New Decision Restricts Right to Fire 'At-Will' Employees

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In general, employers can fire "at-will" employees for any reason or for no reason at all, as long at the termination is not based on a reason that violates public policy, such as discrimination against the employee's race, religion or gender. However, a new decision of the California Court of Appeal, *McCaskey v. California State Automobile Association,* places a new restriction on an employers' right to fire at-will employees. The appellate court held that an employer cannot fire employees "for a reason it had promised not to use as a basis for their discharge."

The case involved three plaintiffs who had been hired to work as sales representatives for the California Automobile Association in the 1960s and 1970s, when they ranged in age from 25 to 31. Each signed an agreement providing that the Association could change his compensation arrangement. The agreements also provided that the Association could terminate their employment at any time. Over the years, the Association made various changes to its compensation structure. Beginning in 1973, the Association included a provision reducing the sales quotas required for agents who were 55 years old and older. In 2001, the Association discontinued the policy, and required all agents to meet the same sales goals. By that time, the three plaintiffs were at least 55 years old. The employees refused to agree to the new policy and so the Association fired them.

The plaintiffs sued the Association for wrongful termination. The trial court granted summary judgment in favor of the Association, finding that the Association had acted within its rights in firing the employees. The employees appealed, arguing that the evidence showed that not only should the order be reversed, but that they were entitled to summary judgment in their favor. The appellate court agreed and ordered that judgment should be entered for the employees.

In reaching this conclusion, the appellate court rejected three arguments that the Association made in support of its right to terminate the employees. First, the Association claimed that it had the right to change its policy allowing employees over 55 to produce fewer sales. The appellate court agreed that employers are generally entitled to change their policies affording particular benefits to employees. Yet the appellate court found that, by offering to allow employees to reduce their hours after reaching age 55, the employer had made an "implied-in-fact" promise to keep the policy in effect until the employees reached that age.

Second, the Association claimed that, because the employees were at-will, it could fire them for any reason it chose. The appellate court agreed that the Association "was generally entitled to discharge plaintiffs without having to establish good cause to do so." However, the appellate court explained that allowing the Association to terminate the employees for failing to reach the quotas applicable to younger employees "would render the promise of reduced quotas wholly illusory." Thus, in order to give effect to the Association's promise required "an exception to the general rule of at-will employment." The Association could fire the employees "for no reason, or even for a bad reason," but it could not fire them for insisting on a benefit that the Association had promised to give them.

Finally, the Association argued that the employees had consented to its change in policy by continuing to work for years after the change was announced. Here too, the Association based its contention on a well-established rule, namely, that "when an employer announces new terms of employment, the announcement constitutes a unilateral offer of employment on the new terms, which the employee accepts by continuing to work." The appellate court refused to apply the rule because to do so would have undermined the employees' right to insist on enforcement of the Association's promise to allow them to reduce their sales quotas. Moreover, the appellate court noted that the employees expressly objected to the change in policy, so they cannot have been understood to agree to the change.

Conclusion. The *McCaskey* decision demonstrates that firing an employee can result in litigation, even when the employee is at-will. It is important to ensure that employees acknowledge their at-will status in writing. But employers should not assume that such an acknowledgement gives them freedom to fire an employee without risk. In addition to restrictions imposed by public policy, such as the prohibition on firing an employee because of race, religion, or gender, an employer can also face liability for firing an employee in order to avoid giving the employee a benefit that the employer promised to provide.