

## LIVING IN AN “AT WILL” EMPLOYMENT STATE

by Mary-Ann Leon, Ph.D., J.D.

North Carolina is one of a few states where most employment relationships are defined as “at will” employment. It is important to understand what “at will” employment means, what limitations there are on employers, as well as what limitations there are on the remedies an employee may have. In any employment situation, the best way to start protecting oneself is with knowledge.

*What does “Employment At Will” mean to an employee?*

The employment relationship between most employees and employers in North Carolina is what is called an “employment at will,” relationship. This means that either the employee or the employer can end the relationship, “at will,” without notice to the other, or, without stating a reason for doing so. As our Supreme Court said when it decided the case of *Sides v. Duke Hospital*, back in 1985, “at will” employment means that an employer in North Carolina can terminate an employee for no reason or for an arbitrary or irrational reason. In other words, if there is no written contract which describes different rules for terminating an employee, whether an employer has a good reason, a bad reason, or, no reason at all, most employers can terminate an employee without notice and without stating a reason.

*Does an employee handbook which describes disciplinary policies make a difference?*

With respect to the employer’s right to terminate the employee, no, it does not. Our North Carolina courts have stated that an employer’s handbook does not constitute a contract between the employer and the employee. In fact, most employers’ handbooks will state, explicitly, that the handbook is not to be construed as a contract of employment and does not change the basic “at will” employment relationship. Where a handbook spells out the company’s discipline policy and the employer doesn’t follow that policy, the employee may have an excellent basis for receiving unemployment benefits under North Carolina law. The question of whether an employee is entitled to receive unemployment benefits is, however, a completely separate question from whether the employer may terminate an employee despite the fact that doing so seems to be contrary to the policies spelled out in the employer’s handbook.

*Are there employees in North Carolina who are not “at will” employees?*

Yes. In general, there are two kinds of employees who do not fall into the category of “at will” employees. First, employees who have a written contract which states the length of the employment relationship, or, states specifically that the contract will be renewed unless the employer has “cause” to terminate the

employee are not “at will” employees. Second, state and county employees who have reached the status of “permanent employee” and are protected by the State Personnel Act in North Carolina are not “at will” employees.

*Are there exceptions to the general rule that an employer may terminate an “at will” employee without cause?*

Yes. This is a narrow exception to the rule, but the courts in North Carolina have stated that the right of an employer to terminate an employee “at will” is subject to one important limitation: An employer cannot terminate an employee for a reason that “contravenes the public policy of the State of North Carolina.” There are three general categories of “public policy violations” which our courts have prohibited:

- (1) an employer cannot terminate an employee if doing so would mean that the employer would be violating a law or policy of the state of North Carolina;
- (2) an employer cannot insist that an employee do something which is a violation of law or policy as a condition of keeping his or her job; and,
- (3) an employer cannot terminate an employee who is performing an obligation required by law.

Termination actions which fall into the first category generally refer to terminations based on race, sex, age, religion, national origin, or, a “handicapping condition.” For instance, North Carolina General Statute 143-422.1, also known as the *North Carolina Equal Employment Practices Act*, is North Carolina’s public policy statement on equal employment practices. This law itself does not give an employee a remedy in court upon which to sue. However, the law is a statement about what is the policy of the state. An employer who terminates an employee because it is discriminating against the employee on the basis of one of the categories mentioned in this Act has violated the public policy of this state. The employee who is terminated may then be entitled to bring a lawsuit against the employer for “Wrongful Discharge in Violation of North Carolina Public Policy.”

Termination actions which fall into the second category refer to terminations where the employee is asked to violate a law and refuses to do so. Upon his or her refusal, the employee is then terminated. In the *Sides* case, the employee refused to provide false testimony under oath for the employer. The employer then terminated Sides and she sued for wrongful discharge claiming that the employer’s termination violated the state’s public policy by making her job dependent upon committing perjury. In *Coman v. Thomas Manufacturing*, the employee, who was a commercial truck driver, was fired because he refused to falsify his driving logs. His employer was asking him to drive for more hours than

state and federal regulations allowed. In addition, the employer was asking Coman to report in his logs only the number of hours that were allowed under the state and federal laws. Coman refused to do so and was terminated.

The third category of termination actions which are exceptions to the general rule of “at will” employment are those times when an employee has a legal obligation to do something and the employer terminates the employee for doing what the law requires.

For instance, in *Deerman v. Beverly California Corp.*, Deerman was a registered nurse who was legally obligated by the Nursing Practices Act to respond candidly and honestly to a patient’s family members who were asking questions about the patient’s medical condition. The patient had begun deteriorating and was showing symptoms of acute distress. Deerman documented the medical difficulties and reported those to the patient’s physician. She made additional attempts to communicate with the physician about the patient’s deteriorating condition, but, the physician did not respond to Deerman. Based upon her training and experience as a registered nurse, Deerman believed that a change in the patient’s treatment was required. One of the family members asked Deerman what, under the circumstances, she would advise and Deerman advised the family that she would reconsider the choice of physicians because the appropriate treatment had not been provided to the patient. Deerman was terminated by her employer because she had advised the family that they should consider changing physicians. She claimed in her lawsuit for wrongful discharge that the discharge had violated public policy because her employer had fired her for doing precisely what the Nursing Practices Act required her to do. The Court agreed and allowed Deerman’s lawsuit against her employer to go forward.

In other decisions, the Court allowed the claim of an employee who was terminated when she provided truthful information to the State Bureau of Investigation (*Caudill v. Dellinger*), and the claim of an employee who was terminated because she refused to cash out a bank customer’s certificate of deposit without giving the notice that is required by North Carolina’s Uniform Commercial Code (*Roberts v. First Citizens Bank & Trust Co.*). In the *First Citizens* case, a jury compensated Roberts \$600,000.00 for her employment loss and also awarded \$1,000,000.00 in punitive damages.

Employees in North Carolina who do not work under a written contract and who are not protected by the State Personnel Act are employed “at will” and may be terminated for a good reason, no reason, or, for an arbitrary or unfair reason, so long as the employer’s reason does not violate the public policy of North Carolina. Employees who believe that their employer has terminated them in violation of public policy should contact an employment lawyer who can review

the factual circumstances surrounding the termination and discuss with them whether there is a viable claim for wrongful discharge under North Carolina law.