



## Employment-At-Will and Wrongful Discharge in Ohio\*

PREPARED BY: PAUL LUZZI, LSC ATTORNEY  
REVIEWED BY: JULIE A. RISHEL, LSC DIVISION CHIEF

### Introduction

Ohio is an employment-at-will state, which means that, in the absence of a written employment agreement or a collective bargaining agreement, either the employer or the employee can terminate employment for any reason that is not contrary to law. However, the Ohio Supreme Court has recognized various exceptions to this basic doctrine that are founded on judicial doctrines of implied contract and public policy. And both state and federal law also impose statutory limits on the employment-at-will doctrine. An employee who is discharged in violation of a statute, public policy, or the terms of an express or implied contract is considered to have been "wrongfully discharged" and may bring an action for breach of contract or in tort.

### The employment-at-will doctrine

The general rule in Ohio is that "[u]nless otherwise agreed, either party to an oral employment-at-will agreement may terminate the employment relationship for any reason which is not contrary to law."<sup>1</sup> There is a strong presumption in favor of an at-will contract "unless the terms of the contract or other circumstances clearly manifest the parties' intent to bind each other."<sup>2</sup> The Ohio Supreme Court has held, subject to the exceptions described below, that the right of an employer to terminate an employee's employment for any cause at any time is absolute, and cannot be limited by principles that protect persons from gross or reckless disregard of their rights, or from willful, wanton, or malicious actions or acts done intentionally, with insult, or in bad faith.<sup>3</sup>

\* This *Members Only* brief is an update of earlier briefs on this subject, the most recent of which was dated September 18, 2006 (Volume 126 Issue 10).

Generally, an employer can discharge an employee for any reason that is not contrary to law, the terms of a contract, or public policy. Similarly, an employee who is not covered by an employment contract or collective bargaining agreement may quit at any time and without notice.



---

*An employee who is covered by a collective bargaining agreement or an express employment contract may be discharged only in accordance with the terms of the agreement or contract.*

---

*An implied contract may arise in an employment-at-will context but is inferred by a court from the relationship between the employer and the employee and the circumstances surrounding those parties' transactions.*

## **Contractual exceptions**

### ***Collective bargaining agreements***

In the case of an employee who is subject to a collective bargaining agreement, the written agreement normally will cover the grounds and the manner by which the employee can be discharged. The presence of a collective bargaining agreement generally supersedes actions for breach of implied contract and violation of public policy.<sup>4</sup> An employee who is governed by a collective bargaining agreement and who is discharged in a manner that is inconsistent with its terms may seek redress through his or her union representative as specified in the agreement's grievance procedures. In 2016, approximately 14.1% of Ohio employees worked in jobs covered by a collective bargaining agreement.<sup>5</sup>

### ***Express employment contracts***

The elements of an express employment contract are the same elements required of any other contract. The employer must present a definite offer of continued employment, the employee must accept that offer, which means there must be a "meeting of the minds" as to what was offered and what was accepted, and there must be legally sufficient consideration.<sup>6</sup> If these elements exist, an express employment contract is created. An employer who then dismisses an employee in violation of the terms of the express contract may be liable for a breach of contract; similarly, an employee who quits also may be sued by the employer for breach of contract.

### ***Implied contracts***

The elements of an implied employment contract are the same elements as an express employment agreement; thus, there must be a definite offer, acceptance, and consideration.<sup>7</sup> The difference, however, is that an express contract is an actual agreement with explicit terms often put in writing. An implied contract, on the other hand, is a contract inferred by a court from the circumstances surrounding the transaction, making it a reasonable or necessary assumption that a contract exists between the parties by tacit understanding.

Ohio courts have recognized that the history of relations between an employer and employee, including the combination of employee handbooks, company policy, custom, course of dealing, and oral representations, may give rise to contractual or quasi-contractual obligations despite the fact that those relations arose in an employment-at-will context.<sup>8</sup> Because of this, whether an implied contract exists depends on facts and circumstances unique to each situation.

