**FLORIDA IS AN EMPLOYMENT AT WILL STATE**

**BY: WILLIAM G. MORRIS, ESQ.**

Florida is an employment at will state. The simple definition of employment at will is that either party to an employment agreement can terminate the agreement whenever they choose. In practice, terminating an employment arrangement can be more complicated.

An employment contract cannot be terminated at will if it is for a definite term. A definite term means the employee has been hired to work for a specific period of time with the contract that sets out the duration of the employment arrangement. It is not enough that an employee is hired with an annual salary to create a one-year employment contract. The contract must specify employment is for a specific term and not merely that compensation is based on an annualized salary.

If the contract does provide for a definite duration, it is enforceable and not terminable at will. An employment contract for a specific term can be terminated pursuant to its terms or for failure of the employee to meet contract or job requirements. That is generally referred to as termination for cause.

Florida courts seem to go a long way in confirming that either party can terminate an employment arrangement unless it is clear the contract was for a definite term. In rare cases, the courts will find that circumstances surrounding execution or commencement of a contract may convert it from employment at will to a definite term. A good example is the case of *Iniguez v. American Hotel register Co., 820 So.2d 953 (Florida 3rd DCA 2002)*.

In the *Iniguez* case, the employment contract was created by two letters from the company appointing the employee as the exclusive representative for the company in Ecuador, confirming rate of commission on all sales, that the appointment would be for five years and that the employee agreed to pay all advertising, promotional and market development costs as well as operating expenses in Ecuador. The employee did not sign either of the letters went to work in Ecuador and incurred substantial expense establishing and marketing in Ecuador. Eighteen months later, the company terminated the arrangement and the employee filed suit.

The trial court ruled that there was no express statement as to duration in the contract, so it was terminated at will. The appellate court disagreed. The appellate court ruled there was a five-year contract established by the letters and circumstances. The substantial expense incurred by the employee was referenced in the appellate decision and was likely a big part of the court’s reasoning, although the court did not go so far as to rule the company could not disavow a five-year term because the employee had relied on the company’s letters and incurred considerable expense in that reliance.

When one party relies to his or her detriment on the action or inaction of another party, the court can apply the doctrine known as estoppel. Estoppel means that a promise is made that the promisor should reasonably expect to induce action by another. If the action is induced, it would be inequitable to not enforce the promise. Florida courts generally have held that promissory estoppel does not apply in the employment arrangement. But, that appears to be most often the result when there is little to no detriment to the employee other than loss of the job. Where the employee has incurred substantial expense and change in position in reliance upon a promise of employment, it appears the courts may enforce the promise.

When there is an agreement for lifetime or permanent employment, the Florida courts generally find those agreements to be employment at will unless the contract is supported by independent consideration. Extra duties or giving up the opportunity for another job are not considered sufficient consideration to enforce a lifetime contract of employment.

Perhaps the real reason lifetime employment contracts fail is because they are oral and therefore indefinite. The statute of frauds also comes into play, which bars the enforcement of contracts which are not to be performed within one year. For whatever reason, Florida courts are strongly prejudiced against enforcement of lifetime employment contracts.

Even though an employment at will contract may be terminated at will, at least the employer must give the employee reasonable notice. The length of the reasonable notice is based in large part on what is customary in the industry and the nature of the employment arrangement being terminated.

Employees can also find solace in federal and state laws protecting civil rights and retaliatory action. When a former employee can establish discharge was based on an illegal basis, the employee may not only recover damages but also attorney’s fees. Employee rights even extend to retaliation by the employer when the employee exercises civil rights, including discharge for filing a workers compensation claim or a complaint with the government about employer action.

The simple concept of employment at will means either party could terminate the arrangement, owner and employee alike. Florida courts go a long way to uphold the principal of employment at will. Other states have added a “good faith” obligation and many have created exceptions to the employment at will doctrine. Florida has refused to follow. Nevertheless, termination of employment in Florida is not always simple.

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