

**Ending Employee-Employer Relationships:
And They All Lived Happily Thereafter**

By

Dan Van Bogaert, J.D.

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Historical Perspective

At-Will Employment Doctrine

Based at least in part on the free-enterprise system philosophy, early court decisions established our common-law rule, the *at-will employment doctrine*.¹ Eventually, this doctrine was codified in most states.² The doctrine essentially provides that either the employee or the employer may for any reason or for no reason may terminate their employment relationship.

Ever since the 1980s, starting *Tameny v Atlantic Richfield* (27 C3d 167, 164 CR 839) in which the California Supreme Court held fired employees could sue their employers for emotional distress caused by the termination, employees who lose their jobs are more inclined to sue their employers. Coincidentally, employers are more hesitant to rely on the *at-will doctrine* as the sole basis for involuntary terminations—or at least they should be.

The premise of private sector employee-employer relationships is, generally, based upon the *at-will employment doctrine*. (This doctrine usually does not apply to public sector employee-employer relationships because of federal and state statutory prohibitions.) But the increase in wrongful termination litigation in the past few decades has made the prospect of terminating an employee more fearful and onerous for many employers. The increase is understandable in light of the fact that employees are more aware of their legal rights. Employee complaints may be easily investigated and litigated

¹ E.g. *Payne v. Western & A.R.R.*, 81 Tenn. 507, 519-20 (1884)

² www.law.cornell.edu/topics/table_labor.htm; e.g. California Labor Code section 2922, “An employment, having no specific term, may be terminated at the will of either party on notice to the other. Employment for a specified term means an employment for a period greater than one month.”

without charge by the Equal Employment Opportunity Commission (EEOC) and state agencies.

Exceptions to (& Erosion of) the At-Will Doctrine

Notwithstanding the fact that most states have codified *at-will employment* relationships, employees have numerous protections to counter-balance potential arbitrary and unfair use of the doctrine by employers. The following are examples of legal exceptions and statutory restrictions relating to the *at-will doctrine*.

Constructive Discharge

An employee who apparently voluntarily quits may claim later that the termination was actually forced due to intolerable working conditions³. The elements of constructive discharge include; 1) actions and conditions so intolerable or aggravated at the time of resignation that a reasonable person in the employee's position would have resigned, and 2) that the employer had actual or constructive knowledge of the intolerable actions and conditions and their impact upon the employee, and 3) the employer could have remedied the situation but did not.

Statutory Restrictions

Federal or state anti-discrimination statutes prohibit terminations of employees who belong to any one of several protected classes, e.g. race, color, religion, national

³ E.g. *Valdez v City of Los Angeles*, 231 Cal.App.3d 1043; 282 Cal. Rptr 726, June 1991; *Rochlis v Walt Disney Co.*, 19 Cal.App.4th 201; 23 Cal Rptr 2d 793, Sept 1993; *Zilmer v Carnation Co.* 215 Cal.App.3d 20; Cal. Rptr 422, Oct. 1989.

origin, sex, age, disability, veteran or marital status, pregnancy. These anti-discrimination statutes preempt an employer's right to exercise the *at-will doctrine*.⁴

Public Policy

State courts may apply a public policy exception. Even *at-will* employees cannot be terminated for an unlawful reason that violates public policy. An example would be where an employee refuses to commit perjury during testimony that would have protected the employer for wrongdoing.

In *Foley v Interactive Data Corp.*, the California Supreme Court held that "... the employer's right to discharge an *at-will* employee is still subject to limits imposed by public policy, since otherwise threat of discharge could be used to coerce employees into committing crimes, concealing wrongdoing, or taking other action harmful to the public weal."⁵

Employment Contracts

The *employment at-will* doctrine does not apply to jobs in which a contract states a specific employment period. In other words, an employment contract may override the doctrine. Employers need to avoid creation of unintended contractual obligations to terminate only *for cause*.

When an employee can establish an implied or oral (unwritten) contract, the employer may not utilize the *employment at-will* doctrine to discharge the employee.

