

UTAH BUSINESS LAW - MONTHLY NEWSLETTER

A publication provided by the law firm of Eveland & Associates, PLLC
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Should My Business Have Employment Agreements With My Employees?

... and if so, should they be "at will"?

One of the most important issues that all business owners have to deal with is human resources or who they hire to do work for the business. When you think about hiring people, most business owners in Utah do not usually put too much thought into whether they should have an employment agreement with the employee.

This is mainly because Utah is considered an "at will" employment state -- which means that an "at will" employee may be terminated for any reason or for no reason, so long as the reason is not illegal.

There are numerous illegal reasons for termination. Most often the illegal reason is based on illegal discrimination or illegal termination in violation of a public policy. Generally, employees who work under an employment contract can only be terminated for reasons specified in the contract.

Since this is the case, isn't it better not to have any employment agreements with your employees? Well, it depends. How valuable is that employee? If that employee left, could your business thrive without them. Oftentimes in businesses like television news, the newscasters and reporters have employment agreements with the television station to avoid the newscaster from switching to another station.

Does your business depend on key employees? If it does, then an employment agreement might be a very good thing to have to prevent them from leaving. You can also place non-compete language in the agreement as well as non-disclosure language so that if they ever do leave, they cannot speak about your business and reveal private information to others.

When looking at employment agreements, there is usually an employment "term" (or the duration of employment) identified in the employment agreement. This is basically a promise by the employer to terminate the agreement only "for cause," an employee is presumed to be employed "at will." An at-will employment relationship can be

terminated by either party (the employer or the employee) at any time (with or without notice) and for any reason (with or without cause). An at-will employee is typically not entitled to severance benefits upon the termination of employment.

Regarding an employee employed for a specific "term" (i.e. a specific period of time), the employer is bound by the terms of the agreement to continue to employ the employee until the expiration of the term. If the employer terminates the agreement at the end of the agreement, the employee is not entitled to any severance benefits, unless the agreement specifies otherwise.

If the employer terminates the agreement prior to the expiration of the term contained in the agreement; then, the termination will be deemed either a "termination for cause" or a "termination without cause." Employees terminated "for cause" are not entitled to severance benefits. Employees terminated "without cause" are usually entitled to severance benefits (or payment for the remainder of unexpired portion of the contract term).

Since this is the case, the definition of "cause" as set forth in the employment agreement is a very critical issue to be determined by the language of the agreement.

Conclusion

Since many employers want to have some protections provided by employment agreements and keep their employees "at will" - I have included with this issue a sample "at will" employment agreement template for your review. Please note that if you use this form, it is just a form, and it does not constitute any legal advice. If you would like our law firm to prepare any agreements on your behalf, please contact a complimentary appointment to meet with one of our very capable attorneys. Until next month, take care of your business so your business will take care of you. {-}

Utah Business Law - Monthly Newsletter is written by Jeremy D. Eveland, MBA, JD, Attorney and Counselor at Law. Mr. Eveland is licensed to practice law in Utah, Nevada, and California. This newsletter is published as a service of the law firm of Eveland & Associates, PLLC • 8833 South Redwood Road, Suite C • West Jordan, Utah 84088. This information is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified attorney.
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EMPLOYMENT AGREEMENT (At-Will)

This Agreement, made this __ day of _____, 20__, by and between _____, a _____ corporation having its principal office at _____ (the "Company") and _____, of _____ (the "Employer").

WITNESSETH:

WHEREAS, Company is engaged in the business of _____, and maintains a business premises at _____; and

WHEREAS, Employee seeks employment with Company as _____; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, receipt of which is hereby acknowledged, Company and Employee agree as follows:

1. Employment and Duties. Company hereby employs Employee to serve in the capacity as _____, and for such other duties and responsibilities as may be assigned by the Company's President and Board of Directors. Employee agrees to devote full time and attention to Company's business and shall not engage in business activity for any other employer, or be self-employed, during the term of this agreement.
2. Term. Employee is employed by Company on an "at will" basis. For purposes of this Agreement, "at will" is defined to allow either Company or Employee to terminate this Agreement at any time on _____ days' written notice, with or without cause and for any reason permitted under applicable law.
3. Compensation. Company shall pay Employee, as full compensation for services rendered to Company hereunder, an annual salary of \$_____, payable semimonthly on the 15th day and last business day of each month. Company shall withhold from compensation all federal, state and local taxes as are applicable or may become applicable during the term of Employee's employment.
4. Benefits. Company agrees to provide Employee the following benefits: (a) Employee's participation in Company health, dental and vision insurance plans after Employee's 90th day of employment by Company;

(b) Annual, paid vacation, personal and sick days according to the following schedule: _____ . Employee must provide at least twenty (20) days' written notice to Company of Employee's intention to take vacation.

