

# **Baker Donelson**

# **Breakfast Briefing**

*Handbooks and Policies*  
*Best Practices for Mississippi Employers*

J. Randall Patterson, Esq.

Baker, Donelson, Bearman, Caldwell & Berkowitz

(601) 351-2545

[rpatterson@bakerdonelson.com](mailto:rpatterson@bakerdonelson.com)

## ***Who is Baker Donelson?***

- The 66<sup>th</sup> largest law firm in the U.S. based on number of attorneys (NLJ)
- 19 offices across 7 states and Washington, D.C.
- More than 670 attorneys and public policy advisors representing 30 practice areas
- Ranked as one of FORTUNE magazine's "Best Companies to Work For" for the past five years
- 75 attorneys recognized by *Chambers USA* as leaders in their field
- 235 attorneys in *Best Lawyers in America*® 2014 edition
- Consistently ranked in the "Top 100 U.S. Law Firms For Diversity," and the "Top 100 Law Firms for Women" by *Multicultural Law*



# **Handbook Safe Harbor Employment At-Will Doctrine**

*it all starts here.....*

“Mississippi follows the common law rule that a contract for employment for an indefinite term may be terminated at the will of either party. The employee can quit at will; the employer can terminate at will. This means ... a good reason, a wrong reason, or no reason for terminating the employment contract.”

**Employment at-will is reaffirmed**

**1981**

“We therefore decline to adopt a public policy exception to the common law rule that an employment contract at will may be terminated by either party with or without justification, and decline to create a common law tort action against an employer by an employee who has been discharged for filing a workmen’s compensation claim.”

*Kelly v. Miss. Valley Gas Co.*, 397 So.2d 847 (Miss. 1981).

# What Are The Employment at Will Exceptions

?



## Mississippi At-Will Doctrine Carve outs

- Contracts of Employment Implied from Employment Manuals or Policy Statements  
*Bobbit v. The Orchard, LTD*, 603 So.2d 356 (Miss.1992).
- Public Policy Exceptions to the Employment at-will Doctrine  
*McArn v. Allied Bruce-Terminix Company, Inc.* 626 So.2d 603 (Miss. 1993).

# Mississippi At-Will Doctrine

## Carve outs

Contracts of Employment Implied from  
Employment Manuals or Policy Statements

## Mississippi Employment Law

“We hold in this case that because the manual was given to all employees, it became part of the contract. It did not create ‘tenure,’ or create a right to employment for any definite length of time, but it did create an obligation on the part of The Orchard to follow its provisions in...discharging an employee.”

*Bobbit v. The Orchard, LTD, 603 So.2d 356, (Miss.1992).*

## Mississippi Employment Law

“We hold the employer to its word.”

*Bobbit v. The Orchard, LTD*, 603 So.2d 356, (Miss.1992).

## Mississippi Employment Law

Holding in *Bobbit*, creating contract from language in Employee Handbook is narrowed.

*McCrory v. Wal Mart Stores, Inc.*, 755 So.2d 1141  
(Miss. Ct. App. 1999).

## Mississippi Employment Law

“ Disclaimers in employees’ manuals having their purpose of preserving the employment at-will relationship cannot be ignored.”

*McCrary v. Wal Mart Stores, Inc.*, 755 So.2d 1141 (Miss. Ct. App. 1999).

# Mississippi At-Will Doctrine

## Carve outs

What About Other Exceptions

to the

Employment at-will Doctrine

## Mississippi Employment Law

“We are of the opinion that there should be in at least two circumstances, a narrow public policy exception to the employment at-will doctrine and this should be so whether there is a written contract or not...”

*McArn v. Allied Bruce-Terminix Company, Inc.*, 626 So.2d 603 (Miss.1993).



## Mississippi Employment Law

“(1) an employee who refuses to participate in an illegal act...shall not be barred by the common law rule of employment at-will from bringing an action in tort for damages against his employer...”

*McArn v. Allied Bruce-Terminix Company, Inc.*, 626 So.2d 603 (Miss.1993).

