

## PENNSYLVANIA LEGAL UPDATE

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### "AT-WILL" EMPLOYMENT IN PENNSYLVANIA

Pennsylvania employment law strongly supports the principles of "at-will" employment. This means that, unless an employee has an employment contract, the employer is free to terminate the employee for any cause or for no cause at any time. The employee is equally entitled to quit for any reason at any time.

Of course, state and federal antidiscrimination laws prohibit an employer from discrimination based on an employee's race, ethnic background, disabilities, gender, age, or religious beliefs. But, in the absence of illegal discrimination, an employer can simply fire any employee "at will," even for fickle or insubstantial reasons.

The policy behind the law of at-will employment is fairly simple: Public policy presumes that employers who do not manage their hiring and firing practices fairly and professionally will not succeed or thrive in the marketplace. The law presumes that effective employment policies are better regulated by a free employment market than by a body of law.

Union employees have contracts and are not considered to be at-will employees. Some nonunion employees have written employment agreements. On rare occasions, the courts have found that an employment handbook or written policy manual amounts to an employment contract. Most employment handbooks include specific language disclaiming the existence of any employment contract or agreement arising from the publication of the handbook. Many employment handbooks also go so far as to declare that all employment with the employer is at-will employment.

### Employee Challenges Job Classification

Recently, a Pennsylvania management employee sued his company after his job classification was changed over his objections, and his working conditions became so intolerable that he could not perform his job duties. The employee had worked for the employer for 29 consecutive years. He claimed that he had a "lifetime" employment contract, and that he was forced to quit because his supervisors conspired to make his job unbearable for him.

While the employee admitted that he had no union contract and no individual employment agreement, he argued that the employer's handbook and the job posting for his final position amounted to a contract. The job posting had described the position as an assignment of 18 to 36 months, after which time the individual in the position would rotate back to a "core work" assignment.

The Pennsylvania Superior Court found that the employee had no winning legal claims. Pennsylvania law strongly presumes that all employment relationships are at-will. A worker who contends that his employment was not at-will must establish very clearly that he had an agreement for a definite duration, or that he had an agreement specifying that the employer could fire the employee only for just cause, or that an applicable recognized public policy exception prohibited the job termination.

An example of a public policy that prohibits job termination is "whistleblowing." When an employee reports an employer's illegal activities--"blows the whistle" on the employer--the employer cannot fire the employee in retaliation.

### Get It in Writing

All employers who expect to benefit from the presumption of at-will employment should issue a written policy confirming clearly that they operate on at-will employment principles. Any time an employee assumes he has a job of a definite duration, he should be sure to get the details of that agreement in writing. The strong presumption that all employment is at-will can be overcome in the Pennsylvania courts only with clear evidence of an actual job contract.

## GRANDPARENTS' CUSTODY RIGHTS

The custody laws passed by the Pennsylvania legislature distinguish "visitation" from "custody." Visitation is the right to visit a child without removing the child from the custody of the child's parent or guardian. Custody is the physical possession and control of a child.

The Pennsylvania legislature has granted grandparents custody rights in limited circumstances. Recently, the Pennsylvania Supreme Court held that it was constitutional for the legislature to pass laws permitting grandparents some limited custody of their grandchildren. The laws provide for grandparental custody even over the objections of the natural parents if a judge determines that contacts with a child's grandparents are in the child's best interests.

### Which Grandparents Qualify?

Only certain grandparents qualify for custody rights. Grandparents are entitled to visitation and/or some regular periods of custody of their grandchildren if their adult child (one of the grandchildren's parents) is deceased. But grandparents of the living parent are not entitled to custody on the ground that a parent is deceased--only the parents of the child's deceased parent are entitled to custodial time due to a parent's death.

Grandparents are also eligible for some visitation and/or custodial rights to their grandchildren if the parents are divorced or have been separated for more than six

months. Grandparents generally are not entitled to any court-ordered custody if the parents of the grandchildren are currently married and not separated. However, if a child has resided with his or her grandparents for a period of 12 months or more and is subsequently removed from the home by his or her parents, the grandparents may be granted some custodial rights.

## AUTOMOBILE ACCIDENTS AND MEDICAL COVERAGE

If you are injured in an automobile accident, your medical bills will first be paid from any medical coverage available to you under any automobile insurance policy from which you can draw coverage. Once those benefits are exhausted, your health insurance will cover insured expenses. If you do not have health or automobile insurance, or if you exhaust all of the limits of benefits of both, you may be eligible for medical assistance benefits.

Under some circumstances, insurance companies that pay out on claims are "subrogated" to any money the injured insured later wins in a lawsuit. If, for example, a workers' compensation insurance company pays benefits to a worker injured by a defective workplace machine, that insurance company is entitled to reimbursement if the worker later sues the machine manufacturer and wins.

However, Pennsylvania law broadly forbids insurance companies from demanding subrogation rights to the money won by injured persons who bring lawsuits over motor vehicle accidents. So, if your automobile or health insurance company paid your medical bills from an automobile accident injury, you do not have to pay the company back if you win a personal injury award--unless you have insurance through a "health maintenance organization," or "HMO."

