Wrongful Termination and At-Will Employment

In almost every state in the United States, employment is "at-will." This means that, in theory, either party to an employment relationship (the employer or the employee) can terminate the relationship at any time, for any reason, or no reason at all. While at-will employment technically goes both ways (the employee is free to quit at any time), it gives a great deal of power to employers, since they can fire an employee at any time, for any reason.

This has been the default arrangement in the United States since the Industrial Revolution, and many arguments are put forth to support it. The main argument is that, if it's very easy for employers to fire poorly-performing employees, hiring a new employee is far less risky, which should result in more people being able to find jobs. Whatever the merits of the argument, it's the system that we've chosen.

However, over the last century (and the last few decades, in particular), the federal government, and the governments of most states, have adopted laws which chip away at the default rules of at-will employment, and the many situations in which an employer is legally prohibited from firing an employee.

It's important to note that, even though there are a large number of exceptions, at-will employment is still the default rule. So, unless you can show that an exception clearly applies to your case, you will have little legal recourse. Here are some of those exceptions:

Employment Contract

Remember, "at-will" employment is only the *default* arrangement. The employer and employee can agree to any alternative arrangement they like. Some employment contracts state that the employee can only be terminated for good cause, and then provide a long list of things that actually amount to cause for termination (such as poor performance, insubordination, absenteeism, illegal activity, etc.).

It's rare for an employer to agree to a special employment contract for an individual employee, unless that employee has some extremely rare and valuable skills that the employer needs, which would obviously give that employee quite a bit more bargaining power than the average worker.

More often, employees get covered by these contracts through collective bargaining agreements negotiated by labor unions, which have much more bargaining power than an individual employee.

Discrimination

Federal law, and the law of almost every state, prohibits employers from firing, refusing to hire, demoting, or otherwise taking any adverse action against an employee because of their race, color, religion, national origin, or sex.

One should note that, in order for it to be wrongful, the termination must have actually been motivated by the employee's membership in a protected class. Just because an employee happens to belong to a racial or religious minority, and gets fired, they are not necessarily the victim of unlawful discrimination. For this reason, employment discrimination is notoriously difficult to prove.

In fact, a single act of discrimination is almost impossible to prove, in the absence of some sort of "smoking gun" evidence – such as a written policy stating that the employer has racist hiring preferences. As you might imagine, this is pretty rare. Usually, a successful employment discrimination lawsuit is supported by a long pattern of discrimination, such as employees of one race periodically being fired for conduct that did not get employees of another race fired.

Obviously, if you suspect that you have been a victim of employment discrimination, you should speak with an employment discrimination lawyer, who can advise you on your chances of success.

Jury Duty

Even though absenteeism is almost always a valid reason to fire an employee, no adverse action can be taken against an employee due to the employee meeting his or her legal obligation to serve on a jury.

Retaliation

An employer cannot fire or otherwise take adverse action against an employee if they report an illegal activity that the employer may be engaging in.

Illegal Activity

An employee cannot be fired for refusing to engage in an illegal activity. While insubordination is usually a perfectly valid reason to fire an employee, if the "insubordination" is actually an employee refusing to follow an instruction that requires him or her to do something illegal, the employer cannot take any adverse action against them.