



Fine Print

A Quarterly Publication of the Ohio State Bar Association
and Our Members

Issue 4 • Summer, 2000

"Employment at Will" Affects Working Ohioans

by Maribeth Deavers

Q: What does it mean to be an "employee at will"?

A: Generally, in Ohio, an employee is an "employee at will" unless the employee's relationship with his or her employer is governed by a contract or protected by law. "At will" means the employee serves at the will of the employer. In other words, the employer is free to terminate the employee, and the employee is free to quit, at any time, for no reason or for any lawful reason, with or without notice. If you do not have a contract with your employer, are not in a union, or are not in the classified service of public employment, you may be an at-will employee subject to termination at any time, regardless of fairness. There is no duty on the employer to treat employees fairly, only lawfully. However, even if the termination is lawful, an employer may still be required to act with decency in the process or be liable on a claim for intentional infliction of emotional distress, invasion of privacy, defamation, or other claims.

Q: Must a contract restricting an employer's ability to terminate an employee be written?

A: No. Such a contract can be written, but may not have to be. A contract can be verbal or even implied from the circumstances and conduct of the parties. Also, an employer may be bound by promises made to an employee with re-

spect to termination procedures, reasons for termination, or length of employment, upon which the employee reasonably relies, thus sustaining damages.

Q: Are there exceptions to employment at will?

A: Yes. Although an employer may terminate an employee for no reason, or for a lawful reason, an employer cannot terminate for an unlawful reason. For example, an employer cannot terminate an employee because he or she is a member of a "protected class": that employee's race, national origin, gender, religion, or disability, or age. Also, there are laws protecting veterans and military reservists.

There are also laws prohibiting termination based on retaliation in certain circumstances, such as an employee exercising his or her legal rights, including filing for workers' compensation, reporting sexual harassment, or filing claims with the Department of Labor for overtime violations.

There are also exceptions where termination for certain reasons is thought to be against public policy: serving on a jury, or refusing to break the law, or exercising a legal right such as hiring an attorney to represent him or her in an employment matter.

Because there are numerous exceptions to employment at will it is important to consult with an attorney familiar with employment law.

Maribeth Deavers is with the Delaware firm of Manos, Martin, Pergram & Browning and is a member of the OSBA Board of Governors.

BUYER BEWARE: THE STEPS TO PURCHASING A BUSINESS

By Michael A. Ellis

If you're looking to buy or acquire a business, you will need patience, honed detective skills, legal and accounting advisors, and attention to every detail. The process of buying a business is a negotiation between the seller and the buyer, with both looking out for their own interests as well as the future of the business -- but for different reasons.

As the potential buyer, it's important to consider the seller's motivation to sell: To retire? Or due to changes in the market place and an aversion to putting more capital at risk? Knowing the reasons for the sale will help a buyer prepare an offer, including whether to purchase the assets of the business or the stock.

As the buyer and seller negotiate through the sale, there are often important legal documents at stages prior to the definitive agreement:

Confidentiality agreement: To receive information about the seller, the buyer signs a this document agreeing to use the information revealed only for the purpose of considering buying the business. The agreement may also preclude the buyer from hiring the seller's employees if the sale does not go through. The seller agrees to disclose all information.

Letter of intent: This is generally a non-binding offer for the business. Buyers prefer a short letter, seeking to delay negotiations of issues such as risk allo-

cont. on page 2



For additional copies of **Fine Print**, or further information, please contact OSBA Public Relations, 1700 Lake Shore Drive, Columbus, Ohio 43216-6562, or by phone, 800/282-6556 and 614/487-2050. Articles appearing in this newsletter are intended to provide broad, general information about the law. Before applying this information to a specific legal problem, readers are urged to seek advice from an attorney.

BUYER BEWARE, cont. from page 1

cation and the seller's indemnification obligations until the definitive agreement. Sellers prefer a more detailed letter, as their greatest leverage is before execution of the letter of intent. Afterward, the due diligence process involves disclosure of the proposed sale to more people, including employees. Disclosure creates risks by affecting employees' work and commitment. Disclosure followed by no sale can leave the seller with a reputation as damaged goods.