## Mississippi Employment Law

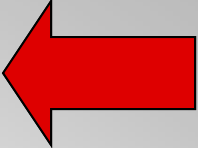
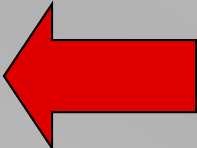
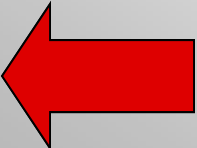
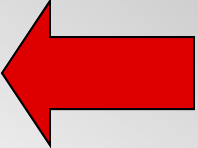
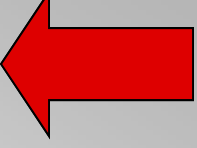
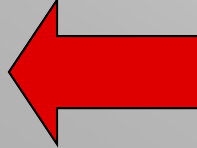
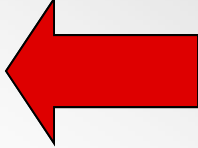
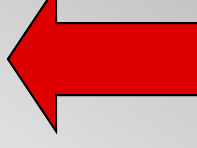
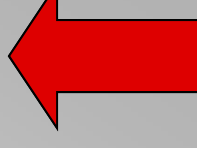
“(2) an employee who is discharged for reporting illegal acts of his employer to the employer or anyone else is not barred by the employment at-will doctrine from bringing a action in tort for damages against his employer...”

*McArn v. Allied Bruce-Terminix Company, Inc.*, 626 So.2d 603 (Miss.1993).

**What the employment at will doctrine does not do...**

**It does not enable the employer to make employment decision based upon legally protected classifications.**

**Protections in the Workplace Include Discrimination  
Based On:**

- |   |       |   |                 |   |                         |
|---|-------|---|-----------------|---|-------------------------|
|    | Sex   |    | National Origin |    | Disability/<br>Handicap |
|   | Race  |   | Age             |   | Religion                |
|  | Color |  | Veteran Status  |  | Other Protected Status  |

# **What Are Some Other Things That Should be in A Handbook**

**?**

## “At Will” Statement

### **IMPORTANT**

*THE CONTENTS OF THIS HANDBOOK DO NOT CONSTITUTE THE TERMS OF A CONTRACT OF EMPLOYMENT. Neither the employee nor the company is obligated to continue the employment relationship, and either may choose to end the employment relationship at any time with or without cause. All employment relationships with the company are therefore “AT WILL” unless a specific employment contract providing otherwise exists with a specific employee and such contract is signed by an officer of the company. Nothing in this handbook changes your status as an employee at will.*

## “At Will” Statement

### **IMPORTANT**

*THE CONTENTS OF THIS HANDBOOK DO NOT CONSTITUTE THE TERMS OF A CONTRACT OF EMPLOYMENT. All employment at ABC Company, Inc. is on an "at-will" basis. That means that neither the employee nor the company is obligated to continue the employment relationship, and either may choose to end the employment relationship at any time with or without cause. All employment relationships with the company are therefore “AT WILL.” Nothing in this manual changes your status as an employee at will.*

## **Equal Opportunity Employment**

ABC Company, Inc. administers all personnel actions, such as recruitment, hiring, training, promotion, transfer, compensation and benefits, discipline, termination of employment, and educational, social and recreational programs without regard to race, color, sex, religion, national origin, age, disability, or other protected status under federal, state, or local law. In addition, it is the company's policy to provide an environment that is free of unlawful harassment with regard to the above-protected groups.



## **No Harassment/Discrimination Policy**

ABC Company, Inc. does not tolerate harassment of or discrimination against any of its employees by other employees or non-employees. Any form of harassment or discrimination that violates federal, state, or local law, including, but not limited to, that which is related to an individual's race, color, religion, sex, national origin, citizenship status, marital status, pregnancy, age, or disability is a violation of this policy and will be treated as a disciplinary matter.

## **No Harassment/Discrimination Policy**

- Harassment in General Defined.**
- Sexual Harassment Defined.**
- Making Harassment/Discrimination Complaints.**
- Response to Harassment or Discrimination Complaints.**
- Retaliation Prohibited.**

**AND --- HAVE A STRONG REPORTING POLICY**

## Make it the Employee's Responsibility

As Per Your Policy Manual, you MUST:

### **Report it!**

Your immediate supervisor

The general manager

Any member of management, who is  
at a level above the employee's  
supervisor including the  
President of the Company

## **EMAIL AND COMPUTER USE POLICY**

All computer hardware and software is the property of ABC Company, Inc. As such, employees are authorized to use company property for business purposes only, and there should be no expectation of privacy on the part of the employee with regard to computer usage.

## **EMAIL AND COMPUTER USE POLICY**

**Internet Use.** The company provides access to the Internet. The Internet represents a useful tool for the company in conducting its business, but like any other tool, it must be used properly. Employees are prohibited from accessing sexually explicit, obscene, or offensive sites on their company computers. The company reserves the right to utilize software that blocks access to such sites or filters the receipt of offensive or disruptive electronic messages.

