Employment Contracts & Severance Agreements

Employees in California are generally "at-will." This means that the employment relationship can be terminated at the election of either the employee or employer for almost any reason or for no reason. However, employers that enter into written contracts with their employees will generally be obligated to comply with the terms of the written agreement and to treat the employee fairly and in good faith.

Employer and employees can enter into written employment agreements that state that the relationship is not "at will." Such agreement can limit the power of the employer to terminate the employment relationship. The agreement can state that the employment relationship will last for a certain period of time (a day, a month, a year). In such circumstances, the employer may not be able to terminate the employment relationship before the end of the term unless the employee willfully breaches a duty under the agreement, neglects his duties, or is unable to perform them for a lengthy period of time. An employee who wishes to sue for a breach (violation) of such an agreement must show that the agreement clearly states the employment term length and the grounds for which it can be terminated before the term ends. An employment agreement may also specify that the employer may not fire the employee without cause. However, a written at-will agreement will usually prevent the employee from claiming that employer promised not to fire him unless it had "good cause" to do so.

Many people have the mistaken belief that an employer must provide two-weeks' notice before it fires its employee. In at-will employment relationships, an employer can fire an employee without *any* notice at all. An employment agreement can also require the employer to provide a certain period of notice before terminating the employee and cutting off her pay. The fact that an employer agrees to provide a period of notice to the employee before firing him does not prevent the employee from quitting without notice.

What do Employment Agreements consist of?

Employment agreements can state that the employer cannot fire the employee unless a certain condition exists. Under such circumstances, even the financial problems of the employer may not justify the termination of employment.

Employers that trick their employees into employment relationships that the employee never bargained for may be liable to the employee for fraudulent inducement of employment (fraud/misrepresentation). This often arises when an employee moves a great distance or quits a job at the invitation of a prospective employer and then is afforded less compensation and different job duties than the prospective employer originally promised.

You may not sue your employer for wrongful termination of employment simply because your employer refuses to renew an employment agreement with you that has expired or is about to end. However, under some circumstances, you may sue your employer if it refuses to renew your employment agreement after you report unsafe working conditions.

Your employer may fire you if you refuse to enter into certain contracts such as arbitration agreements.

Some contracts of employment may be implied even if they are not expressly set out in writing. An employer may promise an employee that he will have a job "for life" or "as long as he chooses to work here." Such implied agreements may prevent a firing unless there is evidence that the employer had

"good cause" to terminate the employment relationship. An employer's mistaken belief that its employee engaged in misconduct is not a basis to justify a firing where there is an implied employment contract not to terminate except for good cause. However, an employer's vague assurances of continued employment will not create an enforceable employment agreement.

An employment agreement limiting an employer's power to terminate may be found in the employer's policies and procedures, employee handbooks, company by-laws, human resources manuals, and memos it gives to the employees. This is true is the employer intends for the employees to rely on such written statements. Also, an employer's past practice of not terminating employees may show that an agreement existed not to terminate employees except for limited circumstances. However, an employee cannot claim that a contract not to terminate exists simply because they employment relationship had lasted for many years or received consistent promotions, good reviews, and salary increases. Similarly, a promise that the employee will receive a bonus every few months is no guarantee of continued employment.

Parties to an employment agreement may modify them for time to time with proper notice. However, such modifications must normally be in writing if the parties intend to change the terms of a written employment contract between them. Assurances by the employer to the employee cannot be used to contradict the terms of a clear written contract between the employer and employee, though the employer's statements may be used to interpret the contract in court.

Ordinarily, an employee is not entitled to severance pay on the termination of his employment. Similarly, employers are not ordinarily required to provide their employees with two weeks notice before firing them, though longer warning periods may be required for mass layoffs by larger employers. However, the employee and employee may agree otherwise. Employees should refer to their employer's policy with respect to severance pay. Severance pay plans provided by an employer pursuant to the Employee Retirement Income Security Act of 1974 are subject to federal law.

Contact the Spivak Law Firm to determine if you have rights under an employment contract with your employer.