⁴ E.g. Civil Rights Act, Title VII 1964; California Fair Employment and Housing Act (FEHA). (See also *General Dynamics Land Systems, Inc. v Cline*, No.02-1080 USSC (2004) which foreclosed the theory of "reverse age discrimination" .)

⁵ 47 Cal.3d 654, p. 655

Contracts may be implied from indirect language in employee handbooks, policies, verbal presentations at new hire orientation, incomplete written offers of employment, and other factors in the workplace requiring “for cause” termination. But even where an employer implements a procedure in which the employee signs an acknowledgement form to the effect that an employment contract cannot be implied, and that *at-will* employment relationship exists, some courts have still required proof of “just cause” for the termination by employers.⁶

Implied contracts may also exist as a right that an employee acquires based on the employer’s actions, rather than a written contract. A contract may be implied when the employee can reasonably assume, based on statements in company policy or communications, that involuntary termination of employment will not occur without cause. A concrete example of an implied contract may be merit pay raises that are based on favorable performance evaluations but inconsistently applied.

Use of a “probationary period” for new hires as a provision in an employment contract, or as part of written company policy, can also create problems for employers. Successful completion of a probationary period may be intended as the last step of the selection process. But it may also be misconstrued as a contractual guarantee of continued employment once the probationary period is over, unless the language is carefully crafted and communicated. For example, the policy or contract may include the following language *...successful completion of the probationary period may not, however, be interpreted as a guarantee to continued employment. Rather, employment is*

⁶ *Conner v City of Forest Acres*, South Carolina; *Hessenthaler v. Tri-County Sister Help, Inc.*, S.C. Sup Ct. May, 2003; *Baril v Aiken Regional Medical Centers*.

still intended to be an at-will relationship, as defined under California Labor Code section 2922, et al.

Implied promises of continued employment except for cause may prevent the exercise of at-will termination.⁷

Collective Bargaining Agreements

Collective bargaining agreements typically preclude *at-will* terminations, and permit only *for cause* terminations. In effect, the agreement is another contractual exception to the at-will doctrine. Of course, such adverse employment action would also constitute an unfair labor practice under various labor codes, e.g. the National Labor Relations Act (NLRA).⁸

For example, §7 of the National Labor Relations Act (NLRA) gives most non-supervisory employees the right to form and join a union. The NLRA also permits unions to collectively bargain over “terms and conditions of employment.” As a result, essentially all union contracts do not allow employers to use the *at will doctrine*. Further, §8(a)(1) makes it illegal for employers to interfere with, restrain, or coerce employees in their exercise of §7 rights, particularly with employer threats that imply loss of job.

Disability

⁷ *Woolly v. Hoffman-LaRoche, Inc.*, Case involved an employee handbook that contained “for cause” language.

⁸ I.e. NLRA of 1935, §8.

Lacking provable business necessity, a fired disabled employee may be protected from application of the employment at-will doctrine, particularly if the affected employee is able to perform the essential functions of the job after reasonable accommodation.⁹

The Americans with Disability Act (1990)¹⁰ and state statutes prohibit discrimination in employment activities, including involuntary terminations against people with a qualifying disability.¹¹

Special Public Policy Exception: Retaliation & the Whistle Blower

Many statutes prohibit termination or other adverse employment activities in retaliation against an employee for the exercise of a legal right. For example, Title VII of the Civil Rights Act of the 1964, as amended, makes it unlawful for an employer to retaliate against an employee who files a complaint with the Equal Employment Opportunity Commission. This prohibition applies whether or not discrimination actually occurred.¹²

Employees may not be terminated in retaliation for exercising a right or for engaging in a protected activity, such as “whistle blowing” to reveal to an appropriate regulatory agency an employer’s illegal dumping of toxic waste material. California

⁹ Note: Generally, a reasonable accommodation is an attempt by the employer to adjust, without undue hardship, the working conditions or schedules of employees with disabilities or religious preferences, without changing the essential functions of the job. Essential functions of the job may be defined as the core duties and responsibilities essential for success of the job, usually specified in a formal job description.

