

Lesson 3: Termination and Discrimination in the Workplace

In this lesson, we will discuss the process of terminating the employment relationship. We will explore the concept of “at-will” employment. We will also examine other legal concepts that impact the process of termination, as well as the role of employer policies and practices. We will also embark on our review of antidiscrimination laws, beginning with Title VII of the Civil Rights Act.

LEARNING OBJECTIVES

✓ **Objective 1** Discuss the concept of “at-will” employment.

✓ **Objective 2** Offer examples of rightful termination, wrongful discharge, retaliatory discharge, and constructive discharge.

✓ **Objective 3** Explain the importance, impact, and significant features of Title VII of the Civil Rights Act.

✓ **Objective 4** Distinguish “at-will” employees from those who can only be dismissed for cause.

✓ **Objective 5** Describe the role of the EEOC, the process for filing claims, and other remedies available to aggrieved employees.

Text Readings

Employment Law: New Challenges in the Business Environment, Chapters 5 and 7

Additional Readings

Required Readings

- Understanding The New Department Of Labor Civil Rights Guidelines Governing Criminal Background Checks and Federally-Funded Workforce Development Programs(https://www.nelp.org/wp-content/uploads/2015/03/Webinar_DOL_WIA_CrimRecGuidelines.pdf)

Supplemental Readings

- Equal Employment Opportunity Commission(<https://www.eeoc.gov/>)
- Find Your Lawyer(<https://www.findlaw.com/>)
- Law.com(<https://www.law.com/>)

Lecture Notes

Welcome to Lesson 3. In this lesson, we will learn the “ins and outs” of terminating the employment relationship. You probably have heard of the concept of employment at will. At its most basic level, being employed *at-will* means that an employer can terminate a worker without cause at any time. Likewise, an individual can resign his or her employment at any time for any reason. The vast majority of employment relationships are at-will.

Exceptions to At-Will

As we will see, the concept of at-will employment is not an absolute. Due to important public policy, exceptions have been recognized. Thus, if a manager, attempting to induce an applicant to accept a job, tells the applicant that if he or she takes the job, the applicant will have the job for as long as he or she chooses, that manager probably has offered a contract of employment to the applicant that would modify the at-will scenario. This modification should always be in writing to best protect the employee. Additionally, if the employer issues a policy manual to employees and represents that employees will be disciplined and/or terminated only for *cause*, then the employer likely will be held to that promise by a court.

Note that the term “for cause,” as used in an employment arrangement, is distinct from at-will status. Being dismissed for cause can include nonperformance, bad faith, exceeding authority, theft, harassment, and layoff due to downsizing. If an employer is forced to downsize due to a shift in economic factors, the employees who are laid off have little recourse. As your textbook points out, layoffs may allow a company to avoid filing for bankruptcy. Downsizing also allows an employer to increase the price of its stock by making such cuts. Since the great recession, there has been a trend among employers to cut workers’ hours and thus avoid paying benefits.

At-will employment may be desirable in some circumstances and not in others. An employer must avoid unintentionally modifying the at-will status of its employees. These unintentional modifications inevitably lead to litigation and

employees. These unintentional modifications inevitably lead to litigation and

unnecessary expense. Make certain that you can identify “at-will” from “for cause” if you are presented with a hypothetical situation.

Wrongful Discharge, Constructive Discharge, and Retaliation

Wrongful discharge occurs when the employer illegally terminates an employee. This is always an exception to a worker’s at-will status. Examples of wrongful discharge include violations of the protections afforded by Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), or the Age Discrimination in Employment Act (ADEA). If an employee is terminated for exercising rights protected by state and federal laws, such as jury service duties and whistleblowing, the employer has committed an act of wrongful discharge. Wrongfully discharging an employee for whistleblowing is known as *retaliatory discharge*.

Another concept – one that understandably might be initially more difficult for students and workers to grasp – is *constructive discharge*. An employee may be “constructively discharged” if his or her employer or coworkers make the work environment so intolerable that it is reasonable for the employee to resign to escape the work environment. The standard is whether the work conditions were so intolerable that a *reasonable person* would be driven to resign. An employee’s odd quirks and demands about working conditions do not meet the reasonable person standard. For example, a reasonable person would not find an employee’s dislike of background music as grounds to quit and then claim constructive discharge. Discrimination, retaliation, or simple dislike may motivate an employer or coworkers to engage in conduct that leads to constructive discharge. If the motive is unlawful, the discharge is wrongful even though the employee quit.

