

## Employment Contracts

Contracts are often thought of as lengthy complex documents. However, not all contracts need to be put into writing. Employment relationships occur regardless if the terms are put into writing or not. Normally an employer will hire an employee, the employee accepts the offer, and then employer pays the employee in return for the services performed. The employment contract will generally contain an outline of the company's policies and guidelines, give details about the terms and conditions of the employment, and details about compensation. Employment contracts can come in many forms, but the most important thing is to ensure the words and actions of the parties preserve the intentions of the contract. Identifying the type of employment agreement you have is key to understanding what legal rights you have if you are terminated from your employment.

### Type of employment contracts:

- A) **Employment at will**
- B) Employment based on an implied contract
- C) Express contract (individual written contracts)

### MA recognizes two distinct categories of employment relationships:

- 1) Contract employees
- 2) At will employees \*

### CONTRACT EMPLOYEES:

Contract employees may be entered into writing, orally, or be implied by the actions of the employer. In MA a written contract is enforceable according to the terms of the contract. The terms might include language about compensation, benefits, or how/why the employee can be terminated. Damages can be sought if there is a breach of the contract depending on the facts of each case. On the other hand, in MA oral contracts may arise from various representations and may be enforceable. **See, Frederick v. ConAgra Inc., 713 F. Supp. 41, 44 (D. Mass. 1989).** The contract can also be inferred from the action and conduct of the parties. These contracts are usually binding and dictate the terms of the agreement.

### EMPLOYEES AT WILL\*

Massachusetts follows 'at will' employment doctrine meaning employees can be terminated at any time for almost any reason. As long as the reason is accordance with federal and MA law, and not illegal then employees do not have claim. Under the **Massachusetts Fair Employment Act, (M.G.L. c. 151B)** an employer cannot terminate an employee based on race, gender, disability, sexual orientation, other characteristics that would be deemed unlawful. Additionally, an employer MAY NOT terminate an employee for asserting a legal right (filing for workers compensation) or for doing as the law requires (reporting illegal activity) because employers should not be able to terminate an employee for engaging in actions or conduct that the law requires. An exception to this is a breach of the covenant of good faith. This occurs when an employer terminates an at-will employee or subject them to adverse employment actions without

cause and as a consequence of termination retains compensation that is due to the employee for work preformed .

**NON-COMPETE AGREEMENTS:**

Massachusetts non-competition agreement act went into effect October 1, 2018. This agreement applies to employees and independent contractors. Generally it bans employment related non-compete agreements in Massachusetts unless they meet certain statutory requirements.

**NON DISCLOSURE AGREEMENTS:**

Non-disclosure agreement protects against sharing confidential information, trade secrets, or proprietary information. One party agrees not to enter into a similar position or start a similar company/work for a competitor within a certain area. A breach could result even after the employee has left the company.

**VERBAL EMPLOYMENT CONTRACTS:**

Verbal employment contracts are very difficult to enforce when a dispute arises. There is no written document so the parties have to solely depend on the word of each other. This agreement should only be done if there is some level of trust between the two parties, and even then it is not recommended.

**STATUTE OF FRAUDS- WRITTEN CONTRACTS:**

- Any transaction that costs more than \$500
- Any job/work that would take more than 1 year to complete

**STATUTE OF LIMITATIONS ON CONTRACT DISPUTES:**

- Usually contract breach claims are 6 years in MA
- Unpaid wages 3 years
- Depends on the type of claim involved

**COMMON AREAS OF EMPLOYMENT CONTRACTS THAT INVOLVE BREACHES:**

- a) Compensation or benefits
- b) Confidentially agreements
- c) Exclusive employment
- d) Non-compete agreements
- e) Non-disclosure agreements
- f) Post termination actions
- g) Sick leave or vacation
- h) Termination

**BREACH OF EMPLOYMENT CONTRACT:**

Occurs when one of the parties to the contract fails to perform their duties. The terms of the contract, what constitutes a breach, and remedies for a breach should be written in the contract. If there is a breach the parties can: agree to terminate the contract, go to arbitration, or go to court.

**REMEDIES:**

- Money damages
- Termination
- Reinstatement
- Other specific remedies

**ARBITRATION AGREEMENTS:**

Often employers will have arbitration agreements as part of the employment contract. Arbitration is another venue to resolve a dispute rather than going to court. By going to arbitration parties save time and money compared to litigation, and it does not become a public record. Arbitration agreements are generally found to be valid and will be enforceable.

**CHANGES IN EMPLOYMENT CONTRACTS:**

Employment contracts can change over time depending on the duration of an employee's employment. If an employee has been there a long time there is a greater chance that the terms of the employees contract have changed. It may involve a change in a single area of employment like a pension plan or vacation policy. Or the employment contract can be modified without the employer intending to with oral statements or updates to employment handbooks.

**TERMINATING AN EMPLOYEE FOR CAUSE:**

Usually this is defined in the employment contract. Usually this language is broad and parties often disagree on whether the employer had good cause. This may include:

- a. Failure to substantially perform
- b. Violation of criminal laws
- c. Breach of employment violations
- d. Intentional act of fraud, theft, or embezzlement