
Employment-at-Will: Between the American Exceptions and the Lebanese Protections

Dr. Sarwat El Zahr, Dr. Khodr Fakih, and Dr. Raed El-Khalil

People have the right to work in a safe and secure environment. This concept is clearly conveyed by many international conventions and treaties. For example, Article 23.1 of the United Declaration of Human Rights stipulated that every single "person has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment." In addition, the International Covenant on Economic, Social and Cultural Rights indicates that "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."¹ However, the above rights have been sabotaged by the doctrine of employment-at-will. Legal systems around the world have made every attempt to diminish the impact of the consequences of this doctrine mainly to protect employees. The major consequence of such doctrine is the unjust dismissal by the employer that might jeopardize the quality of life of the employees. In addition, employment-at-will doctrine affects the productivity and quality of work. This article focuses on the significant exceptions and legal protection measures against the employment-at-will doctrine under the American and Lebanese legal systems. In addition, this article reviews a survey of 75 different companies in Lebanon and the U.S. to show the differences between them and how managers at those companies view issues such as unions, governments, and employment-at-will.

Most employees believe that one of the most valuable rewards for their satisfactory performance is job security. However, this understanding is eroded by the doctrine of employment-at-will. Under U.S. law, employment-at-will applies to any employee "without benefit of a contractual agreement to the contrary, or protected from such adverse

Dr. Sarwat El Zahr teaches at the Lebanese University School of Law I and at the Filière Francophone de droit Negotiable instruments, Civil, Business, Commercial and Corporate Law. Dr. Zahr also teaches business ethics at the Lebanese American University. Dr. Zahr may be reached at law.sarwat.elzahr@lau.edu.lb. Dr. Khodr Fakih is the director of the LL.M. Program, a department chair, and the coordinator of business law and ethics at the Lebanese American University and is a practicing lawyer and a member of the Lebanese Bar Association. Dr. Fakih may be contacted at khodr.fakih@lau.edu.lb. Dr. Raed El-Khalil is an assistant professor at the School of Business ITOM, Lebanese American University, Beirut, Lebanon. Dr. El-Khalil may be contacted at raed.elkhalil@lau.edu.lb.

action by federal or state statutes, is considered to be employed at the will of his or her employer and may be terminated at any time without notice and with or without a reason.”² At the end of the 19th century, the employment-at-will doctrine was deeply embedded into the American judicial system. This principle gives all employees the right to “dismiss their employees at will, be they many or few, for good cause, for no cause, or even for cause morally wrong, without being thereby guilty of legal wrong.”³ On the other hand, Lebanese employment-at-will doctrine refers to the notion of employment for an unlimited duration that may be terminated by the employer or employee for a legitimate cause, illegitimate cause, or no cause at all.

Employment-at-will, usually, is implemented based on the rational that employer and employee have the freedom to enter or terminate an employment contract. That gives the employee the right to resign from a job that he or she is no longer interested in and allow the employer to discharge an employee at his or her will.

The doctrine of employment-at-will is considered an appealing notion that gives the employer and employee no commitments. It also increases productivity on the basis that an employer can fire his or her employees if they do not perform well. On the other hand, employment-at-will might affect the productivity and quality of work since the employer cannot retain well-trained employees. However, the acknowledgment of the right of employment and the fear of being unjustly terminated urged legislators and courts to enact and apply methods that protect employees from arbitrary termination or unjust dismissal.

This article will address the exceptions that can be used to the employment-at-will under the American legal system, and the protections that are implemented by the Lebanese statutes against unjust discharge. It also provides a survey about the managers’ opinions regarding the impact of the employment-at-will doctrine, unions, and government support of labor law.

EMPLOYMENT-AT-WILL: THE AMERICAN EXCEPTIONS

Under American law, employment-at-will is a contract that can be “terminable by either the employer or employee for any reason whatsoever. The employment-at-will doctrine avows that, when...the term of employment is of indefinite duration, the employer can terminate the employee for good cause, bad cause, or no cause at all.”⁴

The terminations of the employment-at-will agreement could cause many unfair, unpleasant, and adverse consequences. Accordingly, state laws and court decisions have eroded the at-will principle through providing exceptions to the employment-at-will doctrine. The American legal system has introduced many recognized exceptions to the employment-at-will doctrine. These exceptions can be grouped into two categories: exceptions stipulated by statutory laws and ones implemented by court decisions.

