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The Importance of At-Will Language: Avoiding Hazards Down the Road

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While all of your organization's recruiting and hiring practices are important, perhaps none is more crucial than clearly establishing the at-will nature of the employment relationship. At-will language determines how easily you can terminate an employee when you need to. It puts an employee on notice that their continued employment is not guaranteed, and helps prevent legal disputes alleging that they have a right to continued employment.

Although relatively simple, at-will language must include several basic things. First, it must notify the employee that their employment may be terminated without cause. This means that an employee can be fired for any reason, or no reason at all. Secondly, the language must notify the employee that their employment can be terminated without notice. Lastly, it must also state that the only way the at-will nature of the relationship can be changed is by written agreement signed by an authorized representative of the company. This helps avoid having a casual conversation misunderstood by an employee as creating a right to employment.

The following is an example of typical at-will language:

I understand and agree that my employment may be terminated with or without cause and with or without notice at any time. I understand and agree that any agreement contrary to or modifying this provision is not valid or enforceable unless it is in writing and signed by an officer of the company.

In order to serve its purpose, at-will language must be clearly communicated to your employees. The best way to ensure that it has been adequately communicated is by publishing the policy on something the employee signs. This can be on your application for employment, or on a page acknowledging receipt of an employee handbook, or both. What is important is that you have a written record that your employees have read and understood the policy.

Lastly, you must remember that simply using at-will language does not mean you cannot be held liable for anything related to an employee termination. Even with at-will language, you can still be found liable for discrimination, harassment, and violation of a long list of laws. You must still follow all employment laws and regulations – the at-will language simply helps prevent wrongful discharge suits.

This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/962-3171.

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