

A Guide to Managing and Avoiding Liability - I thought You Said it was at-will!

One of the most common questions I've gotten throughout my career has been if employment is at-will why do I need documentation? The truth is most employment relationships are at-will, with the exception of one state, Montana.

The fact is there may not be a specific legal requirement that each corrective action discussion be documented, however there are some unwritten assumptions about how a "good employer" operates:

- **Unwritten assumption #1:** If it's not written, you never gave the employee a chance.
- **Unwritten assumption #2:** If it was documented, it's true.
- **Unwritten assumption #3:** An employer that documents is usually fair.

While most employers are able to exercise their at-will employment rights, the question may be are you able to defend an unemployment claim or a wrongful termination claim. **That is where documentation becomes key!** An employee can simply suggest or say they were "fired for an illegal reason", similar to "I wasn't paid correctly". ***The employer has the burden of proof!***

While I generally encourage clients to not guarantee a certain sequence of steps in corrective action process, it is important to have something to point to as counter narrative – the reason the employee was fired was due to performance, failure to follow policy, etc., not because of an illegal reason.

To the point of not guaranteeing a certain sequence of steps in the corrective action process, this doesn't suggest that being consistent isn't important given similar facts and circumstances, however those facts and circumstances may vary and it is important to determine those and preserving the right to take the appropriate corrective action.

The overall point is while an employment relationship may be at-will, if an employee suggests their rights were violated or you're defending an unemployment claim and your tax rate, can you prove your case – some level of reasonable documentation is key!

While this is the start to answering a common question, there is always more to discuss.



For more information, contact Mike Dobert, S.P.H.R, SHRM SCP, owner of HR in Alignment, LLC; 281-494-2985 or email at m Dobert@hrinalignment.com.

This article is for informational purposes and not intended as legal advice.

Copyright © 2026 by Michael J. Dobert and HR in Alignment, LLC