

**Employment at-will: Is it ethical to terminate an employee
without good cause?**

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Abstract

This paper addresses the issue of employment at-will and fairness. It examines the differences and various dimensions of employment at-will and good cause doctrines in an effort to establish ethical considerations that must be examined when considering both.

Established concerns are discussed and suggestions are made to assist the reader in handling dismissals in either state of employment doctrine. Consideration should always be given to perceived fairness and the ramifications associated with the lack of a positive perception relative to employee morale, commitment, loyalty and productivity.

Employment at-will: Is it ethical to terminate an employee without good cause?

Employment at-will has been in existence for many centuries and remains a viable employment practice today. It tends to be a double-edged sword in that many individuals and organizations seem to support it while others detest its mere existence. Some say that it gives both the employer and employee certain positive attributes while others seem to think that it overly favors the employer, potentially leaving the employee “out in the cold” when it comes to fairness in the employment relationship. One issue that seems to be prevalent when examining issues concerning employment at-will seems to be its fairness. One question that will be addressed in this paper is whether or not it is ethical for an employer to terminate an employee without good cause? Another way of framing this question is: Can an employer ethically fire an employee without an appropriately justifiable reason?

This paper will examine this issue and address its many implications for both employers and employees of today’s business environment. Realizing that times have changed since the inception of the employment at-will doctrine, one must consider whether or not this practice has reached a point in its life cycle where it should be considered for abolishment.

Recent judicial proceedings have recognized exceptions to the employment at-will doctrine that many believe has eroded its effectiveness. Exceptions pertaining to issues such as implied contract, public policy, implied covenant of good faith and fair dealings, and torts are believed to have limited the effectiveness of employment at-will powers (Roehling & Wright, 2004).

*Definitions**Employment at-will*

Employment at-will originated from common law that transitioned from English common law into the United States during the 19th Century when some of the most notable labor laws of the country were established. One of the most widely used definitions of employment at-will provides that “in the absence of a specified employment contract, private sector employers can legally dismiss any employee for a good reason, a bad reason, or no reason at all, as long as the dismissal does not violate the provisions of some specific statute” (Roehling & Wright, 2004, p. 89).

Another simpler version was drafted by Williamson & Kleiner (2003, p. 35) and states that “at-will employment refers to an employer-employee relationship that can be severed at any time for any reason, except an illegal one”. As noted, a relationship exists under the at-will doctrine that allows the employer or employee to terminate the employment relationship for any reason unless a law is violated. This does not include public organizations such as Federal, State, or Local governmental entities.

The employment at-will doctrine allows private employers to terminate the employment relationship with employees for virtually any reason so long as it is not protected by law or one of the three exceptions that have been handed down by the courts. The judicial decisions include the public-policy exception, the implied-contract exception, and the covenant-of-good-faith exception (Muhl, 2001; Lin & Kleiner, 2003; Craw & Kleiner, 2003; Williamson & Kleiner, 2003; Abraham, 2004).

Employee terminations that violate the public-policy exception generally develop from the discovery of an ethical dilemma within an organization (Lin & Kleiner, 2003).

This exception occurs when an employee is discharged concerning a matter that is contrary to public policy (Muhl, 2001; Miles, 2000). An example of this may be when an employee is subpoenaed to jury duty, which mandates attendance by statute, and the employer refuses to allow the employee to miss work. The employee subsequently disobeys the order and fulfills his/her commitment to jury duty and is fired by the employer. This would be an illegal and unethical act on the part of the employer since the employee is obligated to attend jury duty or be personally arrested. The employer's behavior falls in opposition to Kantianism since he is treating the employee as a means to reach his own ends, not to mention the fact that judicial review has established it as being a civil violation of one's rights (Beauchamp & Bowie, 2004; Muhl, 2001).

The implied-contract exception to employment at-will occurs when an implied contract is formed, even without an explicit written document indicating that the relationship exists (Muhl, 2001; Craw & Kleiner, 2003). This can be an oral or written presentation that represents some form of job security or procedures concerning adverse employment actions or it can be as simple as a "psychological contract" between the employer and employee (Muhl, 2001; Roehling & Boswell, 2004). When the implied-contract is violated, employers must be concerned with employee fallout as well as legal ramifications. Organizations that experience this exception may very well experience morale issues with employees as well as decreased motivation and productivity (Roehling et al., 2004). This can harm the reputation of the organization and impact not only employee potential, but may harm retention and recruitment efforts. The implied-contract violation is generally considered a breach of truth and honesty, which are two ethical issues on the forefront of leadership today (Daft, 2005). The Utilitarian ethical

theory would apply to this situation since the breach of contract jeopardizes the relationship of not only the individual, but the group as a whole. The violation of trust does not promote the greatest good for the organization as a whole and therefore has bad consequences for many (Beauchamp & Bowie, 2004).

The covenant-of-good-faith exception is perhaps the broadest exception in that it includes a covenant of good faith and fair dealings in every employment relationship (Muhl, 2001; Williamson & Kleiner, 2003). This would seem to imply that “fair dealings” would include any number of issues that are considered to be unfair treatment of an employee. However, the courts are somewhat split on this exception resulting in only 11 states accepting it (Muhl, 2001). It has its greatest potential in situations involving psychological contracts and implied contracts (Roehling & Boswell, 2004).

