

AT-WILL EMPLOYMENT

EMPLOYMENT LAW

Understanding Pennsylvania's At-Will Employment Standard Will Help Townships and Employees Alike

Townships may think they are saddled with a poor-performing employee because they lack adequate cause to fire him. That same employee may think his job is safe and secure no matter what he does — or doesn't do. Pennsylvania's "at-will" employment standard can cause confusion from all sides, but knowing the facts can help townships avoid unintentional violations.

BY **STEVEN M. WILLIAMS, ESQ.**, AND **JEFFREY C. CLARK, ESQ.** /
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The general rule in Pennsylvania is that employment is "at will." This means an employer may fire an employee, or an employee may quit, at any time, with or without notice, and for any reason or no reason at all. An employee does not have a right to employment, and the employer does not have a right to require that an employee remain in its employ. Simply put, the employment relationship exists only for as long as the employer or employee wants it to continue.

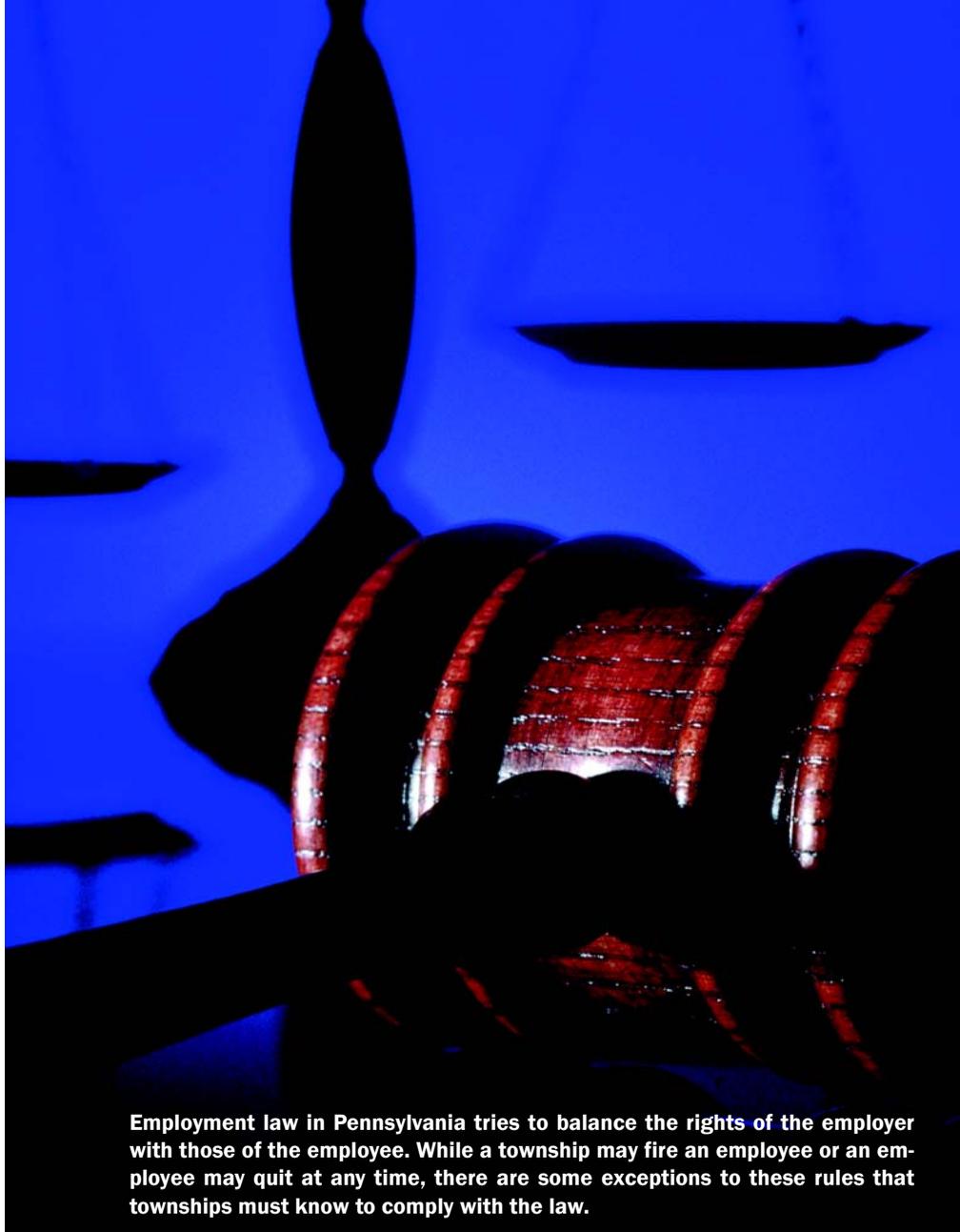
Exceptions to the rule

Like most rules, at-will employment law has its exceptions, and these can limit the employer's right to summarily dismiss an employee. These exceptions include the following:

- **Civil Service, unionized, or statutorily protected employees:** Some township employees may be protected by Civil Service rules, collective bargaining agreements, or state law. These employees have a protected right to employment and may not be fired at the will of the township. Rather, they may only be terminated in accordance with the rules, agreements, or statutes that provide the protections.

In most cases, this means the township may fire these employees only for just cause and must first provide them with "due process" — notice before the termination and an opportunity for a hearing.

The township has the burden of proving just cause, and what that is will depend on the facts of each case. Some examples include a housing authority employee defrauding an elderly tenant,



Employment law in Pennsylvania tries to balance the rights of the employer with those of the employee. While a township may fire an employee or an employee may quit at any time, there are some exceptions to these rules that townships must know to comply with the law.

a disabled employee violating township policy by working another job while on disability, or an employee committing a crime during work hours. Just cause can also include employee conduct that could diminish the public's respect for the township — for example, a police officer committing adultery or engaging in negligent use of a firearm.

- **Unlawful discrimination:** Both federal and state laws prohibit firing an employee because of age, sex, race, color,

national origin, religion, or disability. In some cases, a township could be liable even when firing an employee for a legitimate reason if the employee can show that part of the action was based on unlawful discrimination.

- **Public policy:** A township may not terminate an employee if the reason would violate public policy, but this is difficult for the employee to establish. He would have to show that the township violated a clear public policy in