¹⁰ 42 USC. §12112, *et al.*

¹¹ E.g. California AB 2222, Fair Employment and Housing Act. These statutes require covered organizations to provide reasonable accommodations to protect the rights of disabled employees and job applicants.

Note that California standard for “disabled” is different from the ADA standard, i.e. does not require that a qualifying mental or physical impairment “substantially” limit a major life activity, nor does it allow consideration of correctable nature of the disability, such as eye glasses.

¹² Title 42, US Code §2000e-3(a)

prohibits employers from preventing employee disclosures of their alleged illegal activity to appropriate governmental authorities.¹³ Examples of whistle blower statutes include the federal Whistle Blower Protection Act of 1989 for federal workers; parts of the Clean Air Act (42 USC §7622), Safe Drinking Water Act (42 USC §300j-9(l)), Solid Waste Disposal Act (42 USC §6971), Federal Water Pollution Control Act (33 USC §1367), and the Occupational Safety and Health Act of 1970 (“OSHA”; §11(c)). Most of these statutes were enacted to address activities in industries where there may be a propensity for employers to harm the environment.

Provisions of these statutes prohibit employers from discharging or otherwise punishing employees in retaliation for disclosure to appropriate governmental agencies the wrongful acts of their employer. These statutes, however, exclude from protection disclosure of hazards deliberately caused by an employee, as well as “frivolous” complaints.

Activities of employees protected by statute against employer retaliation include disclosure wages, serving on jury duty, military service, and maintaining privacy of arrest records that do not lead to convictions.¹⁴

Employment Torts

An employee who is terminated for an unlawful reason in violation of public policy may bring suit for wrongful termination, and the *at-will doctrine* would not apply.

¹³ California Labor Code §1102.5

¹⁴ E.g. Occupational Safety and Health Act; California Occupational Safety and Health Act (1973)

But making proper ethical decisions may actually help to minimize potential tortuous conduct and related lawsuits.¹⁵

Other employment torts that may give rise to wrongful termination claims by terminated employees include *defamation* (e.g. an unprivileged untrue communication—intentional or unintentional—causing harm to the reputation of another during the layoff determination process, based on performance evaluation records), *interference with contractual relations* (e.g. employer induces a prospective employee to break a confidentiality agreement), *interference with economic benefit*, *invasion of privacy*, and *fraud* (e.g. enticing a job applicant with false representations during recruitment efforts).¹⁶

Attempting to help employers overcome their fear of providing more than just the standard “date of hire—date of termination” in reply to reference requests, the majority of states have enacted reference immunity legislation. Although California does not have an employer reference immunity statute, California Civil Code §47 (c) allows privileged publications, which may give employers limited protection against defamation claims.¹⁷ These state laws are relevant because they may protect employers from defamation claims by former laid off employees. The purpose of the privilege is to promote candid and open communications without the fear of being sued for defamation and other employment torts. Like the common law protection afforded by qualified privileges,

¹⁵ *Foley v. Interactive Data Corp*, supra

¹⁶ *Lazar v Rykoff-Sexton, Inc.* 12 Cal. 4th 631 (1980); *Randi W. v Muroc Joint Unified School District*, IER Cases 673 (1997)

¹⁷ *California AB 1068 and AB 2868 give limited immunity from defamation liability for advising a prospective employer without malice when answering the question “whether or not you would rehire” a former employee. (See also Randi W. V Muroc Joint Unified School District, 1997 Cal. Lexis 10 (January 27, 1997)).*

these statutes protect employers, unless it is proved that the privilege was abused due to lack of good faith, knowing falsity, recklessness or malicious purpose.¹⁸

Job & Benefit Protection Statutes

While US workers' jobs are not inherently guaranteed for life, several federal and state statutes may grant temporary job protection. Similarly, employee benefits are generally not guaranteed except those as protected under applicable statutes, or in certain instances, under group insurance contracts. Following are some of the more important applicable job and benefit protection statutes.

