

## OUTLINE IN EMPLOYMENT LAW

### I. EMPLOYMENT AT WILL

#### A. EXCEPTIONS

1. CONTRACT → ORAL V. WRITTEN; EXPRESS OR IMPLIED
2. PUBLIC POLICY
3. DISCRIMINATION
  - a) CATEGORIES → SEX, RACE, COLOR, CREED, ETC.
  - b) STATE VARIATIONS
  - c) HARASSMENT

### II PRIVACY

- A. SOURCE OF RIGHT
- B. LEGITIMATE EXPECTATION
- C. BALANCING TEST
- D. HOT AREAS

EMPLOYMENT AT WILL → AN EMPLOYER CAN FIRE AN EMPLOYEE AT ANY TIME FOR ANY REASON, ABSENT AN ILLEGAL REASON.

#### A. EXCEPTIONS → WHILE THE RULE IS BROAD, THERE ARE A FEW EXCEPTIONS:

1. CONTRACT → AN EMPLOYER CAN CONTRACT NOT TO FIRE YOU FOR A NUMBER OF YEARS, NOT FIRE FOR ANY REASON, ETC.

##### a) NOTE

1. THEY CAN FIRE YOU, THEY JUST MUST PAY YOU DAMAGES, AND THEY CAN SET OFF YOUR EARNINGS FROM YOUR REPLACEMENT JOB.

2. LESSON: NEGOTIATE A SEVERANCE PAYMENT TO GUARANTEE YOUR PAYMENT.

- b) ORAL V. WRITTEN → IN GENERAL, ORAL CONTRACTS ARE ENFORCEABLE, ALTHOUGH HARDER TO PROVE.

1. CONTRACTS FOR LONGER THAN ONE YEAR MUST BE WRITTEN - "STATUTE OF FRAUDS."

- c) EXPRESS V. IMPLIED CONTRACT → IMPLIED CONTRACTS CAN COME FROM A MANAGER'S PROMISE OR AN EMPLOYEE MANUAL.

1. TEST: UNDER ALL THE CIRCUMSTANCES, COULD THE EMPLOYEE REASONABLY BELIEVE THERE WAS A PROMISE.

2. PUBLIC POLICY → IT VARIES FROM STATE TO STATE, BUT IN GENERAL YOU CAN'T FIRE SOMEONE FOR REFUSING TO BREAK THE LAW, FOR COMPLYING WITH THE LAW, FOR FILING A WORKER'S COMP. CLAIM, OR FOR EXERCISING A LEGAL RIGHT.

- a) EX: CAN A PRIVATE SECTOR EMPLOYER FIRE AN EMPLOYEE FOR WEARING A PRO-CHOICE BUTTON? YES! RAYTHEON IS NOT OBLIGATED TO EMPLOY SOMEONE WHO IS SPEAKING AGAINST THEIR INTEREST.

1. THIS WOULD NOT WORK FOR GOVT. EMPLOYERS - THEY HAVE A DIFFERENT STANDARD.

- b) EXERCISING A LEGAL RIGHT → FAMILY MEDICAL LEAVE ACT FOR A MATERNITY LEAVE

- c) YOU CAN'T FIRE SOMEONE TO DEPRIVE THEM OF COMPENSATION ALREADY EARNED.

1. EX: SALESMAN'S BONUS IS ABOUT TO BE PAID.

2. STOCK OPTIONS WITH VESTING SCHEDULE: VESTING SCHEDULE DETERMINES WHAT YOU'VE EARNED, BUT IF YOU'RE CLOSE TO THE DATE, THE COURT WILL HEAR THE CLAIM.

- a) GOOD COUNSEL: DON'T FIRE CLOSE TO THE DATE OR FIRE AND PAY THEM THE OPTION VALUE.

d) WHISTLE-BLOWING → IN MASS, WHEN YOU INFORM THE APPROPRIATE OUTSIDER OR COMPANY PRESIDENT AND INFORM THEM OF CONDUCT IN VIOLATION OF APPLICABLE STANDARDS OR REGULATIONS.

1. TELLING THE PRESIDENT OF MANAGEMENT MISTAKES IS NOT WHISTLE-BLOWING; PURELY INTERNAL MATTERS DON'T QUALIFY.

### 3. DISCRIMINATION

a) SOURCES OF LAW: FEDERAL, LIKE TITLE VII, AGE DISCRIMINATION ACT, DISABILITY, ETC. AND STATE, WHICH USUALLY PROTECT THE SAME CHARACTERISTICS.

b) SEXUAL ORIENTATION → SOMETIMES ADDED BY STATES, SUCH AS CALIFORNIA OR MASS. SOME STATES PROTECT AGAINST MARITAL STATUS.

1. SHOULD YOU ASK: "ARE YOU MARRIED?" NO, BECAUSE YOU'LL NEVER ASK A MAN AND IT BUILDS A CASE FOR GENDER DISCRIMINATION. YOU REALLY WANT TO KNOW IF SHE'S GOING TO HAVE KIDS.

c) BONA FIDE OCCUPATIONAL EXCEPTION → IF THE POSITION TRULY REQUIRES A PARTICULAR GENDER, SUCH AS AN ACTOR, YOU CAN DISCRIMINATE.

1. NARROWLY CONSTRUED, DOES NOT APPLY TO RACE.

d) IMMIGRANTS → GREENCARD HOLDERS ARE PROTECTED

e) AMERICANS WORKING FOR AMERICAN COMPANIES ABROAD ARE COVERED

f) AGE → OVER 40, PROHIBITS MANDATORY RETIREMENT SAVE AN EXCEPTION FOR VERY HIGH LEVEL EXECUTIVES.

g) DISABILITY → YOU MUST HAVE A PHYSICAL OR MENTAL IMPAIRMENT THAT PREVENTS A LIFE FUNCTION, BUT YOU MUST BE ABLE TO PERFORM ALL THE ESSENTIAL FUNCTIONS OF YOUR JOB.

1. REASONABLE ACCOMADATION → CAN YOU GIVE THE EMPLOYEE AN ACCOMADATION SO THEY CAN PERFORM THEIR JOB.

#### h) PROOF

1. DIRECT EVIDENCE → HE SAID, SHE SAID. THESE CASES ARE DIMINISHING TO ZERO.

2. INDIRECT OR CIRCUMSTANTIAL EVIDENCE → LOOK AT ALL THE FACTS AND INFER A DISCRIMINATORY MOTIVE.

4) USE DISPARATIVE TREATMENT TO SHOW THE MOTIVE.

3. NOTE: WHEN YOU FIRE SOMEONE, TELL THE TRUTH, EVEN IF IT IS UNPLEASANT.