

## Employment At-Will Doctrine in HRM Perspective

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### **Abstract:**

*Employment is a contract between two parties, one being the employer and the other the employee. In an 'at-will' situation, either the employer or employee may terminate the employment relationship at any time, with or without warning and with or without cause, unless there is an existing agreement which express terms and conditions covering its termination. The 'at-will' employment doctrine holds that employees without a contract can have their employment terminated by either party at any time and for almost any reason. There are still few organizations where employment 'at-will' contracts still exist. At-will employment has grown increasingly more popular over time. This type of employment involves a great deal of flexibility for both the employer and the employee.*

**Key Words:** Employee Rights, Job Market, Terms of Employment, Conditions of Employment, Service Conditions, Contract of Service, Contract for Service.

### **Introduction**

Employment At-will means an employee can be terminated at any time without any reason explanation or warning. It also means an employee can quit at any time for any reason or no reason at all. In general, an 'at-will' employment relationship means that either the employer or the employee is free to end the relationship at any time, with or without advance notice and for any reason at all. Employment At-will is a term used in US. Most countries throughout the world allow employers to dismiss employees only for cause. Industrial law for contractual relationships in which an employee can be dismissed by an employer for any reason and without warning, as long as the reason is not illegal.

At-will employment has grown increasingly more popular over time. This type of employment involves a great deal of flexibility for both the employer and the employee. Employers, for example, can change the terms of employment such as salaries, benefits or paid time off- without notice or consequence. Employees can change jobs without notice if they choose.

The 'at-will' employment doctrine holds that employees without a contract can have their employment terminated by either party at any time and for almost any reason. A breach of the covenant of good faith and fair dealing can occur when an employer terminates an 'at-will' or subjects that employees to other adverse employment actions without cause or in bad faith and as a consequence of the termination retains compensation due the employee for the work performed. Constructive discharge may be actionable where an employer unlawfully harasses or alters the employees working conditions to such an extent that a reasonable employee could no longer endure working there and would be left with no reasonable option but to quit. In both these instances the employer may have committed an unjust or wrongful termination.

In today's, job market, it pays to be ready to make a change on short notice regardless. After all, job never knows when a better opportunity will come along and you'll decide to take advantage of at-will employment and get a better job. In the employment market, employers compete to hire the best and the employees compete for the best secured job and satisfying job.

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A market in which employers search for competent employees and employees search for high remuneration with the secured job. The job market is not a physical place as much as a concept demonstrating the competition and interplay between different workforces. This type of job does not have any contract. This type of work arrangement was introduced to offer immense flexibility to the employer. However, this form of job opportunity does not offer any job security.

### **Contract Employment vs. Employee At-Will**

Those employees who are not 'at-will' employees are more than likely contract employees. This contract may have been entered into in writing, orally, or be implied by actions of the employer. A written employment contract is generally enforceable according to the terms of contract. This means that if a contract has specific terms outlining compensation, benefits or how and why an employee can be terminated, the employer is legally obligated to adhere to the terms of the contract. If the employer does not adhere to these terms and provisions, the employee may be able to seek damages as a result of the breach of the employment contract. This also means however, that an employer may be able to sue the employee for damages as well if the employee is the one who breaches the agreement.

Employment contracts or terms and conditions of employment may also be inferred from the actions and conduct of the parties. If the employer has certain policies regarding employment or has company standing orders or personnel policies, the information contained therein may be sufficient to alter what would normally be classified as an employment 'at-will' and create contractual obligations for both the employer and employee.

The word "Terms and Conditions of Employment" is a comprehensive meaning. The word consist of two terms i.e., one is terms of employment another one is conditions of employment. It contains the working conditions of employment, wages/salaries and incentives, welfare amenities and so on. The Factories

Act, 1948, has provided mainly for working conditions of workers in factories. The Industrial Employment (Standing Orders) Act, 1946 deals with the terms and conditions of employment in various establishments and organizations.

### **Terms of Employment:**

All human resources are utilised to improve their terms of employment and develop their organisations. In present situation human being in expecting for more remuneration and job security. The employees have a physical needs and social needs. By employment the needs are fulfilled. Therefore, they seek better employment. Where the terms of employment are good since the human resources motivates to join in employment.

### **Conditions of Employment:**

It is covered under the working conditions, welfare, leave, benefits and so on. Conditions of employment that part of an employment that sets out of the duties, responsibilities, hours of work, salary, leave and other privileges to be enjoyed by persons employed.

### **Service Conditions:**

That part of employee welfare which concerns with the employees health, safety, comfort and efficiency in work setting is termed as working conditions. Provision of sanitation, canteens, crèches, drinking water, rest shelter, and other similar facilities are included in it. As a part of employee welfare activities, working conditions include welfare amenities provided within the premises of an establishment.

Where the terms and conditions are better in employment, while human resources are stimulated to apply for the employment into sound organisations. In India, public sectors are to provide more and more conditions of employment than private sector. Therefore, all human resources are stimulated to join into public sector employment.