### ***Employee handbooks***

Employees sometimes claim that the existence of an employee handbook setting forth the employee's duties as well as disciplinary and grievance procedures alters the at-will relationship, and Ohio courts have held that employee handbooks or personnel manuals, depending on the circumstances, can create contractual obligations. Like every contract, there must be a "meeting of the minds" for an employment manual to be



considered a valid contract; that is, the parties must have a distinct and common intention that each party communicates to the other.<sup>9</sup> There also needs to be consideration. An employee's continued employment after receiving the handbook or personnel manual may be sufficient consideration.<sup>10</sup>

To avoid creating a contract or the impression of a contract through an employee handbook, employers often include in the handbook a disclaimer stating that the employee may be discharged at the employer's will. The Ohio Supreme Court in 1990, for example, denied recovery to an employee who claimed that the employee handbook created an implied employment contract because it unequivocally stated that the employee is an at-will employee who may be dismissed at any time by the employer.<sup>11</sup> In 1991, the Court held that, "[a]bsent fraud in the inducement, a disclaimer in an employee handbook stating that employment is at will precludes an employment contract other than at will based upon the terms of the employee handbook."<sup>12</sup> If an employee signs a disclaimer stating that the employee understands the handbook is not intended to constitute an employment contract, the requisite meeting of the minds is lacking. Consequently, the employment remains at will, regardless of whether the employee actually read or understood the disclaimer.<sup>13</sup>

However, a split of authority exists on whether or not a disclaimer creates an at-will employment relationship when the employee

does not agree to the disclaimer, particularly when the disclaimer modifies a prior employment relationship.<sup>14</sup>

### *Promissory estoppel*

Promissory estoppel, first applied to employment contracts in Ohio in 1985,<sup>15</sup> "is not a contractual theory but a quasi-contractual or equitable doctrine designed to prevent the harm resulting from the reasonable and detrimental reliance of an employee upon the false representations of the employer."<sup>16</sup> The test developed by the Ohio Supreme Court in these cases is whether the employer should have reasonably expected the employer's representation to be relied on by an employee, and, if so, whether the employee's expected action or forbearance actually resulted and was detrimental to the employee.<sup>17</sup>

For example, in *Mers v. Dispatch Printing Co.*, an employee was charged with several criminal offenses and suspended from his job without pay. Supervisors told the employee that the employee would be reinstated with back pay if the case was favorably resolved. The criminal trial resulted in a hung jury, and the prosecutor dropped the charges. But the employer refused to reinstate the employee. The employee sued alleging, among other things, that he did not search for another job because he relied on the supervisor's statement. The court found that a jury could reasonably conclude that the employer should have expected the employee to rely on the statement, and that the employee did so to his detriment.<sup>18</sup>

*Employee handbooks can create contractual obligations that alter the at-will relationship. However, a disclaimer in the handbook that the employment is at-will usually precludes a court finding anything other than an at-will employment relationship.*

*Courts may use the doctrine of promissory estoppel as an exception to employment-at-will to prevent harm resulting from an employee's reasonable and detrimental reliance on false representations of the employer.*



Courts have held that it is against public policy to discharge an employee for a reason that violates a statute.

An employer may be liable for backpay and compensatory and punitive damages for discharging an employee in violation of public policy.

However, a promise of future benefits or career opportunities without a specific promise of continued employment is not sufficient to support a promissory estoppel exception to the employment-at-will doctrine. Courts have held that a promise of job security, discussions of future career development with the particular employer, or praise with respect to job performance do not, by themselves, invoke the promissory estoppel exception to the employment-at-will doctrine.<sup>19</sup>

#### *Public policy exceptions*

Originally, the Ohio Supreme Court held that there is no "public policy" exception to the employment-at-will doctrine.<sup>20</sup> The Supreme Court has since overruled this decision. The current standard for establishing that a person was discharged in violation of public policy is "a plaintiff must allege facts demonstrating that the employer's act of discharging [the person] contravened a clear public policy."<sup>21</sup>

An employer can be sued in tort for a violation of public policy, which means that the discharged employee can recover back pay, compensatory damages, and punitive damages. An employee must satisfy four criteria to prevail in a claim of wrongful discharge in violation of public policy. These four criteria are:

That [a] clear public policy existed and was manifested in a state or federal constitution, statute or administrative regulation, or in the common law (the clarity element).

That dismissing employees under circumstances like those involved in the [employee's] dismissal would jeopardize the public policy (the jeopardy element).

