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Employment-At-Will Doctrine in Arkansas: Do Employment Manuals Create For-Cause Employment?

December 2015

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Arkansas courts recognize the right of employers to fire employees under the “employment at-will doctrine” where an employer-employee relationship remains completely terminable at will (other than for discriminatory reasons related to age, sex, race or religious beliefs) by either the employer or employee, unless there is an agreement to the contrary.

However, the employment at-will doctrine is not absolute as Arkansas courts recognize a number of exceptions to the general rule. One such exception involves employment manuals and handbooks. In *Gladden v. Arkansas Children’s Hospital*, 292 Ark. 130 (1987), the Arkansas Supreme Court held that a for-cause employment contract was formed between an employer and employee even though the employer referred to the employment as strictly at-will. The employment was determined to be for-cause because the employment manual’s terms and conditions contained a definitive list of grounds and conditions for dismissal. The Court considered this list to be a provision that the employee would not be discharged except for cause due to its exhaustive nature, even though the employment was for an unspecified term.

The Arkansas Supreme Court also stated that an employment manual creates a for-cause employment contract if it contains an express provision against termination except for cause upon which the employee relies. If such provisions exist, employers that arbitrarily discharge their employees face potential liability for both breach of contract and wrongful discharge under the employment agreement.

Arkansas courts continue to follow the *Gladden* decision. In *Cisco v. King*, 90 Ark. App. 307 (Ark. Ct. App. 2005), former employees of St. Francis County, Arkansas filed a wrongful-termination claim against the county. They alleged that the county’s employment manual created an employment contract under which they could be discharged only in accordance with the manual’s terms.

The county's employment manual specifically stated that the tenure of an employee with "permanent status" shall "continue during good behavior and satisfactory performance of his duties." The manual distinguished this from "probationary employees," all of whom were required to "serve a probationary period," during which they "may be terminated for any reason without recourse...."

The county argued that the terms relating to employee job security were not sufficiently definite and comprehensive and should be distinguished from the manual in *Gladden*. The Arkansas Court of Appeals disagreed, and stated that the promise to "permanent employees" amounted to a "promise not to terminate a permanent employee without cause." The court also stated that the clear distinction between "permanent" and "probationary" employees strengthened this interpretation of the employment manual.

If an employer wishes to retain at-will employment for its employees under Arkansas law, it should look very closely at its own employment manuals. Such manuals need to be very carefully constructed. An employment manual should not provide a definitive list of events that would be considered grounds and conditions for dismissal.

The employer should also confirm that any employment manuals do not contain express provisions against termination except for cause. Employers have unintentionally provided employment manuals with such provisions to employees they thought were strictly at-will. Such circumstances can be avoided if the employer takes the time to review the terms actually contained in the manual.

Finally, employers should attempt to avoid, whenever possible, the creation of a distinction between "permanent" and "probationary" temporary employees in the employment manual. A distinction for "permanent" employees could be construed by courts to create a promise to not terminate the permanent employee at-will.