Arrangements and conditions set out in a contract of employment. Also called terms and conditions of

employment. General and special arrangements, provisions, requirements, rules, specifications and standards that form an integral part of an agreement or contract. Terms and conditions are very important in work they give information to the person, who is applying to the job. It says important things about working hours, paternity and maternity leave, etc. It is to ensure each person knows exactly what is required of each other, need to know things like holidays, sickness benefits, maternity leave and retirement benefits, hours of work and overtime, health and safety requirements, responsibility within the workplace and conduct in and out of work.

An employee may be defined as: “A person in the service of another under any contract of hire, express or implied, oral or written where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. In a commercial setting, the employer conceives of a productive activity, generally with the intention of generating a profit and the employee contributes labour to the enterprise, usually in return for payment of wages. Employment also exists in the public, non-profit and household sectors. To the extent that employment or the economic equivalent is not universal, unemployment exists.

The employment is going on either Contract of Service or Contract for Service;

### **Contract of Service:**

There is a master and servant relations. Contract of service related to a person in employment. Permanent employees have a contract of service with their employer. There is also a relationship between an employer and employee. The worker is controlled by their employer – they must perform the tasks they are instructed to by a line manager according to their job description. Employers are only vicariously liable for torts committed by employees who are under a contract of service. In a contract of service, the employer is responsible under the pay system, taxation applied (professional tax, income tax).

### **Contract for Service:**

There is no relation between master and servant. Contract for a job undertaken by a self employed person. An obligation to make right any error or defective work, without additional remuneration. If either party fails to fulfill their obligations under the terms of the contract, they are in breach of contract and can take legal action to remedy the situation.

There are still few organizations where employment ‘at-will’ contracts still exist. Numerous hourly and minimum wage employees work as at-will employees. In fact, if you are working only on the basis of a verbal contract with the employer, then you are deemed to work as an ‘at-will’ employee.

The at-will presumption is a default rule that can be modified by contract. For example, a contract may provide for a specific term of employment or allow termination for cause only. Cause generally includes reasons such as poor employee performance, employee misconduct or economic necessity. An employment contract may specifically outline the situations or employee actions that would lead to termination for cause.

### **Rights of At-Will Employees**

All employees have basic rights in the workplace, including the right to privacy, fair compensation and freedom from discrimination. A job applicant also has certain rights even prior to being hired as an employee. Those rights include the right to be free from discrimination based on age, gender, national origin or religion during the hiring process. For example, prospective HR professionals cannot ask a job applicant certain family-related questions during the hiring process. Employee’s rights are a group of legal rights and claimed human rights having to do with employment relations between employees and their management, usually obtained under HR laws.

HR laws covers all rights and obligations within the employer-employee relationship, whether current

employees, job applicants or former employees. Because of the complexity of employment relationships and the wide variety of situations that can arise, HR law involves legal issues as diverse as discrimination, wrongful termination, wage payments and taxation and workplace safety. Many of these issues are governed by allocable Central and State HR laws. But, where the employment relationship is based on a valid contract entered into by the employer and the employee, Central and State HR laws alone may dictate the rights and duties of the parties.

In most States, employees have a right to privacy in the workplace. This right to privacy applies to the employee's personal possessions, including handbags or mobile phones, storage lockers accessible only by the employee and private mail addressed only to employee. Employees may also have a right to privacy in their telephone conversations or voicemail messages. However, employees have very limited rights to privacy in their e-mail messages and internet usage while using the employer's computer system.

- Some important employee rights include;
- Right to be free from complaint against an employer
- Right to fair wages for work performed.
- Right to be free from discrimination and harassment of all types;
- Right to a safe workplace free of dangerous conditions and other potential safety hazards.

While 'at-will' employment provides fewer worker protections than alternatives such as employment under a collective bargaining agreement, employees do have rights after a termination. In addition, HR policy may offer protections such as severance pay for employees who are terminated under certain conditions.

If you are working as 'at-will' employees then this does not mean that you have no rights at all. There are still some rights that you can experience. There are various pros and cons of 'at-will' employment. While it allows employees to be fired or promoted based on their merit and productivity, it even offers them with great

uncertainty about the job. But the employees can always control things in their favour by working up to the employer's expectations and surpassing the standards. At the same time, employers have the full convenience to make decisions as per their choice and requirement.

Now, let us know about the pros and cons of employment 'at-will'. Just like this job option has few pros and cons, it even has some exceptions. So, here are some exceptions to employment 'at will'.

### Pros of Employment At-will

- It offers employees great flexibility to search a better job. If there are countless 'at-will' options on the job market then this will offer employees with higher chances to find better-paying jobs for them. Being an 'at-will' employee, the employee will terminate their present employment instantly. As a result, they will be able to find a better job right away.
- At-will employment offer promotions on the basis of merit. When employees work in a contractual job then are promoted on the basis of negotiated rules or seniority. But this is not the case with 'at-will' employees. At-will employees are promoted because of merits and credit of their action. It is because if an employee-at-will is performing well then, actions based on merit will encourage him and allow him to work more and in a better way. This imparts encouragement to the workers to work efficiently every day and be more productive. It is because this will always offer them a chance to earn their way into a position, which is better paying and more rewarding.
- A major benefit of employment 'at-will' to the employer is that it can be beneficial for an employer who wishes to terminate the employee for performing poorly. It is not essential for the employer to give reasons to the employee for his termination. So, if an employer suspects that the employee is not working up to the mark then he can terminate him immediately. There is no

potential litigious explanation required for the termination.

