



OLR RESEARCH REPORT

July 12, 2011

2011-R-0262

MUNICIPAL EMPLOYEE JOB PROTECTIONS

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You asked whether municipal employees have job protection under (1) municipal civil service, (2) employment contract, or (3) case law exceptions to the employment at-will doctrine, such as an implied contract.

SUMMARY

The answer depends on whether the employee is in an at-will employment situation and, if not, what job other protections apply to the employee's situation. The at-will employment doctrine holds that employment relationships of an indefinite nature (such as those without a specific contract) can be terminated by either party at short notice without cause.

Although Connecticut is an at-will state, most municipal employees are not in an at-will situation because they (1) have protections under the municipality's civil service ordinance or policies or (2) are under a union or individual employment contract that includes terms for terminating employment. For employees not covered by civil service or employment contract, and therefore who are at-will employees, the courts have recognized some exceptions to the at-will doctrine which we describe below. The two primary exceptions to at-will termination are those in violation of (1) public policy or (2) implied contract.

(This report does not address state and federal anti-discrimination laws that prohibit an employer from dismissing an employee due to the employee's race, religion, gender, marital status, age or any of a number of other protected statuses.)

MUNICIPAL CIVIL SERVICE/MERIT SYSTEM

Under state law, municipalities may adopt a civil service system for hiring and promoting municipal employees. Those that choose to do so must meet certain statutory requirements, but the law also gives municipalities considerable discretion in how many positions and departments will be under the merit system.

For towns that adopt a merit system the law requires, that the town's appointing authority cannot remove any employee from a classified service (civil service) job after the person completes his or her probationary period unless the reason for the removal is submitted to the town's civil service board and a copy is given to the employee (CGS § 7-419). The employee must also be given the opportunity to respond to the board regarding the reasons for removal. This means the town must show cause before removing a person in a civil service job.

The law also permits towns to create a personnel appeals board to hear and make determinations on employee grievances, as defined in the town's civil service ordinance (CGS § 7-422). The board must adopt procedures that insure any aggrieved employee receives a prompt and fair hearing and an opportunity to be heard in person or by a representative of his choosing. A decision of the board may be appealed to Superior Court within 90 days.

UNION AND INDIVIDUAL CONTRACTS

Union contracts usually require the employer to show cause before an employee can be dismissed and typically include an employee grievance procedure if the employee feels the employer has unfairly acted against him or her, such as attempting to terminate them. Grievance procedures usually involve the option of holding a hearing where the employee's side of the issue can be heard.

Individual employment contracts may vary in whether they require the employer to show cause before dismissing the employee. Some may contemplate keeping confidential the reasons for an employee dismissal or termination. Some may only allow the employment to end before the contract is expired if the two sides agree to early termination. In some instances the town and the employee will agree to terms of a "buy out" where the town pays the employee a certain amount to end the contract early. This is most often done in higher profile positions such as town manager or police chief.

EXCEPTIONS TO THE AT-WILL DOCTRINE

The at-will employment doctrine holds that employment relationships of an indefinite nature (those without a specific contract) can be terminated by either party at short notice without cause. The strength of this common law rule is gradually eroding due to various court decisions. In many states, including Connecticut, the courts have created exceptions to the employment at-will doctrine. These decisions have taken place because of the sometimes harsh results of at-will employment. Two of the primary exceptions are termination in violation of (1) public policy or (2) implied contract.

The public policy exception arises when an employee is discharged for asserting a right that is protected under either state or federal law. It could involve “whistleblowing” where the terminated employee reports his or her employer to a public agency over an alleged illegal practice or the employee’s refusal to engage in some prohibited conduct. Regarding prohibited conduct, in a 2005 case the court ruled in favor of a nurse supervisor who objected to a surgeon attempting to use his own surgical instruments in an operating room rather than the hospital’s sterilized instruments. The nurse reported the surgeon’s conduct and the next day the nurse was suspended. The court ruled in her favor indicating that if she had allowed the surgeon to use his own instruments, the nurse would have jeopardized her own nursing license (*Cappiello v. Fitzsimmons*, 2005 Conn. Super.LEXIS 1930).

Implied contracts in the workplace are most commonly created in employee manuals or employee policies a business adopts. In *Holt v. Home Depot*, (2004 U.S. Dist LEXIS 824 (D. Conn. 2004)) the court found in favor of an employee who was fired shortly after utilizing the company’s “open door” policy. Home Depot offered an open door policy to encourage employees to air complaints about their boss to higher management without fear of retaliation. Holt, an employee, took part in this and complained about his manager. Four days later his job was terminated. He sued arguing that the open door policy created an implied contract not to retaliate. The jury agreed and awarded him nearly \$500,000 in damages.

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