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Employment at Will

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Employment at Will

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Tennessee recognizes the doctrine of employment at will, which allows the employer (and the employee) to terminate the employment relationship at any time, with or without cause.^[1] Normally, the employer can use whatever criteria he or she desires for hiring decisions in an employment-at-will relationship, unless the criteria is prohibited by law. For example, employment decisions cannot be made on the basis of race, color, religion, sex, national origin, disability, or under most circumstances, age or veteran status. The United States Supreme Court has placed some additional restrictions on the employment-at-will concept. For example, in *Rutan v. Republican Party of Illinois*,^[2] the Court ruled that the First Amendment constitutional rights of applicants for low-level public positions are violated when their employment applications are set aside because they have chosen not to support a particular political party. This same principle is applicable to promotions, transfers and recalls after layoffs. Thus, although the employment-at-will doctrine is still valid, it does have many limitations that the employer must keep in mind.

Unless the employer wishes to further limit the employment-at-will doctrine, he or she must be careful not to provide promises of continued employment. Under some circumstances, courts have found that provisions contained in an employee handbook could constitute a contract between the employer and employee. These courts have ruled that the employer is contractually bound by the rules and regulations set out in the handbook. This means that, regardless of the employer's contention that he or she can fire an employee, if the handbook gives the employee certain rights to continued employment the employer must be prepared to honor them. With this idea in mind, the employer should carefully consider the benefits included in an employee handbook, and the employer should include a clear statement that the policies are not to be construed as creating any kind of contractual obligation.

An employer who wants to retain the employment-at-will doctrine should be careful not to include policies in an employee handbook that could unreasonably hinder the termination process. If the handbook states that the employee can only be terminated for good cause and then sets out a disciplinary procedure or hearing process, the employer has diluted his or her authority to terminate an employee at will.

Another way an employer can inadvertently create a problem is language in the handbook concerning an employee's probationary period. Often an employer will adopt a rule stating that for the first few months of employment an individual is considered a "probationary" employee. Such a rule either states or implies that after the probationary period the employee becomes "permanent." If the employee is viewed as permanent, a court could question the employer's authority to terminate employment without a showing of good cause. One way to avoid this result is to define the terms differently, such as referring to the initial period as "newly hired" and the permanent position as "regular" employment. Also, the reason for making the distinction should be clear. For example, a newly hired employee may not be entitled to full benefits until he or she has been on the job for a certain period of time, and an employee who is entitled to full benefits may be referred to as a regular employee.

An employer who wants to retain employment-at-will status needs to include a statement in the handbook stating that the benefits set out in the rules and regulations are not to be considered an employment contract. The handbook should also state that all employment will be considered employment-at-will. Finally, the statement should advise employees that any of the policies can be amended by the employer at any time. For personnel policies adopted in counties under the provisions of T.C.A. § 5-23-101 *et seq.*, the law expressly provides that such policies are not to be interpreted as creating an implied contract or otherwise affecting the employment-at-will status of employees.^[3]

[1] See, e.g., *Gregory v. Hunt*, 24 F.3d 781 (6th Cir. 1994). This case examines a public employee's claim that the terms of an employee handbook abrogated the employment-at-will status of the employee; the court found that an implied contract cannot be recognized against the state.

[2] 110 S. Ct. 2729 (1990).

[3] T.C.A. § 5-23-108. See also *Williams v. City of Milan*, 2009 WL 989775 (W.D. Tenn. 2009).

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