EMPLOYMENT-AT-WILL: STATUTORY EXCEPTIONS

The growing attitude against discharging an employee without just reason compels the federal government and many state legislators to act promptly. Consequently, many federal and state laws were passed to eliminate unjust termination of employment-at-will contracts.

Federal Statutory Exceptions

There are many federal statutory laws that have been passed to restrict the ability of an employer to discharge his or her employee for an unjust reason even if the employment is at-will. For example, Title VII of the Civil Rights Act of 1964 “prohibits employment discrimination based on race, color, religion, sex and national origin.”⁵ In addition, the Fair Labor Standards Act (FLSA) forbids the company from discharging an employee if the employee submits a claim against an employer that violates the wage and hour requirements. Furthermore, the Occupational Safety and Health Act (OSHA) states that an employer cannot discharge his or her employee in case the latter submits a complaint against the company for violating the health and safety rules stipulated by the Act.

State Code Exceptions

Many state codes have developed and established public policy exceptions to the employment-at-will doctrine. The whistleblowing laws that have been passed by many states can be used as an example of such exception. Whistleblowing “can be defined as the release of information by a member or former member of an organization that is evidence of illegal and/or immoral conduct in the organization or conduct of the organization that is not in the public interest.”⁶ The law of whistleblowing prohibits any retaliation of an employee who passed information that is evidenced by illegal conduct. The State of Illinois stipulates in Section 30 of the Whistleblower Act:

if an employer takes any action against an employee in violation of Section 15 or 20, the employee may bring a civil action against the employer for all relief necessary to make the employee whole, including but not limited to the following, as appropriate: (1) reinstatement with the same seniority status that the employee would have had, but for the violation; (2) back pay, with interest; and (3) compensation for any damages sustained as a result of the breach, including litigation costs, expert witness fees, and reasonable attorney’s remuneration.⁷

Therefore, if the employer dismisses the employee because the latter provided information about illegal or wrongful acts that are conducted

by the organization, such dismissal will be considered against public policy. Consequently, the court can reinstate the employee based on the above-mentioned rule of law even if the employment relation was at-will.

EMPLOYMENT-AT-WILL: COMMON-LAW EXCEPTIONS

Courts are keen to protect employees from the arbitrary termination of their employment contract. Thus, exceptions to the employment-at-will doctrine are inevitably present in the judicial decisions of many states. The exceptions to the at-will doctrine can be found in employee policies and handbooks and bad faith/good faith termination.

Employee Policies and Handbook Exceptions

Although many workers have no written or verbal contracts, workers should not be fired based on unjust cause. This is true if the firms distribute policies and handbooks outlining the reasons and processes that should be implemented before terminating an employment contract. The most well-known case that deals with the implied-in-fact contract exception is the decision rendered by the Michigan Supreme Court in 1980. The court considered that a rule stipulated in the personal policy handbook which states that termination an employment agreement can only be for legitimate cause protects workers from unjust dismissal.⁸ Accordingly, contracts could result from verbal or written express agreements with the employee or could result from employee expectations arising from employer's policy statements.⁹

The *Toussaint v. Blue Cross & Blue Shield of Michigan* case was decided by the Supreme Court of Michigan. After five years of employment at a middle managing position, Charles Toussaint was fired by Blue Cross. At the time of hiring, officials stated clearly to him that he would not be fired as long he does his work. He also received a handbook of Blue Cross personnel policies that contain the disciplinary procedures that apply to all Blue Cross employees who finished their probationary period. It was also clearly stated in the handbook that Blue Cross would not terminate employees' contracts except for a legitimate cause. The court held that, although employment could be concluded for a certain term, an internal policy that stipulates that an employee could be fired only for just reason would be enforceable and that such an internal policy could create an implied contract if it established reasonable expectations of employment security in the employee. If the employee's contract is randomly terminated afterward, a claim for unlawful termination is applied. The court considered that Blue Cross had the opportunity to establish a policy that allows it to