(c) Fees for professional associations or memberships related to the Employee's duties specified under this Agreement. Such associations or memberships include, but are not limited to, the following: _____.

5. Employee's Covenants. Employee covenants and agrees as follows: (a) Employee shall devote all working time, effort and skills to furthering the business interests of the Company, and shall do so with Employee's best effort and in good faith;

(b) Employee recognizes and agrees that in the course of Employee's employment by Company, Employee may be exposed to customers list, proprietary information and Company business methods which constitute confidential information of Company which may be protected under law (hereinafter collectively referred to as "Confidential Information"). Employee recognizes and agrees that the Confidential Information has been developed by Company at substantial effort and expense, is confidential and proprietary to Company and shall remain the exclusive property of Company. Employee agrees not to use, disclose or communicate in any manner, or to any third party, Confidential Information without the express, written consent of Company;

(c) Within _____ (_____) days of termination under this Agreement with or without cause, and whether such termination is initiated by Company or Employee, Employee agrees to return to Company any and all materials, documents, records, copies, manuals, computer files, storage devices and other information relating, directly or indirectly, to Confidential Information and to customers or clients of Company;

(d) Employee recognizes and agrees that Company's employees are a valuable resource to Company. Employee agrees not to recruit any of Company's employees for any outside business interest, including any interest in which Employee may be self-employed, for a period of _____ (_____) years following Employee's termination from employment with Company.

6. Remedies. Company and Employee recognize and agree that irreparable injury will result to Company's business interests and Confidential Information in the event of a breach of Employee's covenants under this Agreement. Company and Employee agree that in the event of a breach or prospective breach of Employee's covenants, Company shall be entitled, in addition to any other remedies available, to injunctive relief against Employee. Employee agrees to pay all reasonable costs, including attorney's fees, incurred by Company in connection with the enforcement of any of Employee's covenants under this Agreement.

7. Disability. In the event of Employee's disability for a period of more than _____ (_____) business days for any reason (whether due to illness, accident or incapacity), Employee's compensation for such period of disability may be reduced to Company to _____ percent (____%) of Employee's full compensation, as defined under this agreement.

8. Notice. Any notice that may be given or is required to be given under this Agreement shall satisfy this provision if delivered in writing, by certified mail, to the respective addresses of Company and Employee set forth above.

9. Arbitration. Any controversy or dispute arising out of or relating to this Agreement, other than those arising out of the enforcement of Employee's covenants hereunder, shall be settled by arbitration conducted in the County of _____, State _____, unless prohibited by law. Such arbitration shall be effected by arbitrators selected as hereinafter provided and shall be conducted in accordance with the rules existing at the date thereof of the American Arbitration Association (hereinafter the "AAA"). The dispute shall be submitted to a single arbitrator acceptable to the parties. If a single arbitrator cannot be agreed upon within ten (10) days, the dispute shall be submitted to three (3) arbitrators, each of them having at least five (5) years' business experience, one arbitrator being selected by Company, one arbitrator being selected by Employee, and the third arbitrator being selected by the AAA. In the event that either party, within thirty (30) days after any notification of any demand for arbitration hereunder, shall not have selected its arbitrator and given notice thereof to the other party, such arbitrator shall be selected by the AAA. The meeting of the arbitrators shall be held at such place or places as may be agreed by the arbitrators in the County of _____, State of _____. Judgment may be entered on any award rendered by the arbitrators in any federal or state court having jurisdiction.

10. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject hereof and supersedes any prior agreements, understandings, representations, warranties or covenants between the parties hereto.

11. Severability. In case any provision of this Agreement is held invalid or unenforceable, in whole or in part, neither the validity or enforceability of the remaining part of such provision, nor the validity of any other term or provision of this Agreement shall in any way be affected thereby, and this Agreement shall be enforced as executed by the parties or as modified by a court of competent jurisdiction to the full extent permitted by law.

12. Governing Law. This Agreement in all respects, including its interpretation and validity, shall be governed by the laws of the State of _____.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date and year first written above.

COMPANY

By: _____
Officer's Signature

Employee's Signature