



## Be Express About At-Will Employment - Otherwise You Might Get Stuck With More Than You Can Handle

Don't get stuck with employees you don't want. In *Olander v. State Farm*, an insurance agent charged with murder brought suit against his employer after the company terminated him for refusing to take unpaid leave. The former employee prevailed because the Court found the company breached an "implied contract" that it could only terminate him for cause. The particular contract at issue was silent as to the cause required to terminate an employee. The Court read this to mean that the employer could terminate individuals only for cause. Ultimately acquitted of the criminal charges, The Court found the company did not have cause to terminate the employee and therefore breached its contract. To avoid a situation such as this, it is critical to expressly set forth the terms of at-will employment in employment contracts, employee handbooks, stock option papers, and other employee documents.

## Watch What You Listen To - Court Limits Recording Of Business And Personal Calls

Can an employer record and examine the telephone conversations of its employees? Only in the ordinary course of business or with the employee's consent. In *Smith v. Devers*, a company, utilizing its own equipment, intercepted and examined the personal and business telephone calls of its employees, thus violating the Federal Wiretapping Statute. The company argued that the business-extension exemption of the statute applied. However, the Court held that this exemption applied only to the interception of conversations for the purpose of determining whether the conversations were personal in nature and thus constituted improper use of business resources. Moreover, the Court found that simply placing a notice in the employee handbook is not sufficient to establish consent on the part of the employee. Consequently, employers should be wary of recording and reviewing employee telephone conversations in their entirety.

## Employer Must Pay Employees For Time Spent Getting Dressed

Must an employer pay an employee for time spent getting dressed? If it is an integral part of the employer's operations. The Court in *Tum v. Barber Foods, Inc.*, ruled that an employer must compensate employees for time spent donning and doffing sanitary and safety clothing in a chicken processing plant. However, the employer is not liable for time spent walking from the plant entrance to a workstation or for time spent waiting to punch in. The Court based this reasoning on the fact that donning and doffing sanitary and safety clothing is an activity that is an integral part of the principal activities of the company. Accordingly, companies should ensure that employees receive compensation for all activities that are critical to the operation of the company.

## Court Refuses To Permit Waiver Of FLSA And State Law Liability For Failure To Pay Minimum Wage

Employees cannot agree to receive sub-minimum wages. In *O'Brien v. Encotech Construction Services*, a federal district court in Illinois ruled that agreements signed by employees to waive claims to minimum wages in exchange for a monetary payment were unlawful. In effect, the employees contracted to receive sub-minimum wages. Minimum wage laws and wage payment laws involve public rights that employees cannot waive. The safest way to avoid this situation is to continue to abide by minimum wage and overtime regulations.

## What Will They Think Of Next??

New England Patriot wide receiver Terry Glenn has filed suit against the National Football League, alleging that it discriminated against him for a disability that prevented him from following certain rules in the NFL's substance abuse policy. The lawsuit filed four days before the Patriots faced the St. Louis Rams in the Super Bowl, alleged that since at least 1999 Glenn has had chronic depression, a disability recognized under the ADA. Glenn claims that his suspension for the first four games of this season, for missing a drug test, was in violation of the ADA. Glenn was later suspended by the Patriots for the playoffs, and did not play in the Super Bowl, after what was described as "multiple unexcused absences."