- There is no requirement of negotiating employment contracts. Most of the contracts cover a particular time period. According to such contract, the entire working relationship between the employees and management is based on this contract. When such contracts need renewal then a comprehensive negotiating process between two parts may take place. With the employment at-will process, it is possible to avoid such negotiations. Moreover, it helps the organisation to focus on the productivity of the employees.
- When employees are hired on the basis of at-will employment then they tend to be more productive on almost every working day. It is because they fear to lose the job and when it is good paying job then they would not want to leave it anyway. As a result, employees prefer staying away from provisions of holding out or striking because if they practice any such thing then the employer can simply terminate the employment offer. Even this eliminates the troubles that the organisation may face with other departments. Hence, if a specific group of employees creates any problem then it can be fired immediately. The fear of losing their job keeps employees away from all such problems.

#### **Cons of Employment At-will**

- It is a slow hiring and fast firing process. If there is an employee who is not able to perform up to the mark then he can be terminated instantly without any reason or cause. Hence, this may not work in favour of the employees. Most of the times, employees may get fired because of an unauthentic reason. Also, since there is no legal contract between the employer and employee, so the employee cannot pose any case against the employer.
- Employers can fire employees because of any reason. In most of the 'at-will' arrangements,

employers may fire employees even for silly reasons or minor mistakes. This type of employment involves no justification. Hence, this offers the employer the advantage that they can fire an employee as and when they want. Also, employees under such condition cannot question the employer and even have to look for other ways out to back up their career and financial inflow.

- It involves high uncertainty to employees. Another main advantage of the 'at-will' employment is the uncertainty of the job. As an employee leaves his job without any prior notice or information, similarly, the employer can fire the employee without giving any prior notice. Your employer is not bound to tell any reason or offer any justification for termination of the employment. Hence, sometimes the employees have to leave their job even when they don't have any backup job with them.
- Legislative actions like Industrial Employment Standing Orders Act 1946, Industrial Disputes Act 1948, as per these HR laws, a discharged employee can sue for incorrect termination where the termination is because the employee refused to violate any HR policy or the termination was for a bad cause or the termination violated the HR policies.
- Employees have no practical way to modify the work culture. Rather than negotiating with an employer about safety of the worker or other problems at the workplace, the best genuine way for 'at-will' employees is to ensure that the work environment is safer for them. The best way they find out is to quit the job. This can happen with or without penalty. But this does not imply that the employee cannot look up to other sources of income. Employees can always look for other new positions and can even leave the job right away as soon as they get a better opportunity.
- This type of employment experiences constantly evolving laws. The laws for 'at-will' employment are regularly evolving. A thing that

constitutes 'at-will' employment varies from organisation to organisation and State to State. A thing that may be considered discrimination in one place might be legal in another State. Hence, there are no fixed laws for this type of employment. Even the employment has different HR laws in different States. These HR laws are regularly evolving, which is a great thing. It is because the new HR laws may offer employees with more certainty and safety about their job.

- Large numbers of employers take the pain to identify in their written agreements, applications, job evaluations, standing orders and other employment-related documents policies for their employees' 'at-will'.

### Exceptions to At-Will Employment

- An employee who is covered under a collective bargaining agreement or who has an 'employment contract' may have rights not afforded typical 'at-will' employees.
- Another exception is the 'implied contract'. When an employer and employee sign an implied contract then employers are not allowed to fire an employee, regardless of the validity of a legal document. Usually, it is difficult to prove the validity of the document. Some of the examples of the implied contract are signing the service register of an employer or hiring a company standing orders indicating that the employees are not 'at-will' and will be fired just because of a good cause. An employer may make oral or written representations to employees regarding job security or procedures that will be followed when discipline is imposed. These representations may create a contract for employment.
- This is another exception called an implied covenant of 'fair dealing and good faith'. In such case, employers cannot reject a person to avoid duties, like paying for retirements, commission – based work or healthcare.

*"One machine can do the work of fifty ordinary men.*

*No machine can do the work of one extraordinary man."*  
– Elbert Hubbard.

### Conclusion

A contract of employment is created when an employee and employer agree on the work the employee will perform and on the salaries to be paid for it and other fringe benefits and conditions. The contract of employment binds both parties. Employees have moral rights, legal rights and contractual rights in the workplace. HR laws and collective agreements regulate employees' right and obligations. Employees have the responsibility of growing the organization, especially in terms of profitability. When employees neglect their roles and responsibilities, then the profitability of an organization is substantially threatened.

Examples of bad faith terminations include an employer firing an older employee to avoid paying retirement benefits. Again, it is important for an employee to understand what type of employment arrangement they have with their employer so that they are aware of their rights, duties and legal remedies are. If there are contract employees the terms of the contract are usually binding and dictate the terms of employment agreement.

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