As we can see employment at-will is generally defined as the ability of a private employer to terminate an employee for virtually any reason unless it is protected by statute or any one of the three exceptions previously discussed. It is important for employers and employees to realize that this doctrine applies to both parties. In other words, employees can terminate the employment relationship just as easily as the employer.

Good cause employment

Good cause employment refers to an employment relationship where an employee is protected against termination unless the employer can establish “good cause” or justification to terminate the employee (Roehling, 2002; Kim, 1998).

It is interesting to see that the vast majority of employees are unaware of their being in an employment at-will relationship, thinking that they are protected under the

good cause employment arrangement. A research study conducted by Roehling & Boswell (2004) revealed that 92% of the sample employees in an employment at-will environment believed that their employer had to have good reason to discharge them; in fact, they believed that their employer was obligated, highly obligated, or very highly obligated to show cause.

This perception is alarming because of the large percentage of the employees that do not understand how easily they could lose their jobs without cause. It must be asked: Why is this occurring? Why are employees so oblivious to the situation? On the surface it appears that organizations are not doing a good job of making this clear and that they may be subjecting themselves to the implied-contract exception. If employees are not properly and adequately informed is this the result of deception or fraud? Are employers correct in assuming that there is an psychological contract that implies job security through “good cause” employment practices?

Critical Components of Employment at-will and Good Cause Employment

Employment At-Will Critical Components

It is critical for employers who engage in the employment at-will to establish the following safeguards to ensure that they are not caught up in a wrongful discharge tort that they can not defend. Saul (2004) suggests that the following areas be closely examined prior to terminating the employment relationship with an employee:

1. Understand the employment relationship – make sure that there are no policies or practices that create an implied contract that would create an exception the at-will employment relationship.

2. Determine why it is necessary to terminate the employee – be prepared to defend your decision to terminate this employee.
3. Explain your decision – be prepared to explain to the employee why they are being terminated. This tends to reduce law suits.
4. Consider logistics – utilize managers who are known and respected by the employee to deliver the termination message if possible.

Being prepared to exercise the termination will enhance the successful and peaceful conclusion of the process. Following each of the above general guidelines will promote fairness as well as legal defensibility. It becomes a more ethical process since all involved are well informed and potentially more accurate in their understanding of the reality of the situation.

Good Cause Employment Critical Components

Perhaps the most critical component of the good cause doctrine is its perceived fairness as it relates to the employee's perceived right to work free of negative consequences when meeting role and productivity expectations of the organization. Employees feel that they are treated as ends and not merely means to someone else's ends (Beauchamp & Bowie, 2004). This will promote commitment and loyalty amongst employees, which will increase productivity and ultimately profitability for the organization (Janove, 2005). Some argue that the good cause doctrine creates an environment that establishes the greatest good for the greatest number of people within the organization, therefore it is considered more ethical than the at-will doctrine.

Statutory Exceptions to the At-Will Doctrine

Montana is the only state in the United States that has adopted the good cause doctrine and it was primarily driven by employers because of the judicial climate in the state. There are, however, Federal statutory exceptions to the employment at-will doctrine that all states must follow (Haymes & Kleiner, 2001). They are listed as follows:

1. Equal Pay Act of 1963 which prohibits compensation discrimination based on sex.
2. Title VII of the Civil Rights Act of 1964 which prohibits discrimination based on race, color religion, sex, or national origin.
3. Age Discrimination in Employment Act of 1967 which prohibits discrimination based on age with respect to those who are at least 40 years of age.
4. Rehabilitation Act of 1973 which prohibits discrimination on the basis of handicap status
5. Americans with Disabilities Act of 1990 which prohibits discrimination based on a disability.

Violation of any of these statutory exceptions, in addition to the three established judicial exceptions, may result in the successful civil tort against an organization. It is therefore imperative that all managers and supervisors become familiar with their implications and guidelines.

Diversity Issues

An employment at-will policy may inhibit the hiring of minorities by causing managers to avoid hiring minorities in the first place (Roehling, 2003). Realizing that

minorities are a protected class, managers become reluctant to hire them for fear of a discrimination lawsuit should they be required to terminate them at a later date. Even when the employment relationship is at-will managers must illustrate good cause to safely discharge minorities. Establishing a good cause policy will place minorities and non-minorities on more equal grounds. This will necessitate the establishment of good cause to terminate either class which compels managers to view hiring minorities in the same light as non-minorities. As a result there is less incentive to avoid hiring minorities because of termination concerns (Roehling, 2003).

Analysis of Arguments and Positions

A prevalent attitude of “unfairness” toward employment at-will exists with many employees. It is considered wrong to be able to terminate an employee for no reason what so ever. It is perceived as being acceptable, however, for an employee to terminate the relationship regardless of the reason and time spent on the job. This does seem to be a contradiction of fairness. If the employee can terminate the relationship and it be considered ethical, why is it different for the employer?