The [employee's] dismissal was motivated by conduct related to the public policy (the causation element).

The employer lacked overriding legitimate business justification for the dismissal (the overriding justification element).<sup>22</sup>

In 1990, for example, the Ohio Supreme Court found that an employer violated public policy when the employer discharged an employee because the employee had court-ordered child support payments deducted from the employee's paycheck.<sup>23</sup> The wage-assignment laws specifically prohibit an employer from discharging an employee who has wages assigned. The statute, however, is limited to a \$500 fine; it does not contain a specific provision allowing the discharged employee a private right of action to seek reinstatement, back pay, and benefits.<sup>24</sup> The Court concluded that it would frustrate the public policy expressed in the statute (providing child support) to permit an employer to discharge an employee for having wages assigned.<sup>25</sup>

Courts also have found violations of public policy when an employer discharged an employee for serving on a jury,<sup>26</sup> for providing truthful testimony that was unfavorable to the employer,<sup>27</sup> and for speaking with an attorney.<sup>28</sup> It is also a violation of public policy for an employer to discharge an employee in contravention of





the state's antidiscrimination laws.<sup>29</sup> Additionally, numerous Ohio statutes prohibit termination of employment but fail to provide a private right of action to a discharged employee.<sup>30</sup> Each of these statutes may provide a public policy exception to the employment-at-will doctrine.

It remains unclear whether a discharged employee can base a public policy tort claim on a statute that provides a specific private right of action to the employee. For example, under Ohio law an employee has a private right of action for damages if the employee is discharged because of prohibited discrimination<sup>31</sup> or in retaliation for filing a workers' compensation claim<sup>32</sup> or for "whistleblowing."<sup>33</sup> It seems that if the statute provides full relief in the private right of action, there can be no "piggybacking."<sup>34</sup> Conversely, if the statute provides only limited relief, some courts have held that "piggybacking" is appropriate, while others have held that the specific statutory remedies override the public policy exception.<sup>35</sup>

## Statutory exceptions

### Ohio and federal law

In addition to the examples discussed above, a number of exceptions to the employment-at-will doctrine exist in both Ohio and federal statutory law. An employee may not be discharged for any of the following reasons:

- Voting or serving on a jury;<sup>36</sup>

- Exercising rights with respect to minimum wages or overtime compensation;<sup>37</sup>

- Refusing to take a lie detector test;<sup>38</sup>


- Having a criminal or juvenile record that has been sealed;<sup>39</sup>

- Engaging in concerted protected union activity under the National Labor Relations Act;<sup>40</sup>

- Exercising rights under the Ohio Public Employment Risk Reduction Law or filing a complaint under the federal Occupational Safety and Health Act;<sup>41</sup>

- Filing health, retirement, or disability claims that are considered benefit plans protected by the federal Employee Retirement Income Security Act (ERISA);<sup>42</sup>

- Filing for bankruptcy.<sup>43</sup>

Ohio's Unemployment Compensation Law provides an additional, albeit indirect, statutory control on the arbitrary discharge of an employee. That law denies unemployment benefits to employees who were fired for "just cause." While the employer still may fire an employee for any reason, the employer will be required to pay for unemployment benefits to the employee if the Department of Job and Family Services, which administers the Unemployment Compensation Law, decides that the firing was for any reason other than just cause.<sup>44</sup> The Ohio Supreme Court has held that an employee's inability to perform the work required is sufficient to support a just cause dismissal.<sup>45</sup> 

*Many state and federal laws prohibit an employee's discharge in certain specified circumstances.*