Family and Medical Leave Act of 1993 (FMLA): a covered employee is entitled to up to 12 weeks of unpaid leave for the care of a spouse, parent, or child who suffers from a "serious health condition."

Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 USC §§4301 through 4333): Prohibits discrimination against persons who are members of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a United States uniformed service.

Worker Adjustment and Retraining Notification Act (WARN) (29 USC. §§2101-2109, et al.): applies to organizations with 100 or more full-time employees (part-time workers are not included); must give 60 days' advance notice of a *mass layoff* or *plant closure*, as defined under WARN. WARN requires employers to provide a 60-day notice before the effective date of a mass layoff or plant closure. The California

¹⁸ Refer to *Cornell Journal of Law & Policy, Job Reference Immunity Statutes Fall 2001*; www.lawschool.cornell.edu; www.capital.state.tx.us/statutes for detailed report on state reference immunity statutes.

Labor Code (§§1400-1408; AB 2957) has similar but not identical notice and coverage requirements.¹⁹

Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA):²⁰ This federal statute give workers and their families who lose group health plan benefits (medical, dental or vision) the right to choose temporary continuation of such benefits. Usually, a general notice must be furnished within the first 90 days of coverage under a health plan. However, the deadline is accelerated to the date that the election notice must be provided if a qualifying event occurs during the 90-day period.²¹

Older Worker Benefits Protection Act of 1990 (OWBPA) (Public Law 101-422): Prohibits certain employers from discriminating against employees, age 40 and older, in early retirement and other benefits. Older workers must be given benefits which are at least equal to those provided to younger workers, unless the employer can prove that the cost of providing an equal benefit would be more for an older worker than a younger one. OWBPA imposes strict guidelines on employers who seek to have employees sign agreements that waiver their rights under the Age Discrimination in Employment Act. Generally, a valid waiver must be voluntary, and must include employee rights under ERISA, twenty-one day (45-days if group incentive offered)

¹⁹ For detailed information regarding provision of WARNA and the corresponding California rules, refer to the US Department of Labor's *Employment and Training Administration Fact Sheet, Federal Register, Vol 54, No.75; 20 CFR Part 639, and www.leginfo.ca.gov.*

²⁰ *Public Law 99-272, amends the Employee Retirement Income Security Act and the Internal Revenue Code; DOL proposed regulation, 68 Federal Register 31832)*

²¹ *See also CAL-COBRA (AB 1401; Cal. Ins. Code §§ 10116, 12692, 10116.5, 10128.50) for similar coverage applicable to most workers in California. Applies to employers with 2 to 19 employees; federal COBRA applies to employers with 20 or more employees on at least 50 percent of its business days during a calendar year).*

waiting period for signature and seven days to revoke afterwards. The employees also must be given benefits greater than those to which they would already be entitled.

These job protection statutes partly address ethical issues relating to job protection, and the need for advance notice in the event of involuntary termination or certain leaves of absence. Related ethical issues and moral obligations may be balanced against the need for business organizations' inherent right to compete in a free enterprise system without undue regulatory interference.

There is a healthy democratic tension—not unlike the democratic tensions that exist in the balance of powers between the judicial, legislative and executive branches—between employers' use of the *at-will employment* doctrine and job protection rights of employees. In fact, the historical imbalance originally favoring employers has been brought back into balance because of the substantial erosion of the *at-will doctrine* by exceptions based on legal concepts and statutory restrictions.

Employee Retirement Income Security Act (“ERISA”) establishes minimum national standards and protection of participant rights for certain retirement and health and welfare benefits, as defined under the Internal Revenue Code.²²

Employers who sponsor ERISA-plans are required to disclose principal plan features to participants and beneficiaries in a timely manner via a summary plan description (“SPD”). Employees who lose their jobs who are also participants in such plans, must be given a statement of their vested benefits, payment options, and other

²² §§3(1), 401(1)(a), respectively, et al. Because of its comprehensive and complex nature, an examination ERISA standards and protections are beyond the intended scope of this article. Significant provisions, however, relate to involuntary terminations.

pertinent information regarding their benefits that may impact decisions precipitated by termination of employment.

