Avoiding Wrongful Employee Termination

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# Introduction

Wrongful Employee Termination has, unfortunately, been becoming a serious issue for most parts of the country in the past decade or so. With an employee becoming more aware of his right and an employer refusing to change old practices regarding the matter, there is a hike in the number of cases being made against employers who have wrongly dealt with their employees. However, there have been instances where wrongful termination suits have been used as a power grab maneuver by former employees, who believe that their employers will cave into their demands if they are made through the court of law. Overall, this is a complicated system that is made even more complicated, with no real solution in sight.

# Discussion

## Constructive Discharge and How Courts Perceive the Claims

A constructive discharge occurs when an employee quits from his place of employment if the conditions they have to work under have become exceedingly intolerable. The term exceedingly intolerable refers to work conditions in which any reasonable person may have been forced to leave as well. Most often, the constructive discharge takes place because of unsafe working conditions, such that threatens the life and the wellbeing of the employees. This may also include constant harassment on the part of the employers that are directed towards the employees. However, at times constructive discharge also takes place when an employer intentionally raises circumstances to force an employee out and proclaim to make the life of the employees ‘miserable’ at the workplace (Kumar, 2016).

The downside of constructive discharge is often difficult to prove since the employee must prove that any reasonable person in his situation would have been forced to quit as well. Furthermore, if poor work conditions are cited as the problems, it can give the employers an opportunity to fix the situation. Seen as the people who would be able to testify to the change are currently being employed by the company, obtaining a viable testimony would be difficult. However, there may be a few factors the courts may choose to focus on if a proper judgment needs to be extracted (Elsenheimer, 2004). These are;

* Proof of physical harassment
* Proof of sexual harassment
* Retaliation of employees following a complaint.
* Verbal and physical abuse.
* Unwarranted demotion and humiliation associated with it.
* Unwarranted denial of promotion.
* Unwarranted reduction of wages.
* Continued mistreatment following a complaint.

 An organization can keep claims of constructive discharge at bay by looking to employee working conditions and ensuring that they are up to the mark. They should also ensure that all the required checks and balances are in place to keep the place running smoothly and the environment of the organization is such that it promotes employee growth and motivates them to work harder. Additionally, they should pay heed to employee requests and address them in the best possible manner. You should also try to keep your work environment respectful and free of bullying. Before implementing any significant change, you should consider informing the employees. Finally, always ensure that the employment agreement terms give you room to authorize change regarding essential terms and always treat your employees with honesty and in good faith (Lieb, 1985).

## Difference between “Pure Employment-at-Will” and “Employment-at-Will with Exceptions”

According to the ruling of American courts, when workers are hired for an indefinite period of time, the employers, as well as the employees, have the right to terminate this working relationship at their discretion, at any time or for any reason. Such employment terms or work relationship is known as “Pure Employment-at-Will” (Paul & Townsend, 1993). It was the outcome of abandonment of Horace Gray Wood’s *A Treatise on the Law of Master and Servant* and the adoption of British Common Law tradition (Biasi & Tuzet, 2016).

In the US, it is regarded as the doctrine of an employee at will, which is a common law rule. Furthermore, this relationship is based on the egalitarian principle that all parties involved in an employment relationship are able to do so as equals in the eyes of the law (Brown & Gray, 1988). However, the idea of equal footing in a relationship like this can better be regarded as a legal fiction, since an employment relationship almost always favors the employer rather than the employee. While this wasn’t regarded as a ground-breaking issue earlier, presently, with the rise in advocacy of employee rights and condemnation of wrongful discharge, the basic doctrine “Employment-at-will” is riddled with controversy and debate (Borstorff, Hearn, & Harper, 1997).

On the other hand, the common law exception to the doctrine of Employment-at-will i.e. “Employment-at-will with exceptions” have been put in place purely to mitigate the harsh consequences of Employment-at-will. The major exceptions being used here are implied a contract, implied a covenant of good faith, and, perhaps the most well know, public policy (Muhl, 2001).

Public policy is one of the most recognized and well-known exceptions of public policy. It aims to protect employees from employment actions that are in direct violation of the public interests. The way various US states recognize the idea of public policy differs exceptionally. However, there are four basic categories that are common to all, that allows the employee to refuse to perform a state-deemed unlawful act, report a direct violation of the law, engage in acts that promote public interest and exercise statutory rights (Kautonen et al., 2010).

