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Using At-Will Contracts To Avoid Litigation

On August 3rd the California Supreme Court reaffirmed the rule that a clear and unambiguous written employment agreement for at-will employment prevents an employee from successfully alleging a claim for wrongful termination in violation of an employment contract. (*Dore v. Arnold Worldwide, Inc.*, 2006 DJDAR 10153 (Cal. Sup. Ct.)) We have consistently advised clients to adopt written employment agreements with all employees. By adopting this practice you can avoid breach of employment contract claims asserted by former employees.

When Mr. Dore interviewed for the position, the company did not inform him that employment would be "at-will". Moreover, the company told him they wanted a person on a long-term basis, that employees were treated like family and that Mr. Dore would play a critical role in growing the company. His predecessors, the company informed Mr. Dore, were fired for cause.

Mr. Dore claimed that these circumstances consisting of statements made during the interview process created an implied employment contract that he would not be fired but for just cause. However, Mr. Dore signed a three-page letter from the company's vice president, sent after the interviews detailing the company's offer. The letter stated that Mr. Dore, like all other employees, was an at-will employee meaning that the company could terminate the employment relationship at any time.

After suffering a job loss, Mr. Dore sued the company alleging that it fired him wrongfully and in violation of an implied contract of employment. In addition to citing statements made in interviews, Mr. Dore claimed that the at-will provision in the contract only stated that his employment could be terminated at "any time" not for "any reason" and that the company

still needed sufficient cause to terminate his employment.

The trial court granted the company's motion for summary judgment. However, the appellate court overturned the decision. The California Supreme Court upheld the decision of the trial court. It concluded that the contract was not ambiguous. It also concluded that Mr. Dore's signature on the document constituted a binding contract for at-will employment.

We recommend that every employer take advantage of the Supreme Court's ruling by adopting a written at-will employment contract with every employee. The at-will agreement must be carefully drafted. It should be clear and unambiguous in all of its terms. The agreement should also include an integration clause to prevent employees from making allegations similar to those of Mr. Dore that statements made at the time of interview or over the course of employment modified the written agreement. The at-will agreement can also contain other provisions particular to your business, such as an arbitration clause.

This article cannot substitute for legal or human resource advice in any particular situation. We encourage you to contact us if you have concerns or questions regarding establishing at-will employment in your place of business. Implementing a written at-will contract is an effective way to eliminate potential claims of wrongful termination of employment.

This is not intended as a complete analysis of the subject matter, or legal advice on any specific matter. Contact us if you have specific questions or need further assistance.