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The at-Will Employment Paradigm: A Link Between Law and Economic Imperatives in the United States

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Abstract

Cost savings, along with increased efficiency and effectiveness in the governance space, are considered to be the nexus of the modern economy and public administration; providing these factors in the face of legal guarantees of employment in the public sector is a challenge. The "at-will employment" paradigm in the United States can be seen as a response to this challenge; Therefore, the aforementioned paradigm has been examined using a descriptive-analytical and library method with the aim of identifying its role in creating a balance between economic requirements and legal guarantees of public employment. Based on the research findings, the paradigm of voluntary employment requires reform and more attention to legal guarantees.

Keywords: at-will employment, public employment, flexibility, efficiency

1. Introduction

According to Blackstone's theory of the common law legal system in England, employment relationships in this country were established in a contractual manner and based on the terms contained therein, which were implicitly or explicitly accepted by the parties. If the duration of the contract was not agreed upon orally or in writing by the parties or was not specified, a period of one year from the date of employment was assumed, unless the other party provided documentation to prove that the assumed period was inconsistent with the actual intention of the parties. In this regard, the early decisions of the United States courts in this area followed the common law system in England, except that they did not consider the annuality of employment as a presumption. When the contract was silent, some courts assumed that the contract was for a period of salary, while others, without considering any presumption, sought to discover the truth contained in each employment contract and to determine the true intention of the parties.

Finally, in 1930, "at-will employment" became a principle of American governance, and its basic principles remain in force to this day; whereby if the duration of employment is not specified in the contract, the default rule is that the contract is terminable at the will of either party without notice.

At-will employment and the challenges it poses, such as the possibility of implementing this employment model in the public sector, require a comprehensive study.

The main question here is whether the at-will employment paradigm, in its current form, is able to balance economic requirements and legal guarantees, especially for public sector employees?

In this regard, using a descriptive-analytical and library method, after examining the concept of at-will employment in the first section, in the second section we will examine the exceptions to at-will employment; and finally, in the third section we will examine the challenges related to the extension of the aforementioned paradigm to classified government employees.

2. At-Will Employment; Paradigm-Building in Symmetry with Flexibility

Although the "at-will employment" paradigm does not include federal employees, it accounts for a large portion of the overall employment landscape in the United States public sector, and is directly linked to the flexibility component.

In its simplest form, at-will employment means that employees can be fired for any reason or no reason at all. This is a common employment practice in the private and nonprofit sectors, but it was uncommon in public employment until the recent revolution, when demands for reform of unfair protections for public employees, began to change. However, the content of the Civil Service Reform Act of 1978 triggered a series of changes at the federal and state levels that began a different path from the aforementioned trend. In any case, the increase in the number and ranks of "senior executive officials" in order to strengthen "bureaucratic responsiveness" shifted the situation towards an at-will employment model in many states. For example, in the state of Utah in the early 1990s, many management positions were converted to "middle management levels" based on at-will employment.

At-will employment can be seen as a combination of a desire to reduce costs and a tendency to simplify and reduce managerial responsibilities. Many see it as an economic model based on financial incentives and competition for jobs as the primary drivers, in which receiving a desirable salary and fear of losing a job are considered to be a carrot-and-stick policy to increase productivity; In this view, there is no distinction between work in the public and private sectors. As a result, some believe that regulatory bodies should also follow "pay-for-performance" systems.

3. Exceptions to at-Will Employment

These exceptions can be categorized into statutory cases, including: "anti-retaliation laws", "anti-discrimination laws", and judicial cases, including: "public policy exception", "implied contractual exception", "implied obligation of good faith and fair dealing exception", each of which has its own characteristics and features.

The first major legal exception was the National Labor Relations Act of 1935, which prohibited the firing of individuals who participated in union activities. The Fair Labor Standards Act also prohibited retaliation against employees who filed complaints or participated in the labor process; The Clean Air Act also protects employees who report violations of clean air standards. These laws are all considered anti-retaliation laws.

Anti-discrimination laws include the Civil Rights Act of 1964, which prohibits discrimination based on race, religion, sex, national origin, and color. Other laws include the Age Discrimination in Employment Act, the Pregnancy Discrimination Act, and the employment provisions of the American with disabilities act.

A policy exception is based on a specific mandate, expressed by law through administrative rule, statutory law, or the Constitution. In this case, courts uphold the exercise of employees' legal rights, such as claiming damages, performing public duties, and refraining from violating the law. This can even include declaring the employer's actions illegal. Although statistics vary slightly, approximately forty-four states have accepted claims of public policy violations as an exception to the at-will employment rule.

Another judicial exception is the implied contract exception, whereby if the courts find a promise or obligation to be contrary to at-will employment, they give effect to it; for example, if the employer has specified disciplinary violations by virtue of a handbook or written instructions, the employee can be dismissed only to that extent.

As for the implied duty of good faith, the reality is that it is rarely considered by courts as an exception to at-will employment, and approximately a dozen states have allowed the doctrine to be used in the face of at-will employment-based dismissals. The New Hampshire Supreme Court, in one of its decisions, invoked the doctrine of implied good faith and declared that voluntary termination of an employment contract, if based on bad faith, is a breach of the employment contract. (See Mongu V. Beebe Rubber co., 316 A. 2d549, 551, 1974) In general, the aforementioned exceptions can be seen as an attempt to reduce the abuse of this employment practice.

4. Challenges of Expanding at-Will Employment for Classified Government Employees

The desire for greater flexibility in employee management has led senior government officials at various levels to expand the at-will employment practice in the public sector in recent years. We will discuss its challenges in two parts below.

