

United States Employment Law

1. Minimum Periods of Notice That Must Be Given to An Employee

In most cases, there is no minimum period of notice required. The Employment At-Will (“EAW”) doctrine states that there is no obligation to justify, or give terminated employees advanced notice of the termination. Although the EAW doctrine is the most common type of employment relationship between an employee and employer in the United States, there are exceptions to the employer’s unrestricted right to terminate employment, which include: (a) federal and state statutes; (b) public policy; and (c) contractual limitations.

For example, the Worker Adjustment and Retraining Act (“WARN”) is a federal statute that covers any business that employs 100 or more employees subject to a plant closing or mass layoff. The employer is responsible for issuing a WARN notice that, depending on the situation, may require 30 day or 60 day notice. Moreover, when there is a reduction in force, such as a plant or facility closing, state statutes generally require notice that health benefits shall continue to be provided to subject employees.

2. Does the Reason for Termination Affect the Period of Notice?

Three reasons why employees may not be terminated include: (a) statutory, (b) public policy and (c) contractual exceptions to the EAW doctrine. Each is discussed below:

a. Statutory exceptions to the EAW doctrine include: the National Labor Relations Act and, in California, the Fair Employment and Housing Act. These acts prohibit employers from discharging or disciplining an employee because of his or her race, color, national origin or ancestry, sex, age, physical or mental disability, marital status or sexual orientation.

b. Public policy limitations include the use of threat or demotion to coerce employees to commit crimes, conceal wrongdoing or take other action harmful to the public good. More specifically, the type of terminations that violate public policy are:

- i. The employee refused to violate the law.
- ii. The employee was performing a statutory obligation
- iii. The employee exercised a statutory right or privilege.
- iv. The employee reported an alleged violation of a statute of public importance.

c. The employer’s right to terminate an at-will employee may be limited by express or implied contractual obligations. This usually occurs through an agreement between the employee and employer to terminate only for “good cause.” An express contractual relationship can arise as a result of positive representations and/or employee handbooks. An implied contractual relationship (also known

as implied-in-fact contract) may be found based on the court's consideration of the employer's policies and practices, longevity of service, job security, promotions, raises, bonuses and other relevant evidence.

3. What Are An Employee's Remedies for Unfair Dismissal?

Assuming the employee is not covered under the EAW doctrine then remedies for unfair dismissal may include reinstatement, compensatory damages, punitive damages and attorneys' fees and costs. Reinstatement, although a potential remedy, is not practical because of the acrimonious relationship that develops as a result of an unfair dismissal cause of action. Compensatory damages compensate an employee for unpaid wages and may award costs for finding new employment. Punitive damages may be awarded to the employee if the unfair dismissal is willful and in bad faith because such damages are meant to punish or deter such further conduct by the employer. Attorneys' fees and costs may also be awarded if provided by federal or state statute.

4. What Courts Have Jurisdiction For Employee's to Seek Remedies?

Federal courts have jurisdiction over federal employees claims or violations of federal law by the employer. State courts have jurisdiction over state employee claims and public policy or contractual violations by an employer. In addition, employees seeking unpaid wages can file claims with the labor board of the state where the employee is employed.

5. What Damages Can a Court Award to An Employee?

Damages include compensatory, punitive and attorneys' fees and costs discussed in number 3 above.

6. How Are Damages Calculated?

The calculation of damages is based on the employee's rate of pay or salary, or federal or state statutes. An at-will employee terminated and entitled to unpaid past wages can recover the unpaid wages, interest on these wages and penalties. In addition, the employee is entitled to payment for accrued vacation time. An employee terminated under certain federal or state statutes or public policy reasons will be awarded damages in accordance with the applicable statute. An employee terminated pursuant to an employment contract may be entitled to compensatory and punitive damages, interest and attorneys' fees and costs.

7. Can Courts Order Reinstatement?

Reinstatement in a private employment situation may be ordered, but generally is not practical given the acrimonious relationship that develops in an unfair dismissal cause of action. Reinstatement is a better option for federal or state employees. The employee will likely not be reinstated to the same position, rather the employee will be reinstated to a position with comparable duties and salary.

8. Are There Obligatory or Voluntary Mediation Arrangements?

An employee subject to an express employment agreement may be bound by the agreement's arbitration or mediation provisions. A employee not bound by an arbitration or mediation provision may be ordered by a court to attend a mandatory settlement conference in an attempt to avoid taking the case to trial. Parties involved in a dispute for unfair dismissal may voluntarily agree to submit their claims to mediation or arbitration. An employee's claim for unpaid wages may be heard by a state labor board employee assigned to mediate and adjudicate the claim.

9. If the Employee Has No Written Employment Contract, Are There Minimum Terms Implied by the Law?

A court may find a breach if an implied-in-fact agreement exists. An implied-in-fact agreement may be found based on the court's consideration of the employer's policies and practices, longevity of service, job security, promotions, raises, bonuses and other relevant evidence. The terms on an implied-in-fact contract depend on the particular facts at issue between the employee and employer.

10. If Dismissal is Found by Reason of Discrimination, Is the Basis or Amount of Compensation Increased?

An employee dismissed based on discrimination is governed by federal statutes as discussed in number 2(a) above. The basis or amount of compensation varies depending on the type of discrimination and the governing federal statute. It is possible that the basis or amount of compensation may be increased.

11. Are There Upper Limits to the Amount of Compensation?

The amount of compensation depends on the damages suffered by the employee. The amount of damages must be proven with certainty and may not be speculative. If punitive damages are awarded they must be rationally related to the amount of compensatory damages. Compensation awarded for attorneys' fees and costs may be limited by federal or state statutes.

12. Are the Rights of An Employee Preserved In the Event of the Transfer of The Business In Which He or She is Employed?

An employee with an employment agreement may be protected by contractual provisions in the agreement in the event of transfer of the business. Moreover, the actual merger or acquisition terms may provide for preservation of all or some of the employees (usually key employees such as management and officers) of the business subject to the merger or acquisition. An at-will employee is likely not protected in the event of a merger or acquisition unless the terms of the merger or acquisition document provide otherwise. Finally, employees subject to plant closings or mass layoffs are subject to the WARN Act discussed in number 1 above.