NLRB Cases Impact At-Will Employment Agreements

By: David W. Tetzlaff, Esq.

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Most employment agreements in California are for at-will employment. This means that the employer can terminate the employee at any time, with or without cause, so long as termination is not for a reason otherwise unlawful (e.g. discrimination based on race or other protected classes).

Employees who are not at-will are often referred to as for-cause employees. This is because such employees typically have an employment agreement which is guaranteed for a stated period of time, and during that time, may only be terminated for good cause. What constitutes good cause is usually stated in the employment agreement and may include, among other things, fraud, failure to show up for work without sufficient explanation, failure to meet stated performance goals, etc.

Most employers rely on at-will employment to maintain maximum flexibility in dealing with their workforce and managing the risk of running a business.

Of course, an at-will contract may lose its at-will status if guarantees for future employment are made. Such guarantees should be avoided.

Two cases heard earlier this year by the National Labor Relations Board (NLRB) have introduced a new uncertainty into the realm of at-will employment. [*American Red Cross Arizona Blood Services Region and Lois Hampton*, Case 28-CA-23443 (2012); *Hyatt Hotels Corporation and Unite Here International Union* Case 28-CA-061114 (2012) (Read Complaint here).

American Red Cross was a decision by an Administrative Law Judge, whereas the complaint in *Hyatt Hotels* led to a settlement between the parties.

Both cases involved at-will provisions in an employment contract that included language suggesting that the at-will arrangements superseded rights guaranteed to employees under the National Labor Relations Act, i.e. the right to organize and engage in concerted action with respect to union activity, or in attempts to improve pay and working conditions, etc.

The language at issue made no mention of such rights. Instead, it provided that only certain senior executives of the company could alter the at-will agreement. Such provisions are not uncommon in at-will agreements, but the NLRB argued that they could be read by employees as a waiver of the right to engage in protected activities under the NLRA. Specifically, the NLRB advises that any language which chills employee's rights to collectively bargain may be challenged.

These cases point out the need for every business to periodically review their employment contracts with an attorney to ensure compliance with current law and conform to the overall business strategy.

Every business is unique, but maintaining employees in at-will employment is often a key strategy to allow for workforce control and to avoid costly employment related litigation.

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