4.1 Constitutional Challenges

A large number of courts have held that stripping public employees of their "job security," such as taking their property without due process of law, violates the Fifth and Fourteenth Amendments to the United States Constitution, as well as similar provisions in state constitutions. Courts take a two-step approach to handling such cases; They first ask whether the claimant has a legitimate financial interest; if the answer to the first

question is in the affirmative, they proceed to the next stage of the proceedings. Almost all courts faced with this question conclude that "classified employees" have a financial interest in continued employment, which is affected by the removal of the protection based on the need for cause to terminate cooperation in the at-will employment reading. An exception to this view has occurred in Florida. The Florida Supreme Court held in a case that the right of classified employees to continued employment with appropriate treatment is distinct from the right to expect to enjoy a job position in a professional service and will always remain in effect. According to the court, the latter does not appear to be a right, but merely an expectation that policymakers will grant them the benefits of professional services in a job position. (Department of corrections V Florida nurses Ass'n., 508 so.2d 317, 320, Fla, 1987) Furthermore, there are at least three Florida court decisions in which the conversion of classified employees to "unclassified status" has not been deemed to be a deprivation of financial benefit. (See Croslin V. Bush; Weglarz V. Metropolitan Dade County (case No. 97-1876-CIV-DAVIS) (S. D. Fla., DEC. 12, 1997); and wilson V. Metropolitan Dade County (case No. 93-0076-CIV-MORENO) (S. D. Fla., NOV. 22, 1993).

Article 10 of the United States Constitution and similar provisions in state constitutions prohibit the passage of laws that interfere with "contractual obligations." The Georgia Supreme Court in a case cited a contract that required a state government to provide benefits to classified employees. Under the terms of the contract, the government was required to notify classified employees of the allegations by notice before any demotion; therefore, the government had breached the contract by demoting the petitioners without prior notice. (Clark and Stepbenson V. state personnel Board, 314 S. E.2d 658, Ga, 1984) In another case, the Georgia Court of Appeals concluded that the contract did not provide for an expectation of continued employment, so changing city policies and establishing new policies did not violate the contract. (Declue V. City of Clayton, 540 S.E.2d 675, Ga. Ct. App, 2000)

In addition, the Fourteenth Amendment to the United States Constitution protects citizens against arbitrary, unreasonable, or malicious government action, and the equal protection clause prohibits states from treating different classes differently on arbitrary grounds. Therefore, any legislation that eliminates the classified status of employees would be inconsistent with these principles. Therefore, the flexibility component, as one of the indicators of regulatory governance, faces challenges in the US Constitution in order to be realized in the US public sector employment debates, using the at-will employment paradigm.

4.2 The Issue of Government Accountability

One of the issues in the area under discussion is the impact of eliminating job security on transparency and, consequently, on government accountability. At-will employment significantly reduces the amount of information that members of the public have about government performance. Based on the experience of the private sector, public servants whose employment relationships are based on at-will employment can be expected to be less inclined to question the decisions of the administration or even less likely to interact with the outside world about what is happening inside the administration, because what is revealed may undermine public trust. Although public servants enjoy some speech protections under the First Amendment and whistleblowing laws, the doctrine is quite limited. The First Amendment allows for the expression of public concern that is not disruptive. The Florida Public Employee Whistle-blower Act protects the filing of written reports of "misfeasance" and "malfeasance" with the Inspector General.

Eliminating job security by eliminating the "due process hearings" reduces the amount of information available about government agencies. The hearing process provides an opportunity for legislators, agency heads, citizens, and the media to examine the inner workings of agencies and learn how government processes are conducted. The information deficit also includes government management practices.

In a report dated January 26, 2005, (Cotteral, B., state Elder Affairs chief Fired, Tallahassee Democrat, 1B, January 26, 2005) the governor fired the Secretary of the Department of elder affairs, an at-will employee. The action came after a secret investigation into allegations of sexual harassment. The secretary was ordered, without warning, not to return to the office, to leave the keys, not to speak to anyone, and to gather her personal belongings. He was not informed of the charges against him and by whom they were brought against him. No investigation into the report or taking of witness statements was prepared, as there was no written record of the investigation and its content. While professional service employees receive notice of the charges and can deny the allegations, at-will employees receive only a one- or two-sentence letter stating, "Your services are no longer required." Some employees commit violations and are aware of it, but some of them have not committed any violations and experience has shown that mistakes have been made in detecting this. From a public perspective, the occurrence of cases such as the one mentioned above makes the government appear to be a secretive and unfair employer.

It seems that realizing the flexibility component through the at-will employment paradigm, despite its direct impact on greater flexibility of public administration by utilizing a flexible employment process in the public

sector, requires a better understanding of different employment situations and the legal challenges associated with them. Continuous changes in employees, especially in important job positions, may not only reduce government transparency and accountability, but also pose a problem for the stability and continuity of the quality of public service provision.

5. Conclusion

In conclusion, it seems that the paradigm of at-will employment seeks to provide maximum economic savings by ignoring many legal guarantees. Of course, such a hypothesis does not mean that it is wrong and that it is necessary to eliminate this paradigm; Because adapting to the requirements arising from the modern public administration requires the use of flexible employment methods, but not in such a way that employees are deprived of even the most minimal legal guarantees. Therefore, it seems that the paradigm of at-will employment requires revision and some adjustment, in line with the strengthening of legal guarantees.

As a suggested solution, it seems necessary to move towards greater attention to job security, especially at the state level, through the establishment of regulations that guarantee the job security of employees if specific and objective criteria are met, so that excessive flexibility does not become a factor in weakening job security and consequently, the accountability of public officials and paving the way for the expansion of political interference in public administration.

This can create a sense of job security among employees, increase their sense of belonging to their respective departments, and ultimately lead to strengthening the efficiency of the overall governance environment.

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