Following execution of the letter of intent, the buyer conducts a process known as due diligence -- an in-depth analysis of seller's business. This is an investigation in which a buyer comes to understand the workings of the business: its suppliers and customers, the reasons behind its recent earnings and expectations for the future, critical contracts, and the status of the real estate. The buyer also learns to evaluate the risks and liabilities of the business.

Buyers need to ask themselves what are the key assets they want to acquire in the purchase of the business: a patent; the seller's employees; an important license or customer agreement; or equipment. If the documents are drafted to accomplish the purchase of the key elements of the business and to allocate the risks for past and future events in a manner you, as the buyer, understand and accept, the purchase is being done correctly. Finalize the deal.

Michael A. Ellis is with Kahn, Kleinman, Yanowitz, & Arnson, Cleveland, Ohio, and chairs the OSBA corporation law committee.

THE RULES DON'T CHANGE IN CYBERSPACE

By Carol Stovsky

When James first unveiled his company's Web site, it was a sharp-looking advertisement for his actual physical business, including a list of services offered and a contact phone number. Then he considered offering customers more: Instead of steering them to call or pay his company a visit, he could sell his service online through e-commerce. His lawyer advised him that there are some legal aspects that are unique to the cyberspace marketplace:

■ What's the best way to control activi-

PAYBACK TIME

Ohio Supreme Court agency reimburses clients of dishonest lawyers

by Janet Green Marbley

The person most trusted with business secrets and personal information is your legal advisor. But every profession has its bad apples and, as with clergy, police, doctors and teachers, there are a few unethical and dishonest lawyers.

That's no consolation to their victims, however, so the Ohio Supreme Court has established a fund to compensate clients who have lost money or property as a result of the dishonest conduct of a licensed Ohio attorney. The Clients' Security Fund receives all of its funding from attorney registration fees.

Q: What types of losses are covered?

A: The Clients' Security Fund compensates losses resulting from the "dishonest conduct" of a licensed Ohio attorney. "Dishonest conduct" includes theft, misappropriation, or embezzlement of client funds or property. It does not include negligence or malpractice by an attorney or loans made to an attorney.

Q: Can I receive reimbursement of legal fees paid to my attorney?

A: Legal fees will be reimbursed only when the attorney fails to provide the

ties on your site? Some sites have an area in which the company's policies are explained. Others may require a browser to review the terms and conditions before allowing access, or only make information available to subscribers. Another way to control activity is to use a "click-wrap" agreement: the viewer has to click an OK button signifying acceptance of the terms before accessing information.

■ Legal jurisdiction may depend on the e-commerce activity and the dispute.

The courts determine which cases fall under state law or federal law. Also, certain businesses - banks, for instance - are subject to regulations that retail establishments are not.

■ Online contracts have the same rules

services for which he or she was paid. Legal fees are not reimbursable simply because the client is dissatisfied with the services provided or with the results obtained.

Q: Who can apply for compensation from the Clients' Security Fund?

A: Almost any law client who believes he or she has lost money or property as a result of a theft, embezzlement or misappropriation by his or her attorney may file an application for reimbursement with the fund. An attorney/client relationship must exist between the applicant and the attorney. A guardian or other legal representative of a claimant may file a claim on behalf of the client.

Q: How much can I receive as compensation from the Clients' Security Fund?

A: The fund can reimburse the full amount of the loss up to a maximum of \$50,000.

Q: How can I file an application for reimbursement with the Clients' Security Fund?

A: Application forms may be obtained by calling the following toll-free number: (800) 231-1680. The application must be filed within one year of the occurrence or the discovery of the attorney's dishonest act.

Janet Green Marbley is the administrator of the Clients' Security Fund of the Supreme Court of Ohio.

as traditional contracts. Both should list who the parties are, what is being agreed to, and when, among other details. It's a good idea to have all terms and conditions listed up front before a client downloads or makes a purchase. And just as paper letters have been used in court to show an implied contract, so can e-mail.

A written signature may not always be required on a contract. Recently Ohio and other states have adopted laws to regulate electronic signatures and records, which are intended to ease and encourage online business.

Carol Stovsky is with Standley & Gilcrest and chairs the OSBA's Computer Law Committee.