit. Whatever the case may be, your at-will status can actually shield you from any potential liability for failing to satisfy the duties and job functions that are outlined in your contract. It therefore works both ways; this is especially so in the rare instances when an employer sues an employee for breach of their employment contract.

To recap: you are presumed to be an at-will employee unless your contract specifies that your employment is to last for a certain period that is one month in duration or longer. When your contract does so specify its term, you may only be terminated for a willful breach of your duties, habitual neglect of your duties, or due to your continued incapacity to perform the job you were hired to perform. On the other hand, when the duration of employment is *not* specified and you are therefore presumed to be at-will, you can still rebut that presumption by, among other things, pointing out a “just cause” provision within the contract, or by showing that your position is one that cannot be deprived or terminated without due process. If you successfully rebut the presumption, your employer is far more limited in how they justify your termination. If you cannot rebut the presumption, you can quit or be fired for any unfair but *lawful* reason, or for no reason at all. And lastly, do not forget that even if you are an at-will employee, you cannot be terminated for any reason which violates other sources of law, such as the ones we discussed above.

As always, there are exceptions to every rule and there are people who try to bend and twist the rules in their favor as much as possible. Hence, it is not all that uncommon to see an employment contract that both specifies the length of employment *and* contains an at-will provision. Understanding and knowing how to interpret these terms is incredibly important before signing your name on the dotted line, and you should not hesitate to contact an attorney prior to doing so if you have any questions.

So, do you need help interpreting your employment contract? Want to see where you stand in terms of your at-will status? Curious to know if your termination from employment was *unlawful* as opposed to just *unfair*? Give us a call today and we will be happy to evaluate your situation!

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