terminate employees' contract for no cause, however, it chose to adopt a just cause termination policy. The court mentioned that the adoption of the "spirit of cooperation and friendliness" policy in the work force led employees to become "orderly, cooperative, and loyal" since they have a peace of mind "associated with job security and the conviction that he will be treated fairly. No pre-employment negotiations need take place and the parties' minds need not meet on the subject; nor does it matter that the employee knows nothing of the particulars of the employer's policies and practices or that the employer may change them unilaterally. It is enough that the employer chooses, presumably in its interest, to create an environment in which the employee believes that, whatever the personnel policies and practices, they are established and official at any given time, purport to be fair, and are applied consistently and uniformly to each employee. The employer has then created a situation 'instinct with an obligation.'"¹⁰

Another case deals with the policies and handbook exception in the case of *Pine River State Bank v. Mettilee*.¹¹ In the *Pine River* case, "the employee was hired by the bank as an at-will employee and was later fired. When the bank sued for delinquent payments, the employee claimed his discharge breached the contract as modified by the employee handbook. The trial court awarded damages to the employee, and the bank appealed. The court affirmed, finding that although the employment agreement was oral, the bank's employee handbook changed the terms of employment. The handbook contains "statements on a variety of the bank's employment practices or policies, ranging from vacations and sick leave to personal conduct and appearance. A section entitled "Performance Review" provides for at least an annual review of the employee's work. Another section entitled "Job Security" speaks, in general laudatory terms about the stability of jobs in banking. The key section, central to this case, is entitled "Disciplinary Policy." This section provides for what appears to be a three-stage procedure consisting of reprimands for the first and second "offense" and thereafter suspension or discharge, but discharge only "for an employee whose conduct does not improve as a result of the previous action taken." The section concludes with the sentence, "In no instance will a person be discharged from employment without a review of the facts by the Executive Officer."

When the bank fired the employee, disciplinary procedures in the handbook were not followed. By distributing the handbook, the bank modified existing contracts, subjecting them to handbook provisions. The consideration for the job security was the employee's continued performance despite the freedom to leave, making the security provisions enforceable. The bank breached the employment contract with the employee by not following the termination procedures, resulting in unemployment.¹² Thus, discharging workers who have been told that they would not be dismissed as long as they are doing their jobs is considered an exception to the at-will doctrine.

Bad Faith/Good Faith Termination Exception

Courts acknowledge the fact that even if the employee is employed at-will, an employer cannot terminate the employment relationship. This exception is based on “good faith and fair dealing that exist in a working relationship.”¹³ The violation of the implied bad faith, good faith, and fair dealing exception give the employee the right to bring a legal action against his or her employer. This understanding is illustrated by the decision rendered by the New Hampshire Supreme Court, which stipulates that “a termination by the employer of a contract of employment-at-will which is motivated by bad faith or malice or based on retaliation is not in the best interest of the economic system or the public good and constitutes a breach of the employment contract.”¹⁴

The concept of good faith and fair dealing was initially applied by California courts through the case of *Lawrence M. Cleary v. American Airlines, Inc.*¹⁵ This case dealt with the discharge an employee by American Airlines, Inc., after 18 years of satisfactory work. A California court of appeal considered that according to both “*the longevity of the employee’s service*” and the expressed policy of adjudicating personnel disputes, an employment-at-will contract could not be terminated without good cause. The court stated that “that exceptions existed in particular cases to the application of Lab. Code, § 2922, providing that employment without a specified term may be terminated at the will of either party on notice to the other.” The court held that the “longevity of plaintiff’s service, together with the express policy of the employer in providing specific procedures for adjudicating employee disputes, ..., precluding plaintiff’s discharge without good cause.”¹⁶ It is noteworthy to mention that there are other exceptions to employment-at-will adopted by a few courts. Those are the promissory estoppel and the tortious discharge limitations.

