

**Goals: This session should help the participant:**

- Understand what employment at will is and is not.
- Handle employment agreements and terminations properly.

**1. Employment at Will Applies to Both Employers and Employees**

- Employment at will means that when there is no employment or collective bargaining agreement:
 - An employer can fire an employee at any time for any reason or for no reason.
 - An employee may resign at any time for any reason and for no reason.
- Employment at will has exceptions.
 - State laws may restrict its application.
 - Court decisions may narrow its application.

2. Avoid Apparent Employment Guarantees and Promises

- Employees may interpret written or verbal language as an implied employment contract.
- Employee handbooks should avoid language that may limit employer ability to fire employees at will because it states or implies:
 - “Permanent” employment.
 - Probationary periods followed by “permanent” status.
 - Employees will be discharged only for specific listed offenses or violations.
- Employee handbooks should include statements that:
 - Reserve the employer’s right to terminate the employment relationship at any time and for any reason.
 - Clarify that the list of offenses calling for discharge is not meant to be all-inclusive.
- Letters that offer employment should avoid statements that mention:
 - “Permanent” status.
 - A “welcome to the family.”
 - “Annual” salary rather than pay period salary.
- Supervisors and other employer representatives should avoid telling candidates or employees that:
 - Their jobs are “safe” as long as they do a good job or avoid specific offenses.
 - The organization “never fires anyone.”
- Employers should require employees to sign an employment-at-will acknowledgment form when they’re hired.

3. Take Precautions to Preserve Employment at Will

- Never assure job candidates or employees of job security.



- Be sure employees understand employment at will's meaning and application.
- Avoid practices that could enable fired employees to claim they were victims of discrimination.
 - Know, follow, and enforce antidiscriminatory policies.
- Never retaliate against an employee who makes or supports a complaint against you or the organization.
 - Employees have legal rights to complain without retaliation, even if what they claim is wrong or untrue.
- Follow disciplinary procedures carefully.
 - Give and document warnings according to policy.
 - Apply discipline consistently to all employees
- Give employees honest and fair performance reviews.
 - Don't use language that downplays problems.
 - Document evaluations with examples and dates of incidents and correction plans.
- Provide warnings to employees with performance or behavior problems that termination is a possibility.
 - Be sure they understand what they have to do to avoid termination.

4. Preserve the Flexibility of Employment at Will

- Avoid words or actions that could imply employment promises as well as discrimination, retaliation, or other improper reasons for discharge.
- Consult with human resources if you're unsure about:
 - What to say to a desirable job candidate or employee.
 - How to handle disciplinary or performance problems.

Applicable Regulations: None

Summary:

- Avoid implied contracts or wrongful discharges in order to preserve the flexibility of employment at will for employers and employees.

Discussion Tips:



- Distribute copies of the handout and review the case study and its outcome.
- Review any employment-at-will statements in your handbook or applications.

Knowledge Review:



- Have participants complete the Employment at Will Quiz. It provides a useful review of their understanding of the subject.

Employment at Will

CASE STUDY

The Case

When Lee Marks applied for a professional position at a financial firm, he filled out and signed a detailed job application that included the phrase, “I understand that nothing in this application is to be construed as constituting a guarantee of employment. Individuals are free to resign at any time, and the company is free to terminate employment at any time.”

Marks was hired, and introduced to other employees at a meeting hosted by his new boss. “Welcome to the team,” said Steve Gray. Marks, who had been through a few shake-ups with prior employers, said he was glad to be part of an organization that had avoided the shake-ups and cutbacks so prevalent in the industry.

“This is a stable organization, and you can feel secure about your job here as long as you do the fine work we know you can do,” Gray assured him.

Marks did do fine work. In fact, his work was so good that within a year, he was transferred to another group and another manager. Marks told Gray he was a bit reluctant to move to a group with such high turnover. “You have no reason to worry,” Gray responded. “You’re a valued member of our organization’s team, and that group needs your skills.”

Marks worried a lot when he saw the disarray in his new job: missing documentation, backlogged applications, and possibly illegal corner-cutting on procedures. As he tried to straighten things out, he alerted his new manager, John Brown, about the potential problems he found.

“That’s not your concern. Just do your job,” Brown told Marks. Soon after, he gave Marks a very negative quarterly review. When Marks protested, Brown fired him.

Marks sued for breach of an implied contract. The company responded that Marks was an “at will” employee and had signed an application acknowledging that.

The Outcome

The court ruled that Marks did have an implied contract. The language in the disclaimer he signed could be interpreted to mean that employment could be terminated “at any time” but only for cause. In addition, Gray repeatedly assured Marks that his job was secure, even making such statements in public settings with witnesses.

Whether Marks was treated fairly or unfairly is not the issue. To maintain employment at will, employers and their representatives must be extremely careful to make sure not to make any employment promises that could be viewed as job contracts. Written statements like the one on the application have to be detailed and clear. Verbal statements must not include anything that could be interpreted as promising job security—much less making statements as clear as Gray’s.

Employment at Will

EMPLOYMENT AT WILL QUIZ

- 1. Employment at will allows employers to fire any employee at any time for any reason or for no reason.**
 - a. True b. False
- 2. Employment at will applies when there's no employment contract or collective bargaining agreement.**
 - a. True b. False
- 3. Employment at will allows employees to resign at any time for any reason or for no reason.**
 - a. True b. False
- 4. Employment at will always applies as long as no written statements promise permanent employment.**
 - a. True b. False
- 5. If an employee handbook lists offenses that are cause for discharge, the handbook should state that these are:**
 - a. The only offenses for which an employee could be fired
 - b. Not an all-inclusive list of the offenses for which an employee could be fired
 - c. Offenses for which employees can be fired only after a series of progressive disciplinary procedures
- 6. If you make an employment offer by letter, you should avoid mentioning permanent status and:**
 - a. Describing the job
 - b. Stating what date the job would start
 - c. Stating the annual salary
- 7. One way to preserve employment at will is to:**
 - a. Avoid referring to jobs as "safe" or "secure"
 - b. Always give mediocre performance reviews
 - c. Fire employees as soon as they receive a verbal warning
- 8. Employees have legal rights to complain without fear of retaliation.**
 - a. True b. False
- 9. All employee complaints should be investigated and documented thoroughly to avoid legal challenges.**
 - a. True b. False
- 10. Employees at risk of being fired for cause should realize that their jobs are in jeopardy without being told formally.**
 - a. True b. False

Name: _____

Date: _____

Employment at Will

ANSWERS TO EMPLOYMENT AT WILL QUIZ

- 1.** a. True.
- 2.** a. True.
- 3.** a. True.
- 4.** b. False. It can also be voided by written or verbal language that could be interpreted as constituting an implied employment contract or job security.
- 5.** b. Not an all-inclusive list of the offenses for which an employee could be fired.
- 6.** c. Stating the annual salary.
- 7.** a. Avoid referring to jobs as “safe” or “secure.”
- 8.** a. True.
- 9.** a. True.
- 10.** b. False. It’s important to inform employees of their status and to document the reasons, the warnings, and any other related actions.