

PRESENTED AT
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101 WAYS TO AVOID LABOR PAIN

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Avoiding labor pain is the goal of every employer when the cost of litigating a single employment dispute can exceed six digits. For smaller employers, one lawsuit can wreak havoc on an already stretched budget. There are three simple rules to follow for employers wishing to avoid such unanticipated costs of doing business:

- #1. Obey the letter and spirit of each and every employment law and regulation;
- #2. Treat every employee fairly and with respect; and
- #3. Accomplish #1 and #2 from the perspective of each individual employee.

If achieving compliance with Rule #3 appears somewhat daunting, this article provides 101 other ways to avoid or hopefully reduce the risk of unnecessary labor pain. Each of the 101 suggestions is identified numerically in the text and is not a reference to a footnote. Some of the ideas presented are universally accepted, while others may be a bit out of the box or even controversial. Whether any specific idea is appropriate for a particular workforce depends greatly upon a variety of factors, not the least of which is what state's laws apply to the employees. These factors would need to be explored with qualified legal counsel.

I. PRESERVING “AT-WILL” STATUS

An “at-will” employee may be terminated for a good reason, a bad reason, or for no reason at all; but, he or she cannot be terminated for an illegal reason. The cynical view is that the exceptions, created by the myriad of illegal reasons, have all but swallowed the employment “at-will” rule. Nevertheless, the single most important thing any employer can do to insulate itself from the unnecessary lawsuit remains preserving the at-will status of its workforce. This must be done expressly in writing, such as the following magic language:

At ABC, Inc., all our employees are terminable “at-will.” This means that neither you, nor the Company, are committed to continuing the employment relationship for any specific period of time. Rather, the employment relationship will continue “at will” such that either side may terminate the relationship at any time, with or without cause and with or without notice. Also, the Company retains the right to demote, transfer, change job duties, and change your compensation at any time with or without notice and with or without cause in its sole discretion. In deciding to work for the Company, you must understand and accept these terms of employment. It is important to note that no one at the Company has the authority to promise or guarantee you employment for any specific period of time, or to alter your terminable “at will” employment status except for the Chief Executive Officer (“CEO”) of the Company, and such promise or guarantee must be in writing and signed by both you and the CEO.

The last phrase is important in order to avoid claims that a former manager made an oral promise that narrowed or eliminated an employee's at-will status. Allegations of an oral promise can get complicated particularly if the officer alleged to have made the promise has since died, or worse,

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