# HIRING & FIRING EMPLOYEES:
# DON'T FORCE "AT-WILL" IN WRITING

**by Dave Bowman, Human Resource Expert**

In a drive to regain an age-old prerogative, organizations across the U.S. are insisting that employees sign a statement that packs a powerful economic punch. The statement gives the boss the right to fire workers "at-will," for any reason or no reason.

In effect, these employers are practicing a form of preventive medicine. But many find the ounce of prevention they're buying will be far more costly than the pound of cure that may be needed later.

A decade or so ago, there was no problem. Employers hired and fired as they chose; there was no need to have workers sign any piece of paper conceding that right. But in the early 1980s, the courts began ruling in favor of terminated employees who claimed they had been wrongfully discharged. That led some venturesome organizations to institute the at-will clause as a condition of employment.

Thus far, the at-will clauses have held up in the courts, encouraging still other employers to adopt them.

I think they're making a big mistake.

First, the at-will clause has a devastating effect on employee morale. Although this doesn't show up on the balance sheet, morale is one of the biggest assets a company has. Press reports indicate that many employees, told to sign at-will clauses, have become embittered. Some workers already on the payroll have quit, while others who are just coming aboard are turning away when presented with the at-will document.

Of course, it's very difficult to measure the negative effect of the at-will clause. But, clearly, when esprit de corps declines, productivity will inevitably be affected.

Secondly, the at-will clause isn't really needed. Now, I can already hear the lawyers exclaiming that the lack of an at-will clause in the employment agreement leaves an organization wide open to wrongful discharge litigation. They say, "If an employer loses, such cases can be very costly - hundreds of thousands, sometimes millions of dollars."

But if a company handles its terminations properly, few if any wrongful discharge cases will ever be filed. That may sound like a far-out statement, but in my many years of counseling thousands of terminated employees, none has ever gone to

trial for wrongful discharge.

How can that be? And what's the secret?

When an employee is fired, her or she is usually upset. And a person in a state of mental turmoil will lash out at the former employer in every conceivable way. The typical outcry is, "I'm gonna get 'em." And one of the first thoughts for such a person is a lawsuit.

The greatest need of a terminated employee is counseling - particularly immediately after the dismissal. The counselor can be a company employee, but such a person represents the "enemy" and usually won't be very effective. Better to use an outsider skilled in dealing with such situations.

The first thing the counselor does is to let the terminated employee express feelings of anguish and hostility. This process, called "venting," will calm down most terminated workers. If a person starts threatening to sue, her or she is told a few facts of life.

Perhaps the most basic of these realities is that few wrongful discharge suits are won by employees. Equally important is that a lawyer is going to want some money up-front, even if the case is taken on a contingency basis.

But the strongest argument of all against filing a wrongful discharge lawsuit is that few employers will hire a person who's involved in such litigation. It can take years to resolve these lawsuits. In the meantime, prospective employers are going to say, "If s/he sued his old boss, s/he might do it to us too. Why hire a potential troublemaker?"

The at-will clause is harsh medicine and can have adverse effects on any organization. Employers will be far better off dealing with disgruntled employees on a case-by-case basis, rather than have every employee swallow the same bitter pill up front.

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