

Employment-At-Will Doctrine

Texas is an “employment-at-will” state. Generally, employees without a written employment contract can be fired for good cause, bad cause, or no cause at all. In an at-will situation, either the employer or employee may terminate the employment relationship at any time, with or without warning, and with or without cause, unless there is an existing agreement with express terms and conditions covering its termination.¹

Of course, the employment-at-will doctrine is not without its limits. Terminations initiated by the employer must not be discriminatory or in violation of specific federal or state laws. For example, the employer is legally prohibited from taking any “adverse employment action” against an employee because of his or her race, gender, age, disability, national origin, or any other legally protected characteristic or activity. Protected activities include, but are not limited to:

- Filing a complaint of discrimination on the basis of race, color, religion, age, sex, national origin or disability.
- Filing a workers’ compensation claim.
- Jury service.
- Refusing to perform an illegal act.
- Reporting violations of law.

Because upset employees sometimes sue a city based on the above and other grounds, it is always recommended that a city maintain documentation of an employee’s performance. The documentation serves as evidence that any disciplinary action was not based on protected activity.

An employee's at-will status may be altered by a written or implied contract, or a state or local law. If the employer and employee enter into a written contract, any termination must be conducted pursuant to the terms and conditions of the contract. A discharged employee who asserts the parties have contractually agreed to limit the employer's right to terminate at-will has the burden of proving an express agreement or written representation to that effect.² The execution of a written contract stating a specific sum per week, month, or year is a definite employment for the period named and may not be arbitrarily concluded. Once the parties have agreed to a term of service, the employee cannot be discharged except for cause.³

Generally, an employer's general oral assurances that an employee will not be terminated without good reason or good cause does not modify the employee's at-will status, absent a definite stated intent to be bound not to terminate the employee except under specific circumstances and absent an agreement on what would encompass good reason or good cause for termination.⁴ For

¹ *Mott v. Montgomery County*, 882 S.W.2d 635, 637 (Tex.App.--Beaumont 1994, writ denied).

² *Lee-Wright, Inc. v. Hall*, 840 S.W.2d 572, 577 (Tex.App.--Houston [1st Dist.] 1992, no writ).

³ *AccuBanc Mortg. Corp. v. Drummonds*, 938 S.W.2d 135, 142 (Tex.App.--Fort Worth 1996, writ denied).

⁴ *Montgomery County Hospital Dist. v. Brown*, 965 S.W.2d 501, (Tex. 1998).

example, a Texas court recently found that an employee's at-will status was modified and an employment contract existed where the employee's manager expressly told him that he would not discharge the employee as long as he complied with the law.⁵

Although employee handbooks and policy manuals are generally viewed as non-binding guidelines,⁶ language appearing in a handbook that specifically and expressly restricts the employer's right to terminate may be interpreted as altering the at-will status.⁷

Municipal ordinances or charters that contain provisions requiring a showing of cause for the termination of certain employees can also alter the at-will relationship.⁸ Similarly, some state statutory provisions require cause for removal. For example, a simple majority of the city council of Type A general-law cities may remove municipal officers for incompetency, corruption, misconduct, or malfeasance in office after providing the officer with due notice and an opportunity to be heard.⁹ If the council wants to terminate an officer due to a mere lack of confidence, a two-thirds majority of the council is necessary to remove the officer at any time.

For more information, please contact the TML Legal Services Department at legal@tml.org or 512-231-7400.

SAMPLE EMPLOYMENT AT WILL STATEMENT

Nothing contained in this policy manual or in any other materials or information distributed by the [Town/Village/City of ____] creates a contract of employment between an employee and the city. Employment is on an at-will basis. This means that employees are free to resign their employment at any time, for any reason, and the city retains that same right. No statements to the contrary, written or oral, made either before or during an individual's employment can change this. No individual supervisor, manager or officer can make a contrary agreement, except for the [____ex. City Council, Mayor, Department Head, etc.____], and even then, such an agreement must be set forth in a written employment contract with the employee, signed by [____position title of the person who has authority to sign employment contracts____].

The policies in this manual are intended for all employees of [the Town/Village/City of _____], its divisions and subsidiaries. The city reserves the right to revise, change, or terminate policies or procedures at any time, with or without notice.

⁵ *Zendeja v. El Espresso and Coach USA, Inc.*, __ S.W.3d __ (Tex.App.—Houston 2005).

⁶ *Hicks v. Baylor University Medical Center*, 789 S.W.2d 299 (Tex. App.--Dallas 1990, writ denied)

⁷ *McAlister v. Medina Electric Coop, Inc.*, 830 S.W.2d 664 (Tex. App.--San Antonio 1992, writ denied).

⁸ *Henderson v. Sotelo*, 761 F.2d 1093, 1099 (5th Cir. 1985).

⁹ TEX. LOC. GOV'T CODE ANN. § 22.077.