## Endnotes

- <sup>1</sup> *Mers v. Dispatch Printing Co.*, 19 Ohio St.3d 100, 103 (1985).
- <sup>2</sup> *Henkel v. Educ. Research Council*, 45 Ohio St.2d 249, 255 (1976), quoting *Forrer v. Sears, Roebuck and Co.*, 36 Wis. 2d 388, 393 (1967).
- <sup>3</sup> *Mers*, 19 Ohio St.3d at 105; *Fawcett v. G.C. Murphy & Co.*, 46 Ohio St.2d 245 (1976).
- <sup>4</sup> See, e.g., *Provens v. Stark County Dept. of Mental Retardation and Developmental Disabilities*, 64 Ohio St.3d 252, 261 (1992) (court declines to create a constitutional tort remedy where the employee has adequate redress through statutory and administrative enactments, as well as through her collective bargaining agreement's grievance procedures).
- <sup>5</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Union Members – 2016* (January 26, 2017), available at [www.bls.gov/news.release/pdf/union2.pdf](http://www.bls.gov/news.release/pdf/union2.pdf).
- <sup>6</sup> See, e.g., *Rogers v. Runfola Associates, Inc.*, 57 Ohio St.3d 5 (1991) (employment contract providing that an employee can be discharged only for just cause in exchange for signing a covenant not to compete is a valid agreement); *Peters v. Mansfield Screw Mach. Prods. Co.*, 73 Ohio App.3d 197 (Richland Cty. 1991).
- <sup>7</sup> *Gargas v. Nordson Corp.*, 68 Ohio App.3d 149 (Lorain Cty. 1991).
- <sup>8</sup> *Kelly v. Georgia-Pacific Corp.*, 46 Ohio St.3d 134, 139 (1989), citing *Mers*, 19 Ohio St.3d at para. 2 of the syllabus; *Helle v. Landmark, Inc.*, 15 Ohio App.3d 1 (Lucas Cty. 1984); *Hedrick v. Center for Comprehensive Alcohol Treatment*, 7 Ohio App.3d 211 (Hamilton Cty. 1982). See *Pond v. Devon Hotels, Ltd.*, 55 Ohio App.3d 268 (Franklin Cty. 1988) ("[A]lthough the handbook itself, standing alone, does not create an employment relationship other than one at will, when it is coupled with other circumstances, a contract other than one at will may be created").
- <sup>9</sup> *Cohen & Co. v. Messina*, 24 Ohio App.3d 22, 24 (Cuyahoga Cty. 1985).
- <sup>10</sup> *Sowards v. Norbar, Inc.*, 78 Ohio App.3d 545 (Franklin Cty. 1992).
- <sup>11</sup> *Karnes v. Doctor's Hospital*, 51 Ohio St.3d 139 (1990).
- <sup>12</sup> *Wing v. Anchor Media*, 59 Ohio St.3d 108, 110 (1991).
- <sup>13</sup> *Kiel v. Circuit Design Technology, Inc.*, 55 Ohio App.3d 63, para. 1 of the syllabus (Cuyahoga Cty. 1988).
- <sup>14</sup> Compare *Hanly v. Riverside Methodist Hospital*, 78 Ohio App.3d 73, 78-79 (Franklin Cty. 1991) (prior agreement that employment could only be discharged for just cause not altered by disclaimer where the employee wrote on disclaimer that he did not accept it) with *Gaumont v. Emery Air Freight Corp.*, 61 Ohio App.3d 277, 286 (Montgomery Cty. 1989) (disclaimer indicates employee's status is at will even though employee signed the disclaimer under threat of dismissal).
- <sup>15</sup> *Mers*, 19 Ohio St.3d at 105.
- <sup>16</sup> *Karnes*, 51 Ohio St.3d at 142 (1990).
- <sup>17</sup> *Mers*, 19 Ohio St.3d at 105.
- <sup>18</sup> *Mers v. Dispatch Printing Co.*, 39 Ohio App.3d 99 (Cuyahoga Cty. 1988).
- <sup>19</sup> *Wing*, 59 Ohio St.3d at 110-11; *Helmick v. Cincinnati Word Processing, Inc.*, 45 Ohio St.3d 131, 135-36 (1989); *Schwartz v. Comcorp, Inc.*, 91 Ohio App.3d 639, 647 (Cuyahoga Cty. 1993) (positive feedback from superiors regarding performance insufficient to alter at-will status); *Briner v. National City Bank*, 1994 WL 50673, 1994 Ohio App. LEXIS 581 (Cuyahoga Cty. 1994) (general discussions of future career development insufficient to alter at-will status).



<sup>20</sup> *Phung v. Waste Management, Inc.*, 23 Ohio St.3d 100 (1986), overruled by *Kulch v. Structural Fibers, Inc.*, 78 Ohio St.3d 134, 162 (1997).

