

THE SCHOOL RULE

Lucy Still and Employment at Will

by David R. Hostetler, Esq.

Last month's "School Rule" focused on unintended consequences when at will employment contracts are altered and morph into "just cause" contracts. This month we examine the employment at will rule more closely: what it means and its practical significance.

Lucy and Joseph Still were a married couple teaching, together, in the Buncombe County public school system in Asheville, North Carolina. Both of their contracts included a clause referring to their positions as "regular" and "permanent."

In their last year, Lucy and Joseph received separate notices near the end of the school year informing them, without explanation, that their contracts would not be renewed. Lucy's notice came two weeks after Joseph's. Lucy wanted reasons and answers. She received none. With no further recourse, she sued the school system.

In the litigation, the system explained that it "nonrenewed" Lucy for reasons unrelated to her performance. Instead, system officials assumed that, by nonrenewing Joseph, he would find a job elsewhere and Lucy would follow him, leaving the system with a sudden vacancy. To head that off, the system simply nonrenewed Lucy to allow more time to replace her.¹

The North Carolina Supreme Court, in a seminal ruling counterintuitive to most people's sense of fairness, rejected Lucy's claim. It determined that her contract

contains no provision concerning the duration of the employment or the terms by which it may be terminated . . . [S]uch a contract . . . even though it expressly refers to the employment as "a regular, permanent job," is terminable at the will of either party, regardless of the quality of performance by the other party.² [Underlining added.]

In other words, the contract did not guarantee a specific duration of employment or specific grounds for its termination; terms like "regular" and "permanent" were too vague and unspecific, according to the court.

The court applied the longstanding rule of "employment at will." This rule exists in most jurisdictions, though with different twists and nuances. It is expressed, in some states like North Carolina, as follows:

Absent a definite term contract or other exception to the rule³, the employment relationship is terminable at the will of either party for any reason, no reason, or even a bad reason (i.e., unethical or unfair, but not unlawful).⁴

What's the Point? (Practical Implications):

- It is important to understand how the employment at will rule works in your jurisdiction. Doing so can significantly minimize the risk of confusion, mistakes and conflict in hiring, contracts, nonrenewal and termination.
- Employment at will gives employers maximum discretion in employment decisions. Of course, this does not mean schools should exploit the rule, especially Christian and classical schools which seek to model high standards of ethics and respect.
- Deliberately and carefully determine which employees in your school should be employed at will and which, if any, should be employed under specific-term (or "just cause") contracts.
- Reasons for employing someone at will include:
 - maximizing flexibility and allowing prompt and (sometimes easier and less complicated) employment decisions and changes;
 - reducing risks of potential employment disputes, legal liability, and costs (tangible and intangible).

The "School Rule" column is designed to offer legal updates and practical legal recommendations. Mr. Hostetler, legal consultant for ACCS, specializes in education law, is founder and director of Lex-is School Law Services (Chapel Hill, NC), and is an associate professor of education law, policy, and ethics at Appalachian State University in Boone, NC. His four children are or have been students at Trinity School (Durham, NC) and the McCallie School (Chattanooga, TN). He may be contacted at hos@Lex-is.com or (919) 308-4652.

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- Reasons for employing someone under a specific-term contract include:
 - increasing the job applicant pool and retaining quality staff;
 - increasing employee morale and job predictability;
 - fostering a greater sense of “professionalism”;
 - ensuring that dismissals are truly based on good or just cause;
 - reducing the risk that good employees will leave during their contract term.
- Regularly review employment contracts, policies, handbooks, and procedures to ensure that proper at will boundaries are established and consistently expressed among these various documents.
- As always, it is best to have an education or employment attorney advise the school on these matters. Attorneys will have knowledge of your state’s specific legal rules, exceptions, and nuances and understand key issues to address.

This column is for information only. It should not be relied upon as formal legal advice. Readers are urged to contact a school law attorney to address specific legal questions and apply the law of the school’s jurisdiction.

Notes:

1. There was nothing in the record confirming that the system’s assumptions were correct.
2. *Still v. Lance*, 279 N.C. 254; 182 S.E.2d 403 (1971).
3. Exceptions to the rule include statutory and constitutional employment protections (e.g., protection against illegal discrimination, whistle-blower statutes, free speech). In addition, some states like North Carolina recognize a “public policy” exception that protects at will employees who are fired because they refuse to violate or they aid in the enforcement of a state law or regulation.
4. The rule in some states stops short of North Carolina’s rule by excluding “bad reason” terminations.