A term of the contract at employment exists between the employer and the employee in writing when the relationship begins. However, an implied contract may be an oral assurance given by the employer to the employee regarded certain matters, such as pay raise, bonuses or promotions are also binding in the eyes of the law. Such assurances can also be held up in court, thus employers should seek to protect themselves against such proclamations by placing disclaimers in employment contracts (Rousseau & Anton, 1988).

Finally, the implied covenant of good faith and fair dealing in employment relationships keeps terminations made in bad faith, or out of vengeance unlawful. It includes firing a salesman or older employees to avoid payment of commission or retirement benefits (Erb, 1994).

While “Pure Employment-at-Will” is a hard pill to digest, seeing as it overlooks some basic rights held by both parties, the exceptions made to it improve the entire situation, safeguarding basic rights while giving all the parties involved better set of the term in their work relationship.

## Benefits of Montana Wrongful Discharge from Employment Act (WDEA)

Unlike most of the states in the US, Montana is an exception as it does not employ and adhere to the doctrine of Employment-at-will. Earlier, the Wrongful Discharge from Employment Act i.e. WDEA was enacted by the authorities in Montana to protect employees from wrongful terminations (Andreason & Morton, 1993). Under the rules laid down by the WDEA, when an employee is still serving the probationary period, he or she can only be terminated for a good cause. Furthermore, unless an employee probationary period has been defined by the employer, the first six months of his or her employment at the place of work will be seen as the probation period (MT Code Sec. 39-2-901 et seq.) (Grenig, 1991).

While an employee is still serving the probation period, their employment may be terminated by the will and discretion of both the employer and the employee. This is the only instance where employment will stay active. Once the probationary period is over, employers need a “Good cause” to terminate you, which they need to prove upon request (Ewing, North, & Taylor, 2005). Furthermore, under this definition, WDEA states that it is wrongful to terminate an employee if;

* If it was in retaliation of the refusal by the employee to violate public policy.
* If it was in retaliation for reporting a public policy.
* If the discharge was not made under a good cause following the competition of the prohibition period.
* If the employer has violated or breached the provisions of his own personal policy.

The prime benefits of such a policy are;

* It gives an employee a sense of purpose and job security while at work.
* It keeps harassment, discrimination and other ills that are common in the workplace at bay.
* It gives them room to decide, whether or not, they would like to remain employed by a certain business during the probation period. If the arrangement doesn’t feel like the right fit to them they can easily part ways.

## Suggested Actions to handle Employee Terminations Legally

Even if employers and employees have a working relationship with one another that operates “at will”, it is easy to justify a termination it is accompanied by a legitimate and justifiable reason. Thus, an organization can reduce the chances of being challenged in the court significant if it handles employee terminations legally and in the following manner.

Firstly, ensure that all post-termination procedures are followed. Make sure that the former employee is being given an opportunity to make their case and pay heed to what they are saying. Here, being candid to the employee and explaining the matter may only help you in the long run. Sugarcoating things will only adversely affect the company if the employee decides to sue (Tomlinson & Bockanic, 2009).

Secondly, give the employee the respect that is due. Do not do anything to embarrass him and let him walk out of the office with his head held high. Around this time, respect the employee’s privacy as well. Advise the people who know of the ground for his termination from whispering among other staff members. If an employee is humiliated in addition to being termination, the likelihood of him suing the company increases (Fisk, 2001).

Finally, try to maintain all the relevant documents regarding the employee. His work performance and the reasons for his termination should be made a part of his personnel file. Additionally, do not try to make any post-termination settlements, or at least mention them in the termination notice. It only creates credibility issues for the employer as this document could be held up in the court of law and even motivate the employee to sue the organization for wrongful termination (Stempf, 1944).

# Conclusion

Wrongful employee termination is a dreary matter as it is. However, helping an employee find another place of employment and providing them with a reference and a letter of recommendation can only mitigate any ill will borne by the former employee against your organization. Additionally, the sooner a former employee is reemployed, the lesser are the chances of such an individual suing for wrongful termination (Sherman Jr, 1981).

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