If It's Done Right, You Too, Can Be An At Will Employer

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Over the past 20 years, several courts have attempted to erode an employer's right to terminate at will. However, the California Supreme Court has hopefully and finally put the matter to rest.

On October 5, 2000, in a 50 page opinion, the California Supreme Court reaffirmed the concept of at will employment. In Guz v. Bechtel National, Inc., the Court held that simply because Guz was a long term employee with satisfactory performance reviews, he was still an at will employee.

Background Facts

Guz was hired in 1971 as an administrative assistant. During his 22 years of employment Guz received steady raises and promotions and in general his performance reviews were good.

Bechtel, a division of Bechtel Corporation, is an engineering, construction and environmental remediation company which focuses on federal government programs for the department's energy and defense. Between 1986 and 1991, the management information group's size was reduced from thirteen to six individuals and its costs were reduced by approximately 50% from 1986 to 1991.

Bechtel had a written layoff policy as well as an at will policy. The layoff policy was a standard policy which gave Bechtel the right to reorganize, change job requirements, reduce workloads, and, if necessary, reduce its work force.

Bechtel also had a standard at will policy in its personnel policy manual. That policy stated that "employees have no employment agreements guaranteeing continuous service and may resign at their option or be terminated at the option of Bechtel." There was no exception for this policy, and in particular no exception for long term employees, or employees who had received regular raises and promotions.

Events Leading to Guz's Layoff

In January 1992 Bechtel's president became dissatisfied with the size, cost and performance of the management information group and decided to consolidate by having the San Francisco Regional Management Information Group take over the work of Guz's group. In April 1992, the president advised employees in the management information group, including Guz, that the work that was being done by the group could be done by only three people. Over the next several months Guz and employees in his group discussed how to reduce the group's workforce. Guz was involved in reassigning tasks, consolidating efforts and reducing overhead.

In December 1992, Guz was informed that the management information group was being disbanded and that his work would be done by another organization and that Guz was being laid off. However, to help with the transition Guz remained on board for several months. Ultimately he was laid off on June 11, 1993.

At Will Employment Really Means At Will Employment

In California, employment is presumed to be at will. That is employees are free to leave at any time, and likewise, employers are free to terminate employees at any time, with or without cause, so long as the reason is not an unlawful reason, such as discrimination. That has been the law since 1937.

The California Supreme Court after an exhaustive review of the state of law reached the proper conclusion that if the employer has an at will policy and there is no evidence that the employer did anything to contradict that policy, (i.e., statements or representations assuring or guaranteeing employment), then there is no contractual right to only be terminated for good cause.

Like most employees, Guz claimed that since he was a long term employee there necessarily was an implied contract that he could only be terminated for "good cause." Guz argued that since he enjoyed a long successful employment, and was a good employee, then he had an implied contractual right not to be terminated at will. Properly rejecting that argument, the Court found that an employee's longevity is not a significant factor in determining the existence of an implied contractual right that the employee could only be terminated for good cause. Recognizing that in most employment arrangements employees receive raises and satisfactory performance reviews, and those rewards for the employee's continued valued service do not, by themselves, constitute a contractual guarantee of future employment security. In fact, having a rule granting contract rights on the basis of tenure alone would discourage the retention and promotion of employees.

Since there was no evidence of any particular actions or communications by Bechtel and no industry customs, practices or policies which suggested that by virtue of Guz's successful longevity at Bechtel that he was entitled to a contractual right against future termination at will, there could be no claim for breach of contract.

What Employers Should Do To Preserve The Right To Terminate At Will

Have a written at will policy.
If an employer wants to preserve its right to terminate at will, then the most important policy is a written at will policy. That policy should be in at least 6 places: (1) application, (2) offer letter, (3) employee handbook (4) the acknowledgment form for receipt of handbook, (5) performance evaluations, and, (6) progressive discipline forms, i.e., warnings. The policy must clearly state that employment is at will, that employees can terminate their employment at any time, and that the employer can terminate employment at any time, with or without cause and with or without notice. It is also important to have an integrated at will policy, which states that all prior agreements are superseded by the at will policy.

Do not make any representations of continued employment. Employers, in particular, managers and supervisors, must not make any representations of guaranteed employment or employment for any specified period of time. Statements such as, "no one is ever fired here," or "the company only terminates for a good reason" are contrary to at will employment. Those representations could be viewed as company practices, and have as much force and effect as a written policy.

Do not have a mandatory progressive discipline policy.
Employers should not have a mandatory progressive discipline policy, which requires that certain disciplinary steps be taken before termination. If there is such a policy, there is the implication, and an expectation, that the employer can only terminate, if and only if, it follows every step of progressive discipline.

Have a written layoff and reorganization policy.
Employers should also put in writing their right to reorganize and reduce its workforce, at any time, and for any reason. Having such a written policy puts employees on notice that the employer can reduce its workforce or reorganize its operations.

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Attorneys

Tracey A. Kennedy

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