

Employment

1. Basic rules

A. Employment at will

B. Exceptions

1. Contract
2. Public Policy
3. Discrimination

2. Emp. law in M+A context

1. Diligence
2. Golden Parachutes | C in C
3. Noncompetes
4. Successorship issues
5. Warn | Layoffs
6. Benefit Plans

A. Emp. at will - Rule bet. all empys. + non-union employees. Emp. can be hired, fired, promoted at any time for any reason. Your emp. can fire you any time, any reason, no warning... True in all states in US. Notice or severance pay not required.

Not relevant for indep. contractors.

This is not true in union context - "just cause" provision - #7 item on union bargaining agenda.

Your job is not a right, it is a privilege

B. Exceptions

1. Contract exception - In exch. for work, get pd. a certain rate.
"At will" rule still applies to terminate employment.
Contract can be used to vary or change the "At will" rule.

- oral
- written (vs)

- express
- implied (vs)

? is who -
do you believe
||
evidence
issue
● NOT
enforceability
issue

no technical legal diff., it
can prove oral contract
existence is just as valid.
One note: contracts that
can't be performed in one
year must be in writing.

express: I promise to emp. you
for 5 years. implied:
e.g., emp. manual written as if
contract.

Oral - any exchange of
promises or performance for
a promise.

what firm owes you: damages for breach of contract are
damages to put Alice back in position before breach.
And, you have a duty to mitigate ... owe her the
difference bet. balance of 5 years and her current
salary. E.g., if she goes and is better off, you owe 0.

US: winner and loser pay own legal fees. Except for discrimination
rule. Why is this so? keeps ↓ # lawsuits.

2. Public policy - narrow in Mass. -

= can't fire someone for refusing to break the law, exercising a ^{legal} right, whistleblowing (within a range). Being fired to deprive you of income you've earned but not received.

Salesperson and
LMM dream shipping -
file a that night...

Exercising a legal right: e.g., wearing
anti-war button, employee union.
Can be fired for this? For speaking?
Yes. First Am. not constrain
employment: govts. can't restrict you
but employers can. Yet not
public employers.

3. Discrimination Can't take into acct. in any work situation:

Federal
Law

=

sex
pregnancy
age
national origin
ancestry
religion
creed
race
color
disability
veteran status

Each state has own baby version to add to this list.
Mass. adds sexual orientation.

sex - bona fide occupational qualification issue. e.g.,
ladies in washrooms. Famous case ag. Pan Am.
pregnancy - version of sex. litigation now: nuclear reactors, etc.
age - only protects you if you are only 40. Over 40.
Under 40 no rights. Can be fired for too young.
No mandatory ret'nt age.

National origin, ancestry
religion, creed
color -

race - no bona fide occup. qualification here.

disability - only protected if you are disabled + can
perform all the functions of the job. Issue of
reasonable accommodation - e.g., be willing to
buy voice recognition software, then be "blind"
to their disability. Issue of reasonable is
situation specific.

US nationals
protected by
US law
overseas
unless this
would violate
local law.

2. M&A context

1. Diligence = looking for what contracts are out there. what do the employment manuals look like? what's discrimination policy?

process is all w/ finding instances of

① - how much ^(A) employment at will has been enforced and ^(B) # and type of exceptions triggered by 2

2. Golden parachutes - Change of Control (C of C can be sale of assets, change in ownership structure, etc)

These now regulated via changes to tax law. Now expensive to company if q's are excess parachutes.

If you receive in parachute payment of any type benefits valued at 3x your average total comp. for last three years, amt. over deemed excessive. Big excise tax on you and company not get tax breaks.

CA - these are outlawed, pro-employee

3. Non competes - Hot issue is what will mgmt. set up/fix and what not be able to do.

NA - pro-employer → non-comps. enforceable if judge says so. ⇒ ⇒

4. Successorship

stock transaction - if do this, you are the successor b/c you are the co.

● Issue as to whom claims can be transferred to you.

asset - you are not the company, old co. left behind.

If you are the same mgmt. team, fact that it is an asset deal w/it protect you. Wait defect being a successor.

S. WARN / Layoffs If of a certain size and will fire enough employees (mass layoff) or shut down plant, need give 60 days notice to ppl (like giving 60 days severance pay).

In M+A context, A buys B and slashes people. So... John sells B to me, I buy Tuesday, fire Wed, John knows. Problem: notice had to be given when John owned co. even though I did the firing.

- So - John puts in clause that I wait fire and I do I indemnify him.

whatever judge feels is fair, inc: employee compensation, competition, other employees, etc.
- pure power question.

only enforceable:

noncompetes - must protect legitimate interests of co:

- confidential info
- goodwill - customers

- reasonable in time

- gen. 1 year works, not > 5 years

- reasonable in geographic scope.

- geo. scope of co's biz.

reality

law

There can be enforced even if you are fired or getting paid...