Whether an employer will be liable for the actions of its employees depends on whether the employer *knew* or *should have known* about the conduct. For example, consider the situation wherein an employee complains about sexual harassment by a popular coworker, and friends of the accused get back at the complaining employee by sabotaging her work through acts such as refusing to give her information she needs to do her job well. If she quits, this may be a situation of constructive discharge, as well as unlawful retaliation for which the employer is responsible.

Antidiscrimination Laws

We begin appropriately with Title VII of the Civil Rights Act of 1964, the first and by far most important antidiscrimination law, and one of the most important of all laws in the United States. Whereas the Civil Rights Act was sweeping legislation that outlawed discrimination in many forms (schools, housing, transportation, public places, and employment), Title VII specifically addresses the workplace. An employer is forbidden from terminating an at-will employee if Title VII protections apply. All the antidiscrimination laws operate in this way as limitations on at-will employment.

Sex, being included as a protected Title VII characteristic has a curious history. Some scholars claim a few Congressmen who hoped to garner votes against the passage of Title VII included “sex” as a joke. Commentators espouse the “joke” theory, because the tale provides an interesting side note to discuss

broader Title VII issues. Other scholars consider the story a myth and use it to highlight how fragile women's struggle for equality was at that time (<https://scholarship.law.wm.edu/cgi/viewcontent.cgi>). Congress later expanded Title VII sex protection to include pregnancy and other conditions related to childbirth. Discrimination based on sexual orientation is not protected nor are transgender persons. A number of states and local governments have adopted this protection, however, and it seems likely that the U.S. Supreme Court will eventually address these categories.

Prior to the passage of Title VII, minorities and women were excluded from higher paying jobs or were kept out of the workforce altogether. It is clear that these groups are crucial members who contribute to the economy – both as workers and consumers. Those of you who watched the 87th Academy Awards may have heard Patricia Arquette's acceptance speech, which included a demand that women earn the same pay as men. Women still earn roughly 77 cents to every dollar earned by men. Visit the U.S. Department of Labor's website for employment statistics. Consider this: Women account for less than half of the working population in the United States, yet nearly 6 in 10 workers earning minimum wage are women. Many work full-time and are the sole breadwinners supporting their families. They often bring in less than \$15,000 a year. A family of four trying to survive on this income is living 17% below the poverty line, even taking into account tax credits! (<https://blog.dol.gov/2015/03/19/facts-about-women-and-the-minimum-wage/>)

HR professionals must always stay abreast of changes in the law. Even though it has been over 50 years since the passage of the Civil Rights Act and Title VII, courts are still resolving these types of disputes between employers and employees. There are many websites that provide resources on Title VII, other antidiscrimination laws, and the cases involving these laws. Use the websites listed in the Supplemental Reading section to keep your knowledge up-to-date and your skills sharp. Now is the time to gear up for your writing assignment that is due in the next lesson. Good work and good luck!

References

<http://blog.dol.gov/2015/03/19/facts-about-women-and-the-minimum-wage/>

<http://scholarship.law.wm.edu/cgi/viewcontent.cgi>

Moran, J. J. (2014). *Employment Law: New Challenges in the Business Environment* (6th ed.). Upper Saddle River, NJ: Prentice Hall.

PowerPoint Lecture Notes

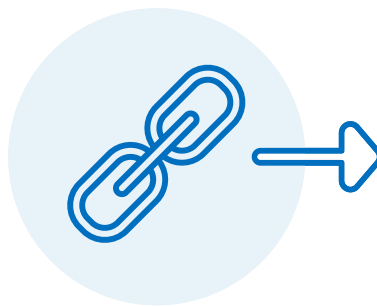
Use the lecture notes available in PowerPoint as you study this chapter by CLICKING THE LINK BELOW. These notes will help you identify main concepts and ideas presented in this chapter.

If you do not have PowerPoint on your computer, you can download a free viewer from Microsoft by clicking

here(<http://www.microsoft.com/downloads/details.aspx?FamilyID=048dc840-14e1-467d-8dca-19d2a8fd7485&DisplayLang=en>). Chapter 5(https://courses.portal2learn.com/content/enforced/9112-R01V_20_1/course-system-files/Lesson_03/.../3/PowerPoints/chapter05.ppt)

Chapter 7(https://courses.portal2learn.com/content/enforced/9112-R01V_20_1/_course-system-files/Lesson_03/../../V3/PowerPoints/chapter07.ppt).

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