What is the difference between an “employee at- will” and a “contract employee”?

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Contract Employee vs. Employee At-Will

Identifying the type of employment agreement you have is a vital step to understanding what your legal rights are if you are terminated from your employment.

It could be argued that all employees are contract employees, insofar as there was an offer of employment, acceptance of the employment duties and consideration – a promise of work for the promise of payment. In some instances these components can create a legally binding contract. Massachusetts, however, recognizes two distinct categories of employment relationships: (1) “contract employees”, and (2) “at-will” employees.

Contract Employees

Those employees who are not “at-will” employees are more than likely “contract employees.” This contract may have been entered into in writing, orally, or be implied by actions of the employer.

In Massachusetts, a written employment contract is generally enforceable according to the terms of the contract. This means that if a contract has specific terms outlining compensation, benefits, or how and why an employee can be terminated, the employer is legally obligated to adhere to the terms of the contract. If the employer does not adhere to these terms and provisions, the employee may be able to seek damages as a result of the breach of the employment contract. This also means however, that an employer may be able to sue the employee for damages as well if the employee is the one who breaches the agreement.

Oral contracts and implied contracts are two other examples of ways that an employee may not be considered an employee “at-will.” Massachusetts case law has held that oral employment contracts which may arise “from various representations and negotiations between the parties” may be enforceable. *See*, Frederick v. ConAgra, Inc. ,713 F. Supp. 41, 44 (D. Mass. 1989). Employment contracts or terms and conditions of employment may also be inferred from the actions and conduct of the parties. If the employer has certain policies regarding employment or has employee handbooks or personnel manuals, the information contained therein may be sufficient to alter what would normally be classified as an employment “at-will” and create contractual obligations for both the employer and employee.

Employee at-Will

Like most states, Massachusetts follows the “at-will” employment doctrine. This doctrine holds that employees without a contract can have their employment terminated by either party at any time and for *almost* any reason. Those reasons, however, must be in accordance with Federal

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and Massachusetts law. For example, an employer cannot terminate an employee based on race, gender, disability, sexual orientation, and other characteristics which would be deemed as unlawful discrimination. For a complete list of categories of unlawful discrimination in Massachusetts, please see the Massachusetts Fair Employment Practices Act, M.G.L. c. 151B.

This is understandably a harsh reality for those employees who find themselves to be employees at-will, and as such Massachusetts has a number of exceptions to the employment at- will doctrine. The largest and most expansive of these exceptions is known as the “public policy” exception. The public policy exception holds that an employer may not terminate an employee for asserting a legal right (such as filing for workers’ compensation) or for doing what the law requires (such as reporting or complaining about illegal activity). This exception to the at-will employment doctrine stems from the idea that an employer should not be able to terminate an employee for engaging in actions or conduct that the law requires or that public policy encourages.

Other examples include a breach of the covenant of good faith and fair dealing and constructive discharge. A breach of the covenant of good faith and fair dealing can occur when an employer terminates an at-will or subjects that employee to other adverse employment actions without cause or in bad faith and as a consequence of the termination retains compensation due the employee for the work performed. Constructive discharge may be actionable where an employer unlawfully harasses or alters the employees working conditions to such an extent that a reasonable employee could no longer endure working there and would be left with no reasonable option but to quit. In both these instances the employer may have committed an unjust or wrongful termination. The application of facts to these laws must be determined on a case by case basis.

Conclusion

Again, it is important for an employee to understand what type of employment arrangement they have with their employer so that they are aware of their rights, duties, and legal remedies are. If you are a contract employee the terms of the contract are usually binding and dictate the terms of your agreement. In at-will settings, only those exceptions carved out by statute or case law, can alter the terms of your employment arrangement, otherwise you or your employer may terminate the employment relationship at any time.

If you believe you were unjustly or wrongfully terminated or are unsure as to your rights and possible remedies please contact me at 508-880-6677 for a free and confidential case consultation.

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