Both employees and employers contact our firm about their rights in terminating the employer-employee relationship. I have been involved with representing both employees and employers in employment relations since 1975, even before I became a lawyer in 1983. Over that period I have seen many changes in employment law. This article will not recite history, but merely give a basic overview of the status of employment at will in Minnesota today.

At the outset, this article will not cover an employer-employee relationship governed by CONTRACTS. A union collective bargaining agreement is such a contract. The vast majority of union contracts require “just cause” for the employer to terminate the employee and a grievance procedure through which the employee’s union can protest the discharge. It will also not review individual employment contracts where the employer and employee have agreed that there must be “just cause” for the employment termination. In some limited instances, the employer’s own employee handbook can be construed as constituting a contract with its employees.

By definition, employment-at-will means just that. The employee is only bound to the employer by his or her own willingness to continue working for the employer. Conversely, the employer is only bound by its willingness to retain an employee. In other words, either the employer or employee can terminate the employee-employer relationship at any time. The termination may be for a good reason, bad reason, or no reason at all.

Notwithstanding the definition of employment-at-will, the Minnesota Legislature and our courts have supplemented the employment-at-will doctrine with various provisions and rulings designed to protect employees in certain circumstances. Thus, there are now a variety of situations in which terminating an employee is illegal or unlawful. Such situations are generally categorized as “wrongful terminations”.

Employees are cautioned that an employer will almost always express a lawful justification for the termination. The difficulty for employees in cases covered by wrongful discharge is to prove that the justification is false. The burden of proof in these cases always falls on the employee to prove the termination was unlawful. Employers should be cautioned that if your justification for the termination is challenged as being false, the cost of litigation will be significant and the employee could prevail, giving rise to a significant damage award.

Examples of Wrongful Discharge

- Discrimination based on: Race, Creed, Color, Sex, National origin, Ancestry, Religion, Age, Disability, Sexual orientation, Marital status [PLEASE NOTE: Federal and State statutes and local ordinances prohibiting discrimination may be applicable.]
- Sexual Harassment.
- Retaliation for complaining about discrimination or harassment based on the above categories.
- Whistleblowing retaliation under Minn. Stat. §181.932 [PLEASE NOTE: Some wrongful discharge claims based on whistleblowing about violations of Federal laws may be solely governed by those Federal laws.]
- Common law whistleblowing retaliation (whistleblowing protection recognized prior to Minn. Stat §181.932 being enacted – i.e refusing to engage in activity with a good faith belief that the activity is illegal).
- Retaliation for seeking workers compensation benefits (Minn. Stat.§179.82)
- Wage and Hour complaint retaliation
- FMLA (Family Medical Leave Act) retaliation
- MNOSHA (Minnesota Occupational Safety & Health Act) retaliation (Minn. Stat. §182.654 subd 9).
- NRLA (National Labor Relations Act) retaliation for organizing activities or exercising rights under the NLRA

**TIPS FOR EMPLOYEES**

1. Always keep a copy of any Employee Handbook, other written employer policies, documents, or correspondence given to you by the employer or given to the employer by you in a file at HOME. (Not at work). This includes such things as doctor’s notes, authorizations for release of information, applications for benefits, leaves of absences, etc.
2. Almost always, it is best to comply with employer instructions and then immediately seek legal advice and counsel if you suspect:
   a. The activity may be illegal;
   b. May not be required under the law; or
   c. Is being requested solely to make you quit or set you up for failure.
3. Commence making written notes, a diary, or report of who, what, where, and when as soon as you suspect something is illegal, you are being treated differently, or that the employer may be seeking to end the employment relationship either by firing you or having you quit.
4. If you are disciplined for something you didn’t do or think is totally unjustified, write a written response to the discipline and request it also be placed in your personnel file.
5. If you are terminated, arguing with the employer is not going to help. If there is an internal grievance process (if you don’t know, ask) you feel the termination is not justified, commence using that process immediately.
6. Immediately upon termination write a letter to the company’s HR department or the owner of the company requesting:
   a. a written explanation of the exact reason for your termination; and
   b. a full copy of your personnel file.
7. Immediately file a claim for unemployment benefits with the Department of Employment and Economic Development (DEED). This can be done online at [www.uimn.org](http://www.uimn.org).
8. If you suspect that you have a case of “wrongful termination” that you can prove, contact an employment law attorney as soon as possible. There are various statutes of limitation that could jeopardize your ability to bring a case if you wait too long.
TIPS FOR EMPLOYERS

1. At the first sign that an employee is not performing, disgruntled, or upset have a private meeting with the employee to find out the reason(s).
2. Don’t ignore or merely dismiss complaints by employees about any aspect of the terms and conditions of their employment.
3. Investigate complaints thoroughly.
4. Meet with the employee about any complaints raised by the employee and the results of the investigation.
5. Counsel and train all management personnel to make sure they do not start behaving differently towards any employee who is exercising their legal rights, despite the fact that it may impact on or change normal operations.
6. Do not hold back on discipline or discharge if there is a good reason independent of any pending complaint by the employee and such discipline or discharge has been consistently meted out to others on the same basis.
7. Document, Document, and Document all meetings, investigations, and facts which lead to any discipline and discharge.
8. Have a written policy and procedure through which employees can bring their concerns, complaints, and work-related issues to management.
9. Have an employment attorney (in-house or on retainer) to whom you can seek advice and counsel for particular situations.
10. Consider a severance package in exchange for a complete release of all potential claims even if such claims are unjustified.

THIS ARTICLE IS JUST AN OVERVIEW AND NOT INTENDED AS LEGAL ADVICE IN ANY PARTICULAR SITUATION. IF YOU NEED OR WANT LEGAL ADVICE, OR REPRESENTATION FOR YOUR SITUATION, A CONSULTATION APPOINTMENT SHOULD BE SET UP.