

At-Will Employment Disclaimers - The National Labor Relations Board's Next Target?

Article By:

Labor & Employment Practice

Most employers set forth their workplace rules and policies in an employee handbook. A common provision in those **handbooks is a statement that employment with the employer is "at-will."** Generally speaking, at-will employment refers to an employment relationship under which an employer can terminate an employee's employment at any time, for any reason (other than an illegal reason), and the employee similarly can resign his or her employment at any time, for any reason.

Employers typically include at-will employment disclaimers in employee handbooks to clarify that, by setting forth the employer's policies in writing in a handbook, no express or implied contractual entitlement arises to employment for any duration. These provisions also usually state that the at-will employment relationship can only be altered by a written contract of employment, signed by an authorized official of the employer, and the employee.

As we have reported in prior GT Alerts, over the past two years, the National Labor Relations Board (NLRB) — the federal administrative agency responsible for enforcing the National Labor Relations Act (NLRA) — has pursued an aggressive campaign to protect employees' right to engage in protected concerted activity, in all workplaces, not just those where employees are represented by labor unions. Some of its recent actions include directing its focus on cases involving non-unionized employees' use of social media, ruling that class and collective action waivers in employee arbitration agreements are unlawful, seeking to expand the remedies available under the NLRA, and attempting to require almost all private sector U.S. employers to post a notice in the workplace advising employees of their right to form or join a labor union.

The NLRB's newest cause appears to be attacking at-will employment disclaimers in employee handbooks. In two recent cases, the NLRB challenged broadly worded disclaimers, alleging that the statements improperly suggested that employees could not act concertedly to attempt to change the at-will nature of their employment, and thereby interfered with employees' protected rights under the NLRA.

In one case, the language at issue stated: "I further agree that the at-will employment relationship cannot be amended, modified or altered in any way." An NLRB administrative law judge found this language to violate the NLRA because it suggests that employees cannot act concertedly to attempt to change the terms and conditions of their employment. For example, under this language,

employees could conclude that they did not have the right to seek to bring in a union to negotiate a collective bargaining agreement, which, if agreed upon, would alter the at-will employment relationship by placing limitations on the employer's ability to terminate employees (typically by requiring that the employer have "just cause" to terminate).

In the second case, the NLRB alleged that the employer's requirement that employees sign an acknowledgment of receipt of a handbook containing an at-will employment statement that provided that the at-will relationship could only be altered by a writing signed by the employee and the employer's executive vice president or chief operating officer violated the NLRA. The NLRB's apparent theory was, as in the prior case, that stating that the at-will relationship can only be altered by a writing signed by the employee and an employer representative implies that the at-will relationship cannot be altered by employees engaging in collective action — a right guaranteed to employees by the Act.

Regrettably, neither case provided any definitive guidance on this issue, as in the first case, the employer voluntarily revised the statement to address the NLRB's concerns, and in the second case, the employer and the NLRB settled prior to a hearing. Nevertheless, these cases demonstrate that the NLRB will scrutinize employers' at-will employment disclaimers, and suggest that future cases involving this issue are likely. Although there is nothing authoritatively requiring that employers at this time change any at-will employment disclaimer they may currently have, an ounce of prevention now might avoid an issue later. Accordingly, employers may want to review and reassess the language in any current at-will employment disclaimer in their employee handbooks (as well as handbook acknowledgment forms) to ensure that the language therein is not so broadly written as to imply that employees cannot seek to alter the at-will relationship through the exercise of concerted activity.

©2025 Greenberg Traurig, LLP. All rights reserved.

National Law Review, Volume II, Number 221

Source URL: <https://natlawreview.com/article/will-employment-disclaimers-national-labor-relations-board-s-next-target>