

Employment Agreement Clauses

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When hiring on as an Employee or Contract, get your agreement in writing !!!

Sample Employment Agreements can be found on the internet.

They should include sections such as:

- Employment and Acceptance – Spells out position and duties
- Compensation
- Insurance Coverage and Other Benefits
- Stock Options and Other Equity Awards
- Termination
- Severance
- Notices
- Other Legal Stuff

Other Sections Might include

- At-Will Employment
- Non-Compete

“**At-will**” employment or the right to terminate employment at any time AND FOR ANY OR NO REASON, i.e., with or without cause, has been the law in California and most other states for a very long time. Labor Code Section 2922, which provides that all employment is “at-will” (unless the employment arrangement is for a specified term) was enacted in 1937. (1)

For many years the courts rejected these cases in which former employees sued for wrongful dismissals and illegal use of the At-Will clause, citing to Labor Code Section 2922 and the concept of at-will employment.

In 1981, all this ended when a California appellate court held, in the now notorious case of Pugh v. See’s Candies, that while Labor Code Section 2922 created a presumption of “at-will” employment, that presumption could be avoided by evidence that the employer and employee had entered into a contract whereby the employer would terminate the employee only for “good cause.” (1)

Thus began the wave of lawsuits by disgruntled employees who challenged their terminations. Employers who had not documented the at-will relationship now had to justify their reasons for termination before twelve jurors unfamiliar with their business and more prone to sympathize with the employee. (1)

So what is the answer? A well-written “at-will” employment policy which gives the employer the discretion to terminate employees for any lawful reason. (1)

“**Non-Compete**” Clauses prevent you for simultaneously working for a direct competitor or barring you from the competitor for a determined timeframe. Employers have used such clauses to protect their corporate assets, intellectual property, and competitiveness.

In August 2008, the CA Supreme Court ruled in RAYMOND EDWARDS II, v Arthur Andersen LLP that “all worker non-compete clauses would now be null and void.” (2)

“In a unanimous decision, the justices said state law since 1872 has forbidden what are called non-compete clauses that restrict management employees' options after they leave a company.” (3)

“Some analysts argue that California’s already-lax approach to enforcing non-compete agreements—resulting in the free movement of technically inclined professionals from one start-up to another—was central to supporting the innovation that has made Silicon Valley tech epicenter it is today.” (2)

To enforce non-compete agreements, companies must demonstrate that it’s necessary to protect a legitimate business interest, such as trade secrets.” But even sharp lawyers will tell you that this is difficult to define.

Furthermore, no matter how tightly worded an agreement is, it may not hold up in court if it limits the ability of a worker to make a living. “If the employer’s restriction against competition prevents you from working anywhere for anyone, it is probably too broad.” (2)

Reference sites:

(1) <http://www.pandab.org/preserving-the-at-will-relationship.html>

(2) <http://blogs.zdnet.com/careers/?p=150&tag=nl.e539>

(3) <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/08/07/BAUH12716R.DTL&tsp=1>

So, what should you do if you are faced with such employment clauses?

OPEN DISCUSSION !!