

## EMPLOYEE'S RIGHTS AT TERMINATION

By Attorney Michael H. Wald

Texas employees have jobs only as long as their employers want them - the so-called "at will" employment doctrine, Texas employers may terminate "at-will" employees with or without cause except for the following exceptions: 1) termination of rehired serviceman, 2) voting, 3) jury duty, 4) assignment of wages 5) garnishment of wages, 6) employees exercising rights under OSHA, 7) employees protected by anti-discrimination laws, 8) married or single pregnant employees, 9) employees protected under the National Labor Relations Act, 10) exercising rights to become union members, 11) pursuing rights under worker's compensation and 12) pursuing certain rights under ERISA. Except for the above mentioned reasons, a Texas employer may terminate an at-will employee for a good reason, a bad reason, or no reason at all.

There has been some controversy concerning the definition of an "at-will" employee. An "at-will" employee is an employee that has not been hired for a specific length of time and does not have an employment contract. The employment contract is usually written but can be implied or oral.

When an employee has been fired without cause, he may file for unemployment compensation with the Texas Employment Commission (TEC). The claim is then forwarded to the company for a response. The company has the option of approving the claim or rejecting the claim and stating the reasons for dismissal. If the company rejects the claim, TEC will schedule a hearing. Those present at the hearing usually include a Human Resource Representative and the former supervisor from the company, the former employee and an arbitrator. Both the company and employee will give their side of the story to the arbitrator. The arbitrator then makes the decision as to whether the claim must be paid by the company. Both the company and the former employee may appeal the decision of the arbitrator. At the hearing an employer attempting to show good cause for terminating an employee generally has to show that the employee breached the contract or was disloyal to the employer.

Texas requires that wages earned for "at-will" employees be paid in full on six days' demand after either discharge or resignation. Earned, accumulated vacation is considered payable as final compensation in Texas.

Employment laws vary from state to state. Texas's law concerning the termination of employees favors the employer. Many other states place more limitations on the employer's right to terminate an employee.

My thanks to Toni L. McBride, a student in my law class at the University of Texas at Dallas, who assisted in preparation of this column.

Copyright (c) 1987 by M. Wald & Co.