High Risk Terminations & Potential Consequences

High risk terminations are those instances in which employers are faced with decisions to terminate employment of employees whose circumstances likely fall within one or a combination of the foregoing exceptions to the *at will doctrine*.

The risk of being sued is reduced when there is a clear and well-documented cause for termination. Justifiable causes include gross insubordination, performance below expectations, excessive absenteeism without excuse and workplace violence. Terminations without cause, in connection with job restructuring based on a compelling and legitimate business necessity, are also generally protected from wrongful termination lawsuits.

Many times, however, the reasons for involuntary terminations are open to dispute. In these circumstances, employers must conduct a careful review of the affected employee's work history, surrounding circumstances, as well as the possible application of exceptions to *at-will employment*. Ethical issues should not be overlooked either.

Remedies for Wrongful Termination

Remedies for wrongful terminations in violation of public policy, implied contract, and covenant of good faith and fair dealing may include back pay and benefits, "front pay," reinstatement, damages for pain and suffering, and even punitive damages.²³

²³ California Lab. Code §§132a, 230, 2929, 6310, et al.

Alternatives to Involuntary Terminations

Problems associated with involuntary terminations may be avoided by choosing positive alternatives. Before leaping to the conclusion that involuntary terminations are necessary, employers should first consider other alternatives. Besides the advisable caution prompted by legal reasons, such as potential costly discrimination and wrongful termination claims, employers may discover that there are practical alternatives that coincidentally satisfy ethical considerations. The following are several effective practical alternative solutions. Whether or not they are practical depends upon the financial condition and nature of the organization. Obviously, these alternative actions require well thought out communications and sensitivity to concerns of employees.

Lower incentive payouts / Salary freezes or voluntary salary cuts

Adjustments to compensation of employees may offer ways for employers to avoid the more drastic step of involuntary terminations. Delaying merit pay increases and lowering of incentive pay or base salaries may be preferred to actual loss of job. Creative variations of adjustments to employee compensation may include special leave without pay during vacation periods, and elimination of executive perks and other discretionary benefits.

These actions adversely affect employee morale, and probably productivity, in the short run. However, if successful in avoiding involuntary terminations, morale and productivity may eventually be restored.

Temporary layoffs

Temporary layoffs are an alternative that may save permanent loss of jobs. This alternative has been common for unionized airline companies, particularly during the initial deregulation of the airlines industry in the 1980s. The temporary layoff approach avoids wrongful termination claims since many long-term temporary layoffs compel affected employees to seek and obtain other jobs. Employers still need to heed advance notice and final pay requirements under applicable state and federal statutes. (Refer to *Advance Notices & Final Pay Issues* below.)

Reduced workweek/ Job share

If the nature of work performed allows for cut backs in the regular workweek, then such action may prevent the need for involuntary terminations. Results of a reduced workweek also necessarily include overall salary expense and incentive pay reductions (California Unemployment Insurance Code §1089).

In this connection, some state unemployment agencies have flexible programs that allow willing employers to permit claims for “partial unemployment benefits” when workweeks are reduced (California Employment Development Department).

Severance Pay Plan

A severance pay plan offers substantial advantages to both the employer and affected employees. The plan provides an effective defense against claims that an employee was promised even more severance. It is especially effective against alleged oral promises. Also, a severance pay plan is not subject to state laws that are sometimes unfavorable.

And, severance payments alleviate much of the stress from financial worries associated with unexpected job loss.

If feasible, an employer should offer compensation, as well as group insurance plan benefits coverage extended beyond termination date, such as medical and life insurance. The length of coverage extension would typically depend upon each eligible employee's length of service.

The plan itself should be a formal written document that includes an employer policy and procedures. The policy would specify the compensation and benefits employees receive in the event of involuntary termination without cause. It is a flexible tool, especially for layoffs and restructurings, to help assure some uniformity in the terms and amounts of severance pay.²⁴

Severance pay plans are, generally, considered to be an "employee welfare benefit plan" governed by the Employment Retirement Income Security Act (ERISA).²⁵ Therefore, the plan must state who is eligible, the amount of compensation, and other requirements, such as a written release or settlement agreement, and the ERISA-required statement of rights and administrative procedure for appealing the denial of benefits under the plan. Like other employee welfare benefit plans, a summary plan description must be given to all eligible employees.

