Terminating Employees with Employment Contracts



DETERMINING WHETHER THERE'S A CONTRACT:

The first step in learning the reasons for which you can fire an employee is to determine if you have an employee contract with him or her. Occasionally, this will be as simple as opening the employee's personnel file and seeing a document labeled "employment contract." This type of contract is called an express written contract.

Usually, however, it's not that easy. This is because employers sometimes create employment contracts without meaning to. This type of contract – called an implied contract – binds employers as much as written contracts do.

Employers create implied contracts when they promise the employee something, usually job security. These promises can occur in all sorts of circumstances, such as during a casual conversation with an employee or as part of a discussion in an employee handbook. No matter how the promise occurs, if a court thinks the promise has enough weight and if the court thinks the employee has relied on that promise (usually through continued employment), the court will view that promise as a contract and will bind you to it.

Figuring out whether you have unintentionally created one of these types of contracts can be tricky business. Past court decisions do provide some guidance, however. Courts have found that an implied contract was formed in the following circumstances:

- In trying to convince a prospective employee to take a job, an employer promises the employee that he will only be fired if he doesn't do his job well.
- An employee manual states that once employees have been with a company for more than 90 days, employees become permanent.
- During an evaluation, a supervisor gives an employee a glowing review and tells the employee that he has a long future at the company unless he does something really wrong.

Don't let the specter of implied contracts worry you too much, however. The vast majority of employees in this country are working without a contract – express or implied. If you are dealing with an employee who has only been in the job for

a year or less and if you feel certain that you have never promised the employee job security, then the chances are that the employee does not have an implied contract and you can fire the employee for any reason that isn't illegal. (For a list of illegal reasons, see Illegal Reasons for Firing Employees.) Also, even if the employee does have an implied contract, you can still fire the employee for good cause (see below).

STANDARDS FOR FIRING EMPLOYEES WITH EMPLOYMENT CONTRACTS

Regardless of what type of contract you have with the employee, that contract will obligate you to treat an employee fairly. This obligation is called the covenant of good faith and fair dealing.

If you have an express written contract with an employee, it will usually state the reasons for which the employee can be fired. If you want to terminate that employee, you must follow what the contract says. Often, contracts will simply state that an employee can only be terminated for something called good cause. Sometimes, however, the contract will be more detailed. Either way, you must follow the contract terms.

Usually, the existence of an implied employment contract means that you can fire an employee only for good cause.

GOOD FAITH AND FAIR DEALING

If you have a contract with an employee, then you have an obligation to treat that employee fairly.

Although this rule might seem like a gaping hole in your ability to terminate employees, it really isn't. To breach this obligation, employers have to engage in very egregious conduct. For example:

- firing employees to prevent them from collecting sales commissions
  firing employees just before their retirement benefits vest, and
- fabricating evidence of poor performance when the real motivation is to replace the employee with someone who will work for lower pay.

GOOD CAUSE

As explained above, most employment contracts require that employees only be terminated for good cause. The exact meaning of good cause varies from state to state, but generally it means what it says: You must have a legitimate reason for firing the employee. In general, the termination must be based on reasons related to business needs and goals. Firing an employee because you don't like the employee, for example, isn't good cause. Firing an employee because he harasses female coworkers is.

Other examples of good cause include the following

- poor job performance
- low productivity
- refusal to follow instructions
- habitual tardiness
- excessive absences from work
- possession of a weapon at work

- threats of violence
- violating company rules
- stealing or other criminal activity
- dishonesty
- endangering health and safety
- revealing company trade secrets
- harassing co-workers
- disrupting the work environment
- preventing co-workers from doing their jobs