

EMPLOYMENT AGREEMENTS

EMPLOYMENT AT WILL

The doctrine of employment at will generally states that an employment relationship may be terminated at any time by either party. In the absence of a collective bargaining agreement or other contract, the employer may discharge an employee at any time for any legal reason, or for no reason, with or without notice. Likewise, the employee may resign at any time for any reason, with or without notice. Minnesota follows this general rule.

The employment at will relationship can be contrasted with a contractual relationship, in which the rights and duties of the parties are governed by specific contractual provisions. The courts in recent years have identified several situations in which an employment at will relationship is changed to a contractual relationship, or where for public policy reasons the employment at will rule will be disregarded. These situations are discussed in the section on Employment Contracts, below.

EMPLOYMENT CONTRACTS

Employment contracts may be written or oral. Employment contracts may be provided to employees who would not otherwise accept employment without the security of a contract, or in cases where the employer wishes to secure certain protections, such as the protection of confidential information or trade secrets. Employment contracts typically set forth the term or length of employment, compensation and benefits, job duties, and circumstances for termination. Some contracts also may include provisions relating to confidentiality, assignment of intellectual property rights like patents or copyrights, and non-compete agreements.

In recent years, Minnesota courts have used contract-based theories to carve out exceptions to the employment at will doctrine for public policy reasons. For example, the courts have found a contract to exist where the employee provides something of value, in addition to performing the job, in exchange for a promise of continued employment. A contract also has been found where the employee, in reliance on an offer of employment, gave up another job to accept employment. Most recently, Minnesota courts have determined that statements in a personnel handbook may create an enforceable contract if the terms are sufficiently definite, are communicated to the employee, and the employee accepts the terms and provides value by continuing to work. Implied contracts may be found to exist in other situations.

In cases where employees are represented by a union, the employer and the collective bargaining agent negotiate a contract which governs the relationship of the parties throughout its term.

PROTECTION OF CONFIDENTIAL INFORMATION

Minnesota law protects employers' confidential information and trade secrets in several ways. First, an employee has a generally recognized duty of loyalty to not disclose trade secrets or proprietary information of the employer. Second, the statutory Uniform Trade Secrets Act, adopted by Minnesota, prohibits misappropriation of trade secrets. And third, employers may require employees to execute nondisclosure agreements to prevent release of trade secrets or confidential information during or after their employment.

To be protected as a trade secret under the Uniform Trade Secrets Act, the information must not be generally known or readily ascertainable by the general public, it must provide economic value to the employer, and the employer must make reasonable efforts to maintain its secrecy.

Confidentiality agreements must be supported by “adequate consideration,” i.e., the employee must be given something of value in exchange for the promise not to disclose the information. Examples of adequate consideration vary from case to case but might include the initial hiring of the employee in exchange for the agreement, promotions, salary increases or cash payments. Continued employment, without more, generally is not recognized as adequate consideration to support a confidentiality agreement.

ASSIGNMENT OF PATENTS AND INVENTIONS

An employer may require an employee, as a condition of employment, to assign the employee’s rights in certain inventions to the employer. Under state law, such an assignment must exclude inventions for which no equipment, supplies, facilities or trade secret information of the employer were used, and which were developed entirely on the employee’s own time, and which do not relate directly to the employer’s business or its actual or demonstrably anticipated research or development, or which do not result from any work performed by the employee for the employer.