The advantages to employers treating the plan as a formal ERISA plan are that the plan may be changed or terminated at any time for any reason, and the employer has complete discretion regarding the amount of severance pay. In other words, severance

²⁴ Refer to Watson Wyatt Worldwide's *Exhibit Book of Employment Contract and Severance Pay Programs, 1995* Wyatt Data Services, Inc., Rochell Park, New Jersey, for comprehensive detailed examples.

²⁵ 29 USCA §1002(3), et al.

pay plan benefits are not subject to ERISA vesting provisions. Also, the plan does not affect an employer's right to terminate *at-will employment*.

Outplacement Services

Outplacement services paid for by the employer may be part of effective termination management, but they are in connection with—rather than in lieu of—individual involuntary terminations and group layoffs. Outplacement services seek to minimize the problems associated with the anticipated difficult transition from losing a job to finding a new job. Services include professional advice regarding how to utilize networking programs, guidance with development of job search campaigns, assistance with preparation of resumes and letters, negotiations with prospective employers, training for interviews, office space and secretarial service, skill assessment and aptitude testing.

Outplacement services have proven to be a very effective way for an employer to show concern for its employees, to preserve its community reputation, and to minimize wrongful termination lawsuits.²⁶

Advance Notices & Final Pay Issues

Timely payment of final compensation, unused vacation and vested cash benefits, as well as advance notices, are important actions that need to be taken by employers in connection with involuntary terminations.²⁷ For example, Labor Code §§210, 201.5 set final pay notice requirements for California employers.

²⁶ Refer to web sites: www.toolkit.cch.com, www.workforce.com/archive/article, www.lhh.com for further information regarding effectiveness of outplacement services.

Communication strategies announcing details to all employees regarding anticipated layoffs and plant closures are crucial for the preservation of employee loyalty and trust. Part of an effective communication process should include small group meetings with question and answer sessions, and the offer of meetings with individuals to address private concerns.

Pre-termination checklist

To minimize expensive wrongful termination complaints, employers who initiate terminations must implement a procedure for prudently identifying high-risk terminations, including a thorough and comprehensive review of potential problem situations. Additionally, employers may want to adopt a uniform policy of offering departing employees an employment reference release agreement as another means of protection against wrongful termination lawsuits. These agreements essentially authorize employers to disclose employment related information about former employees to prospective employers, in exchange for the employees' release of employers' "successors, employees, officers and directors of all claims and causes of action" connected with such disclosures.

(Attached is a sample of a *pre-termination checklist*.)

Model Employment Termination Act (META)

The National Conference of Commissioners on Uniform State Laws (NCCUSL)* proposes, subject to certain exceptions, that the employers scrap the at-will employment doctrine, and replace it with a uniform for good cause only standard under the META. Employers who waive or modify the model statute would be required to provide specific

levels of severance pay depending upon length of service. Enforcement would be entirely by arbitration. However, this proposed “one-size-fits-all” statute may actually generate increased wrongful termination litigation. Discharged employees and employers wanting to make appropriate staff cuts needed to stay in business will more likely resort to the court for assistance in defining what is “good cause”.

** NCCUSL is headquartered in Chicago, Illinois, and is associated with the University of Pennsylvania Law School.*

Conclusion

Employees, particularly dedicated productive employees with family responsibilities, deserve fair treatment within the context of the employee-employer relationship. Although employees thus far have no fundamental right to a job guaranteed for life, several federal and state statutes provide ever-expanding employee rights and job protections. Examples include but are not limited to FMLA, USERRA, COBRA, ERISA, ADA, ADEA, and CRA-Title VII. Yet, the *at-will employment doctrine*, however eroded, probably remains for at least one important reason: perpetuation of the free enterprise system in the United States.