<sup>21</sup> *Painter v. Graley*, 70 Ohio St.3d 377 (1994).

<sup>22</sup> *Collins v. Rizkana*, 73 Ohio St.3d 65, 69-70 (1995), quoting H. Perrit, *The Future of Wrongful Dismissal Claims: Where Does Employer Self Interest Lie?* 58 U. Cin. L. Rev. 397, 398-99; *Painter*, 70 Ohio St.3d at para. 3 of the syllabus.

<sup>23</sup> *Greeley v. Miami Valley Maintenance Contractors, Inc.*, 49 Ohio St.3d 228, 233-234 (1990); see R.C. 3121.39.

<sup>24</sup> R.C. 3121.99.

<sup>25</sup> *Greeley*, 49 Ohio St.3d at 233-234.

<sup>26</sup> *Shaffer v. Frontrunner, Inc.*, 57 Ohio App.3d 18 (Defiance Cty. 1990).

<sup>27</sup> *Sabo v. Schott*, 70 Ohio St.3d 527 (1994).

<sup>28</sup> *Simonelli v. Anderson Concrete Co.*, 99 Ohio App.3d 254 (Franklin Cty. 1994).

<sup>29</sup> *Collins*, 73 Ohio St.3d at 73 (there is "a clear public policy against workplace sexual harassment"); *Clipson v. Schlessman*, 89 Ohio App.3d 230, 236 (Erie Cty. 1993) (against public policy to discharge employee because of his handicap).

<sup>30</sup> See, e.g., R.C. 2151.211 (prohibits discharging an employee for attending a delinquency proceeding in juvenile court pursuant to a subpoena); R.C. 2939.121 and 2945.451 (prohibits discharging an employee for attending a grand jury or criminal proceeding pursuant to a subpoena); R.C. 5123.61(L) and 5104.10 (prohibits discharging an employee for filing a report of neglect or abuse of an individual with a developmental disability or reporting a violation of the child daycare laws or rules).

<sup>31</sup> R.C. Chapter 4112.

<sup>32</sup> R.C. 4123.90.

<sup>33</sup> R.C. 4113.52.

<sup>34</sup> *Schwartz v. Comcorp, Inc.*, 91 Ohio App.3d 639 (Cuyahoga Cty. 1993).

<sup>35</sup> Compare *Haynes v. Zoological Society of Cincinnati*, 1993 Ohio App. LEXIS 6158 (Hamilton Cty. 1993) (whistleblowing statute does not provide relief for emotional distress and economic damages, therefore a public policy claim is appropriate) (reversed on other grounds) with *Anderson v. Lorain Cty. Title Co.*, 88 Ohio App.3d 367 (Lorain Cty. 1993) and *Bickers v. W. & S. Life Ins. Co.*, 116 Ohio St.3d 351, 2007-Ohio-6751 (no public policy claim allowed under the workers' compensation antiretaliation law).

<sup>36</sup> R.C. 2313.19 and 3599.06.

<sup>37</sup> R.C. 4111.13.

<sup>38</sup> 29 United States Code (U.S.C.) 2002.

<sup>39</sup> R.C. 2151.357(G) and 2953.60.

<sup>40</sup> 29 U.S.C. 158(a)(1).

<sup>41</sup> R.C. 4167.13; 29 U.S.C. 660.

<sup>42</sup> 29 U.S.C. 1140.

<sup>43</sup> 11 U.S.C. 525.

<sup>44</sup> R.C. 4141.29(D)(2)(a); see, e.g., *Corbin v. Bureau of Employment Services*, 77 Ohio App.3d 626 (Franklin Cty. 1991).

<sup>45</sup> *Tzangas, Plakas & Mannos v. Bureau of Employment Services*, 73 Ohio St.3d 694 (1995).

PUBLISHED BY THE OHIO  
LEGISLATIVE SERVICE  
COMMISSION STAFF

9th Floor  
Vern Riffe Center  
Columbus, Ohio  
(614) 466-3615

Director  
Mark Flanders

Deputy Director  
Jim Kelly

Contributing Author  
Paul Luzzi  
LSC Attorney

Reviewer  
Julie A. Rishel  
LSC Division Chief

Layout & Design  
Linda Bayer