

## Resource

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**Employers generally intend for new hires to be “at-will” employees. Employers should take precautions at the earliest stages of the employment process to ensure that “at will” employees do not acquire “for-cause” status.**

The pre-employment phase, encompassing recruitment and interviews, exposes employers to considerable legal risks. One example is the risk of inadvertently establishing a “for-cause” employment relationship with an “at-will” employee.

“At-will” employment refers to a work arrangement where neither the employer nor the employee is bound by a fixed contract, and either party can terminate the employment relationship at any time, without any obligation, and with or without notice or cause. However, termination cannot be based on unlawful reasons, such as discriminatory practices or retaliation. In the majority of states, employment is presumed to be at-will unless an agreement stating otherwise is in place.

When an employment contract explicitly specifies that the relationship is “for cause,” termination can only occur under certain predefined conditions outlined in the agreement. These conditions may involve serious misconduct by the employee, such as intentional wrongdoing, fraudulent conduct, theft of company property, substantial failure to perform job duties, or deliberate violation of company policies. A “for-cause” employment agreement typically outlines the employer’s obligations in the event of a termination without cause, including any provisions for severance pay or other benefits. It’s worth noting that while for-cause employment arrangements are

commonly applied to executives, non-executive employees are typically employed under the at-will framework.

Depending on the state, at-will employment can be inadvertently converted to for-cause if the employer makes oral or written statements implying job security, permanence, or guaranteed positions based on job performance. Even representations concerning introductory or probationary periods can alter the at-will relationship by implying greater job security after these periods. Likewise, progressive discipline policies that mandate specific steps before termination may negate the at-will nature of employment.

To minimize the chances of inadvertently converting at-will employment to for-cause, employers should take these practical steps:

- Ensure that all personnel involved in recruiting, interviewing, and hiring understand the distinctions between at-will and for-cause employment and are prohibited from making statements that modify the at-will status.
- Review written policies, handbooks, offer letters, and employment agreements to eliminate language that may be misconstrued as an assurance of employment permanency.
- Clearly indicate in policies that probationary periods and progressive discipline policies do not alter the at-will employment status.
- Begin the employee handbook with a stand-alone disclosure stating the at-will nature of the employment relationship.
- Emphasize statements regarding at-will employment using bold and underlined text in written materials.

If you have any questions regarding at-will or for-cause employment, please contact Natalie Pierce, Max Perlman, or any attorney in Gunderson's **Employment & Labor Group**.

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