Employees should be—and are—given the opportunity to redress employer abuse, whether by legal means, administrative remedy, or just fair and objective management. The threat of litigation, therefore, need not be the sole driving force behind preservation of an economically healthy employee-employer relationship. Ethical challenges need to be part of the equation, particularly when the relationship must be ended. Promotion of society and family values, corporate responsibility, good will, and community relations add to the preservation of functional employee-employer relationships. Moreover, when

workers believe that they are respected and treated ethically by their employer, they are likely to be positively motivated, productive and loyal.

Other Recent Relevant Court Cases

Thompson v. Tractor Flight Systems, Inc., 86 Cal. App. 4th 1156 (2001) (constructive discharge)

Grant-Burton v. Covenant Care, Inc., Cal.Ct. Appeal, July 10, 2002; B15342 (wrongful termination)

Hernandez v. Hughes Missile Sys. Co 298 F 3rd 1030, 2002 US App (Employer refusal to rehire onetime drug user)

Guz v Bechtel National, Inc. [Ca] (Wrongful termination for breach of contract and discrimination.)

Hazen Paper Co. v Biggins 113 S.Ct 1701 (age discrimination)

Comeaux v. Brown & Williamson Tobacco Co 915 F2d 1264; Dyer v. W.C.A.B. 28 Cal. Rptr 2d 30 (Cal. Ct App. 1994) (wrongful discharge)

PRE-TERMINATION CHECKLIST

- EE member of CRA Title VII protected category?
- EE over age 39?
- EE's current job title. Others hold similar title/responsibilities?
- How long EE employed with ER?
- Reason(s) for proposed termination (If "for cause", is there proper documentation? Other EEs commit same offenses and similarly treated?)
- EE have written employment contract? (If yes, what are terms? Any assurance of job security?)
- EE signed acknowledgment of at-will employment status?
- EE signed alternative dispute resolution agreement? (If yes, what are terms?)
- EE received counseling as evidence of discipline? (If yes, is it properly documented; EE have opportunity to correct deficiencies noted?)
- EE receive letters of commendation, promotion, performance bonuses?
- EE have known or perceived physical or mental disability? (If yes, is there documentation regarding reasonable accommodation efforts?)
- EE filed worker's comp. or unemployment claim, or involved in related proceeding with government agency?
- EE report alleged illegal activity of ER to state or federal agency, or participate in official investigation of ER?
- Potential claim of retaliation by ER in relation to EE's exercise of personal right?
- EE start grievance against ER or other EE?
- EE recently receive pay increase? (If yes, why?)
- Positive alternative solutions to involuntary termination?
 - pay cuts/increase delays; reductions in perks/discretionary benefits;

- offer unpaid vacations/leaves of absence; work share programs
- part-time work hiring freeze and allow attrition

May outplacement services be offered? Severance benefits?

Final Paycheck? (All undisputed wages and accrued vacation earned but unpaid may be due and immediately payable, unless voluntary quit.)

Notice of Change of Relationship (CA Termination Notice/UI Code section 1089) provided to involuntary terminated EE? EE voluntarily sign acknowledgement of receipt?

Notices required under: (a) Worker Adjustment Notification Act (WARN)___? Older Workers Benefit Protection Act (OWBPA)___? Consolidated Omnibus Reconciliation Act (COBRA/CAL-COBRA)___? CAL Labor Code §§ 1400-1402/AB 2957___?

Obtain reference immunity release (agreement regarding info to be given to prospective employers)?

Exit interview conducted? EE return: ID badge ___? Keys___? Equipment___? Security Card ___? Credit Card___?

A. Ethical Challenges:

"Game plan" for handling impact on remaining employees, including communication strategy and employee participation in decision-making.

Reconciliation of potential involuntary termination decision with organization's mission statement and core values

Public relations; dealing with perception by outside stakeholders.

Program to assist affected employees with unemployment compensation claims

Guidance regarding use of Employee Assistance Program

(Completed by)

(Reviewed by)