the federal or state constitutions or other laws.

The courts are hesitant to apply this exception and have done so in limited situations, such as where employers have fired employees who refused to violate the law, filed claims for workers' or unemployment compensation benefits, missed work to attend jury duty, or refused to take a polygraph test.

Even where an important public policy may be involved, an employer may terminate an at-will employee if a separate legitimate reason exists. In such cases, the employer must be able to clearly show that other reason.

Wrongful termination

Because employment in Pennsylvania is at will, an employee may not sue a township for wrongful termination if none of the exceptions applies. Such a claim will only survive if an employee can show that the reason for the termination violates a protected interest he had in the employment position, such as through a collective bargaining agreement; is based on his age, sex, race, color, national origin, religion, or disability; violates public policy; or in the case of non-municipal employees, violates an employment contract. If none of these situations applies, the courts will not allow a terminated employee to proceed with a wrongful termination claim.

Nevertheless, employees frequently sue their employers for wrongful termination. Townships can help defend themselves against such claims by doing the following:

- Notify all employees at the time of hiring that their employment is at will and document this in writing;
- Do regular performance appraisals for all employees and document the results in writing;
- Notify employees in writing of each act or failure to act that violates the employee's job responsibilities; ➤

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- Document in writing all disciplinary warnings, notices, and actions;
- Maintain a file for each employee that contains written documentation of all of the above;
- Treat all employees equally and do not discriminate against any employee; and
- Speak with the township solicitor before terminating an employee for legal advice on potential problems and how to handle the termination. ♦

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Knowing how state law defines at-will employment and its exceptions can help townships avoid unintentional violations and the consequences of costly legal action.

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Plan ahead to defend your township against wrongful termination claims

BECAUSE EMPLOYMENT IN PENNSYLVANIA IS AT WILL, meaning an employee may quit or be fired at any time, an employee may not sue a township for wrongful termination unless certain exceptions apply.

Nevertheless, employees frequently do file wrongful termination suits. Townships can help defend themselves against such claims by doing the following:

- Notify all employees at the time of hiring that their employment is at will and document this in writing;
- Do regular performance appraisals for all employees and document the results in writing;
- Notify employees in writing of each act or failure to act that violates the employee's job responsibilities;
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