Recently, the Pennsylvania Supreme Court analyzed the precise language of the Pennsylvania automobile liability statute and the Pennsylvania HMO statute and decided that the statutes bar subrogation only for insurance companies and other health-care programs but not for HMOs. If you have a claim against a negligent driver, and some or all of your medical bills were paid by an HMO, you must consult with the HMO before settling your claims. The HMO will be entitled to reasonable reimbursement.

### Examine Your Auto Insurance Coverage

With most health insurance companies capping maximum lifetime benefits, and now that HMOs are allowed to seek reimbursement for medical bills, it is wise for Pennsylvania consumers to examine their choice of medical benefits coverage under their automobile insurance policies. All Pennsylvania automobile policies must provide a minimum of \$5,000 in medical coverage. Especially if you have HMO health coverage, consider boosting your medical coverage under your automobile policy now. The cost is often

very affordable, and it is wise to maximize the medical coverage available to you for automobile accidents.

## HOMEOWNERS RECOVER ATTORNEY'S FEES

The Pennsylvania Storage Tank and Spill Prevention Act (STSPA) gives Pennsylvania officials and private citizens the right to sue to recover damages and cleanup costs when underground or above-ground storage tanks leak or spill petroleum products or other hazardous substances. Recently, homeowners who lived immediately adjacent to a gas station won the right to have their attorney's fees paid by the gas station in their STSPA suit.

Generally, Pennsylvania law places the burden of payment of attorney's fees on each litigant. However, in limited kinds of lawsuits, attorney's fees are "shifted" to the party found to have engaged in wrongdoing. Because the STSPA permits courts to make attorney's fees awards, the homeowners insisted that all of their fees be shifted to the gas station owner.

The Pennsylvania Superior Court found that the legislature identified the purposes of the STSPA to include the protection of public health and the promotion of responsibility for storage tank owners. The court ruled that vigorous enforcement of the STSPA may not occur unless the trial courts award plaintiffs attorney's fees. Even where an attorney has agreed to accept a contingent fee--a fee that is a share of the damages award--the court ruled that it is appropriate to require the responsible party to pay an award based on the actual hours that the attorney devoted to the case.

The STSPA provides broad and immediate remedies for persons whose land or property has been damaged by a storage tank spill. Litigants cannot count on receiving a 100% fee shift in storage tank spill cases, but they certainly can expect to have a portion of their attorney's fees paid by the party responsible for the spill.

## BREATHALYZER TESTING FOR IMPAIRED DRIVERS

The Pennsylvania law that sets out all the rules regarding breath, blood, and urine testing for drivers is called the Implied Consent Law. When you drive any vehicle in Pennsylvania, you have impliedly or presumably consented to breath, blood, and/or urine testing. If you refuse, you will lose your Pennsylvania driving privileges for a year or more as a penalty for exercising your right to revoke your implied consent.

No one can force you to submit to testing--you do have the right to refuse. But in order to preserve public safety and to encourage cooperation in testing, the law punishes those who revoke their implied consent. A law enforcement officer can require that you submit to testing if he has reasonable grounds to believe that you are driving under the influence

of drugs or alcohol. Testing is also mandatory for any drivers who are caught driving while under suspension for a previous drug or alcohol driving violation. Any driver sentenced to use an ignition interlock device (an electronic device designed to prevent an intoxicated person from starting his or her car) must also submit to breath or blood testing if he is caught driving a vehicle without an interlock device.

Testing used to be required only for drivers of motor vehicles, but recently the Pennsylvania statute was amended to require testing for drivers of any vehicle. This expands the pool of drivers to include those on bicycles, skateboards, scooters, and similar modes of transportation. The term "vehicle," of course, includes all cars, trucks, motorcycles, snowmobiles, dirt bikes, and all-terrain vehicles. Horses are not considered vehicles; horse-drawn carriages and carts are.

If a law enforcement officer has reasonable grounds to believe that you are driving under the influence, he will request your cooperation in testing. If you decline, the officer is likely to arrest you and issue a detailed warning that your continued refusal to submit to testing will result in a one-year suspension of your driving privileges. Even if you are completely sober, you will suffer the suspension of your driving privileges if you do not cooperate in the testing.

An 18-month suspension is imposed on drivers who have a prior record of convictions for driving under the influence, and on drivers who have previously refused testing. A driver who refuses testing has the right to appeal the suspension penalties. But the suspension will be reversed on appeal only if the driver can prove that the officer did not really have any reasonable grounds for testing, or if the driver can prove that the officer failed to properly warn of the consequences for refusal of testing. If an officer has observed any impaired behavior at all, a driver cannot win a suspension appeal simply by providing proof of a reason other than drugs or alcohol that may have caused the impairment.

You do not have the right to consult with an attorney before the testing. Because the human body constantly metabolizes alcohol and drugs, prompt testing is critical to capture the actual levels of alcohol or drugs that existed at the time of driving. The law recognizes your right to counsel upon arrest, but does not give you the right to delay testing until your lawyer's arrival.

## VETERANS' FUND

On November 7, 2006, Pennsylvania voters approved a referendum to create a state fund for payments of \$525 to every Pennsylvania veteran who served in the Persian Gulf Conflict between 1990 and 1991 following the invasion of Kuwait by Iraq. Over 32,000 Pennsylvanians served in the Persian Gulf Conflict and will be eligible for this payment. If you know a veteran, encourage him or her to contact a state representative to find out more about applying to receive this payment.