***Extend Your EEO and Sexual Harassment Policies...***

**Offensive or Inappropriate Electronic Communications.** The company's voice mail and e-mail system shall not be used by any employee in a manner that is disruptive or offensive to others or harmful to morale. All employees are prohibited from displaying or transmitting any sexually explicit or obscene messages, images, or communications containing libelous or defamatory material; ethnic or racial slurs; or anything that may be construed as disparaging or harassing of others based on race, national origin, gender, age, disability, religion, or any other basis prohibited by law.

## EMAIL AND COMPUTER USE POLICY

### *No Expectation of Privacy...*

**Monitoring Electronic Communications.** To ensure that employees' use of the company's electronic and telephonic communications systems and business equipment is consistent with the company's legitimate business interests and the terms of this policy, authorized representatives of the company may monitor the use of such equipment from time to time. This includes, but is not limited to, monitoring Internet usage and e-mails that an employee sends or receives. This may also include listening to stored voice mail messages. When an employee leaves the employ of the company for any reason, the company reserves the right to review all e-mail, voice mail, and computer files of the departing employee.

# The Computer – Hey! This thing sits on my desk, “it’s mine”

- The computer, its hardware, its software, and everything about it belongs to the Employer.
- There is nothing private about the computer, and anything that goes in it, or comes out of it.
- Since it, and everything in it, belongs to the Employer, it has the right to look into the computer anytime.
- Remember – “Delete” .... Does not really mean gone!



## So.....what does that mean?

Don't solicit non-clinic business for personal gain or profit.

Don't use the Internet or e-mail for any illegal purpose.

Don't represent personal opinions as those of the Employer.

## What else.....?

Don't make or post indecent remarks, proposals, or materials.

Don't upload, download, or otherwise transmit commercial software or any copyrighted materials belonging to parties outside of the company, or the Employer itself.

Don't download any software or electronic files without implementing virus protection measures that have been approved by the Employer.

## What else.....?

Don't visit websites that you would not want your mother to see.

Don't download images or information that might be considered sexually harassing, or discriminatory.

Don't email anything that might be considered sexually harassing or discriminatory.

## ***...the company's official position?***

- **Judges:**

- *Mitt Romney says we need common-sense judges who believe our rights are derived from God.*

- *President Obama insists on judges who support the ACLU's radical anti-Christian, anti-God, anti-family agenda.*

- **Gay Marriage:**

- *Mitt Romney is opposed.*

- *President Obama favors.*

- **Restoring voluntary prayer in the public schools:**

- *Mitt Romney Favors.*

- *President Obama is Opposed.*

## ***At the end.....***

- *With help from you and many others,  
we hope to*
- *distribute 25,000,000 copies of this  
Voter information across the United  
States.*

*If you agree, please pass this on.  
If you disagree, please delete this.*

*and.....*

When you “*pass it on,*” it not only comes from  
you@your.employer.com

but it comes from.....

***Your Company***

**What Else**

**?**

## **Family and Medical Leave Act Policy**

### **Generally.**

After twelve months of employment with ABC Company, Inc., a regular full-time employee who has worked at least 1,250 hours in the previous twelve months and who works at a worksite in which the company has fifty or more employees or fifty or more employees within seventy-five miles of the worksite may request a leave of absence for one or more of the following reasons:

- Due to a serious health condition that renders the employee incapable of performing the functions of his or her job;
- Due to the birth of the employee's child;
- Due to the placement of a child with the employee for adoption or foster care; or
- To care for the employee's spouse, child, or parent who has a serious health condition.

Eligible employees may request up to twelve weeks of such leave ("family or medical leave") during a twelve-month period.



## Family and Medical Leave Act Policy

- Exhaustion of Vacation and Sick Leave Benefits.
- Request for Leave and Advance Notice.
- Medical Certification.
- Status Report.
- Certification of Ability to Return to Work.
- Continuation of Benefits.
- Restoration of Employment.
- Failure to Return to Work after Expiration of Leave Period.
- Calculation of the Twelve-Month Period.

# What About Wage & Hour?

## Overtime Policy

The needs of ABC Company, Inc. may require that employees work overtime. All non-exempt employees are covered by this overtime provision and shall receive 1-1/2 times their regular rate of pay for all approved hours worked over forty hours in the workweek. A non-exempt employee must receive prior approval from his or her supervisor to work overtime.

## **Accurate Timekeeping Policy**

Accurately recording time worked is the responsibility of every non-exempt employee at ABC Company, Inc. Federal and state laws require the company to keep an accurate record of time worked in order to calculate employee pay and benefits. Time worked includes all the time actually spent on the job performing assigned duties.

