

Hanna & Plaut, L.L.P.

Attorneys at Law
106 E. 6th Street, Suite 600
Austin, Texas 78701
Phone (512) 472-7700
Fax (512) 472-0205

<http://www.hannaplaut.com>

Q&A About Employment “At Will” in Texas

1. Q. What does employment “at-will” mean?

A. The employment “at-will” rule in Texas means an employer or employee may terminate an employment relationship with or without cause, at any time. Employees are protected, however, by various federal and state statutes as well as contract and tort causes of action. For example, an employee may not be terminated on account of age, race, gender, or because the employee refused to commit an illegal act. Numerous federal and state statutes (including Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the American With Disabilities Act, and the Family Medical Leave Act) effectively restrict the “at will” nature of employment in Texas. Consult legal counsel with any questions about these or other statutes affecting employment relationships Texas.

2. Q. Is there a private “whistleblower” cause of action in Texas?

A. No. Although the Texas Whistleblower Act protects public employees who report an employer suspected of illegal activity, there is no such cause of action against private employers. Texas does not recognize a cause of action for “good faith and fair dealing” in the employment relationship either.

3. Q. How do written employment contracts affect employment “at will”?

A. The employment “at will” doctrine does not apply to employment based on written agreements or contracts. Some employment contracts limit the employer’s right to terminate by providing that termination be for “good cause” only. Employee handbooks with detailed grievance procedures that promise to discharge for “good cause” only have been found to modify the “at will” status of employees.

4. Q. Is an oral promise of employment enforceable?

A. Under certain circumstances. An employee may sue for breach of an oral promise of employment if the oral contract can be performed within one year. An oral promise of employment for life, for example, is not enforceable. Employers should avoid making oral promises about the terms and conditions of employment to avoid enforceable contractual obligations and potential liability for fraud and/or an employee's detrimental reliance on the promise.

5. Q. How can an employer preserve the “at-will” employment relationship?

A. Employers who want to maintain the “at-will” status of the employee-employer relationship should take the following steps:

- Avoid using written employment contracts.
- When using written employment contracts, indicate that employment may be terminated at any time by either party, with or without cause.
- Avoid making any promises about the duration of employment.
- Specify wages, if you must, on an hourly or pay-period basis and not on an annual basis.
- Make certain that all offers of employment, employee manuals and employee handbooks emphasize that employment is terminable “at-will” and such materials are not contracts that change the terms of employment.