Some ethicists argue that “employer’s adoption and enforcement of at-will policies necessarily involves the violation of a moral right, and that there is no justification for a rule that permits employers to inflict negative consequences on employees without good reason” (Roehling, 2003, p. 116). This argument coincides with Kant’s ethical theory indicating that “the lack of respect for a person is to reject the person’s considered judgments, to ignore the person’s concerns and needs, or to deny the person the liberty to act on those judgments” (Beauchamp & Bowie, 2004, p. 23-24). In other words, the employer is treating the employee as a means to their own ends, which is

considered to be unethical, particularly when it is done at the expense of the employee in situations such as termination without any good reason.

With that said, it should also be understood that others defend the at-will doctrine arguing that it promotes the economic well being of the organization and therefore the individuals working there are taken care of as well (Roehling, 2003). Others feel that the at-will doctrine is useful in that it supplies reasonable employers with the freedom to effectively manage their human capital (Janove, 2005).

Many of those who defend the at-will doctrine, however, realize that employers should restraint the use of terminations without good cause. Janove (2005) has presented a perspective that supports the doctrine of employment at-will as seen in Table 1 below.

Table 1

Defending the employment at-will doctrine.

1. Abolishing the at-will doctrine will allow a brand new right to sue for wrongful-termination that will result in substantial financial loss for organizations.
2. It will weaken employers' leverage to get employees to conform to their business expectations.
3. The fear of lawsuits will not only reduce the amount of information given to perspective employers, as it is today, but it will probably eliminate it completely.
4. The difficulty in hiring and firing employees will probably create an environment where potential employers will become excessively cautious to hire anyone in the first place.
5. Employers and employees will be inhibited from forming formal contracts that both presently have the freedom to do.
6. The at-will doctrine favors the employee as well as the employer.
7. Employees can presently acquire training and skills training while employed with one company and may leave and use those skills elsewhere without cause under the at-will doctrine.

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|---|
| 8. Employers do not have a desire to fire any of their employees without good cause because the costs are substantial when this occurs (hiring, training, etc.) |
| 9. Some believe that not allowing U.S. organizations the right to make judgments about their employee matters will greatly affect their global competitiveness. |
| 10. Even though Montana is the only state to adopt the good cause doctrine, it was driven by employers because Montana's court system had gotten so employer-friendly that it made more sense to establish the good cause doctrine as the rule. |

Additional Considerations

With the eroding effect of the employment at-will doctrine one must ask why do so many organizations in the United States continue to embrace the doctrine rather than good cause employment? One response to the question is that many organizations have not fully evaluated the impact of at-will vs. good cause employment relationships. They continually follow the aggressive at-will practices primarily because they are being advised by legal counsel to do so (Roehling & Wright, 2004). Attorneys are trained to focus on the legal risks of various organizational behaviors and to gravitate toward the conservative perspective that promotes avoidance of law suits at all costs. They are not skilled in management and leadership disciplines; therefore, they are not attentive to the various organizational dynamics such as employee motivation, morale, commitment, and loyalty, all of which are critically important to the efficient, effective, and profitable operations of organizations.

A methodical assessment of considerations in addition to employment at-will should be explored to ensure that all appropriate alternatives are considered. Roehling & Wright (2004) have identified five areas for consideration: consistency as viewed by

employees, the impact on recruitment, employee retention, impact on productivity, and the tendency to promote diversity goals.

Consistency is important to the employees and employer and should be exemplified through policy, hiring practices, organizational values, and organizational norms. Ambiguity can create uncertainties that make it hard for employers to defend employment at-will torts and it makes it easier for employees to illustrate the possibility of abuses. Clear statements in both areas, at-will and good cause, make it easier for employers and employees to understand and comply with policy. Global organizations should be especially interested in consistency. It is difficult to enforce employment at-will practices with U.S. workers while being required to work within the good cause environments of most foreign countries. Employees begin to experience what they see as unequal practices, which may affect employee motivation and retention (Roehling & Wright, 2004).

Allegations of playing favoritism toward certain individuals is not in itself illegal, but could perhaps be viewed as being unethical (Zachary, 2005). If global employers exercise favoritism in the workplace it may be detrimental to the employer-employee relationship, particularly when one applies the egalitarian theory which promotes the belief that “the distribution of good and bad should be equal to all within the society unless merit justifies different treatment” (Beauchamp & Bowie, 2004, p. 632). Again, this could lead to a poor relationship between the employer and employee which often results in lost productivity either through motivational issues or employees terminating the employment relationship.

Conclusion

This paper has examined the various dimensions of the employment at-will doctrine from two different perspectives: those who defend it and those who desire to see it abolished. The pros and cons of both perspectives present very effective arguments for their side of the argument. However, it does appear that many employees assume that they fall under the good cause doctrine when in fact they do not.

There is considerable tension between these two perspectives concerning the ethical considerations such as fairness, equity, and respect. Defenders of the at-will doctrine feel that both parties are equally protected under the at-will doctrine and that either can lose or gain in the freedom to exercise at-will employment practices. The supporters feel that arbitrary terminations are not ethical and should not be allowed. They feel that the good cause doctrine should be adopted and the at-will doctrine abolished.

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