## **Accurate Timekeeping Policy**

Tampering with, altering, or falsifying time records, recording time on another employee's time record, or working off the clock may result in disciplinary action up to and including discharge.

It is the employee's responsibility to sign his or her time record or time card as a means to certify the accuracy of all time recorded. An employee's supervisor will review and then initial the time record or time card before submitting it for payroll processing.

## **What About Discipline Policies?**

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**It is our policy at Exposure R Us, Inc. to use progressive discipline. It will be initiated for various reasons, including, but not limited to, violations of the company's policies or standards of conduct, or for poor job performance.**

**Progressive discipline will progress through the following:**

- Verbal Warning**
- Written Warning**
- Probation**
- Final Warning**
- Discharge**

# **Is Arbitration for You?**



# Arbitration

AN IMPOSITION OF JUDGMENT FROM A NEUTRAL ARBITRATOR WHO, AFTER BEING SELECTED BY THE PARTIES, HEARS EVIDENCE, WEIGHS FACTS AND RENDERS AN AWARD IN THE DISPUTE. SUCH AWARDS ARE GENERALLY SUBJECT TO APPEAL ONLY IN THE CASE OF FRAUD, EXCEEDING THE AUTHORITY OF THE ARBITRATOR, OR GROSS INATTENTION TO THE FACTS.

# Motions to Compel Arbitration

- Since *Circuit City Stores, Inc. v. Adams* (2001) there has been little question that there **is a strong presumption** in the enforceability of Arbitration Agreements.
- ***“By agreeing to arbitrate a statutory claim, a party does not forego the substantive rights afforded by the statute, it only submits their resolution in arbitral rather than a judicial forum.”***

## How Arbitration Works...

- Select the arbitrator
- Conduct discovery
- Consider dispositive motions
- Schedule the hearing
- Try the case
- Accept the results
- Close the file



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- **May be efficient** – usually faster track than in court. But, discovery is typically in line with a standard case in federal court.
- **May be less expensive than litigation** – maybe, but probably not. Remember the Arbitrator doesn't work for free.
- **May reduce risk of large verdicts** – Yes, but also probably eliminates any chance of winning with an early dispositive motion.

# What Next?

Have Great Handbook!  
Distribute to Employees!  
Schedule Periodic Training!  
Acknowledge Receipt in Writing!

## **ACKNOWLEDGMENT FORM**

### **HANDBOOK RECEIPT FORM**

This is to acknowledge that I have received a copy of the ABC Company, Inc.'s Employee Handbook and that I have reviewed the policies and procedures contained in the Handbook. I have also been given the opportunity to ask any questions I have about its contents. I also acknowledge that I understand and agree to abide by the company's policies, procedures, practices, rules and regulations described in the Handbook. In addition, I understand that the Handbook is merely a guide for employees and does not constitute a written employment contract and that the guidelines in the Handbook may be changed from time to time at management's sole discretion, with or without notice. Finally, I understand that my employment with ABC Company, Inc. is "at will," which means that my employment may be terminated by myself or by the company at any time for any reason, or for no reason at all, with or without cause or notice.

EMPLOYEE'S SIGNATURE

---

DATE \_\_\_\_\_

# What Next?



**Train Your Employees!**  
**Train Your Managers!**  
**Acknowledge Training in Writing!**

## **CERTIFICATION OF ATTENDANCE AND UNDERSTANDING**

I hereby certify that on October 2, 2003, I attended an Employee Training session provided by my employer, ABC Company, Inc. which provided training on a variety of employment-related subjects, including, but without limitation, company policies concerning pre-approval for working overtime, sexual harassment, discrimination and other types of inappropriate behavior.

I further certify that I have read and understand ABC Company, Inc.'s Employment Policy Manual, which was provided to me by my employer, ABC Company Inc., and that I was given the opportunity to ask questions regarding the policies provided therein. I certify that, as an employee of ABC Company, Inc., I have not witnessed or experienced unauthorized "working off the clock," sexual harassment, discrimination, or any other inappropriate behavior or conduct, as described in the handbook and/or in this Employee Training session.

I further certify that I understand, as an employee of ABC Company, Inc., that it is my affirmative obligation and duty to report to management any harassing, discriminatory, or otherwise inappropriate behavior that I observe or which I am subjected. I further certify that I understand that if I make a report of "working off the clock," sexual harassment, discrimination or inappropriate behavior, it is my affirmative obligation and duty to actively and cooperatively participate in any investigation that results from this report. I understand that any investigation conducted will be strictly confidential, unless otherwise provided by law.

Employee's Signature: \_\_\_\_\_

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**Questions?**