EMPLOYMENT-AT-WILL: THE LEBANESE LEGISLATIVE PROTECTIONS

According to Lebanese Labor Law, employers have the right to terminate an indefinite duration contract at any time with or without cause. This privilege is restricted by many legislative rules. Lebanese laws indicate that the termination of employment-at-will should only be based on a just cause. Otherwise, employers will be held liable under the state law and be accountable to indemnify their employees. Thus, Lebanese Labor Laws identify the situations in which the terminations by employers would be considered unjust dismissal. In addition, the Lebanese legal system has introduced an exclusive means for legal recourse and remedies against employers that unjustly terminate employment contracts.

UNJUST DISMISSAL UNDER THE LEBANESE LEGAL SYSTEM

In Lebanon, an employment contract that is concluded for indefinite duration is considered an employment-at-will. Employment-at-will is a contract that can be terminated by either the employer or the employee at any time without even providing any justifications. However, the ability of terminating a contract-at-will has been restricted and controlled by the general provisions of Article 50 of the Lebanese Labor Law, the doctrine of prior notification, and the concept of discrimination.

The General Provisions of Article 50 of the Lebanese Labor Law

Article 50 of the Lebanese Labor Law was amended by Law No. 1975/216. This amendment was introduced explicitly to adopt the concept of the unjust dismissal in the contract-at-will. The amended article stipulates that “the employer and employee have the right to terminate the employment contract concluded for an indefinite period. However, in case of misuse or abuse of this right, the aggrieved party shall be entitled to claim indemnity...”¹⁷ This article states that each time the employer misuses or abuses its right of terminating an employment contract such termination will be considered an unjust dismissal.

For the sake of clarifying the meaning of misuse or abuse, Article 50/D stipulates that “termination shall be regarded as being the fact of misuse or abuse of right if it should occur in the following cases:

- i. For a non-valid reason or a reason in no way pertaining to the worker’s fitness or behavior within the company or to the way of managing the business;
- ii. For being or not a member of a particular union, or for engaging in a legal activity in a particular union, within the laws and regulations in force or within the framework of a group or individual labor agreement;
- iii. Running for election, or having been elected as a member of a particular union, or having represented the company’s labor force, throughout the period of such representation;¹⁸
- iv. Submitting, in good faith, a complaint regarding the implementation of the Labor Law to the pertinent department (whistleblowing), or having brought a case against the employer on the same basis;
- v. For having exercised his individual or public liberties within the framework of the law in force.”

After a precise observation of Article 50, the list of misuse or abuse cases was generally itemized in order to encompass a wider scope and not only what was mentioned literally in Article 50. For example, the terms “non-valid reason” or “exercised his or her individual or public liberties” are open-ended terms. This is true since the terms as mentioned earlier incorporate many situations that are not mentioned precisely in Article 50. These cases include, but are not limited to, sickness and pregnancy. It is worth mentioning that Lebanese Labor Law gives the employer the ability to terminate all or part of the employment contracts in certain events such as organizational restructuring. However, the employer must notify the Ministry of Labor and Social Affairs of his or her intention to do so a month before such termination; otherwise, the termination will be considered unjust. Article 50/F of the Lebanese Labor Law states that:

the employer shall be entitled to terminate all or part of his establishment's work contracts in the event of force majeure or of compelling economic or technical circumstances, such as reduction of size of the establishment, or replacement of a manufacturing process by another or final stoppage of work. The employer shall be required to notify the Ministry of Labor and Social Affairs of his intent to terminate those contracts one month prior to execution; he shall equally be required to consult the Ministry on the programming of terminating (of such contracts) taking into consideration worker's seniority in the establishment, their specialization, their age, their family and social status, and finally the means deemed necessary for their re-employment.

Accordingly, the Lebanese Supreme Court the Eighth Chamber considered that failing to apply the rules stipulated in Article 50/F, especially failing to notify the pertinent ministry, would be considered unjust dismissal.¹⁹ Another court decision considered that even in a bankruptcy situation, the employer cannot terminate the employment contract without respecting the rules of Article 50/F; otherwise the termination will be considered unjust. The court mentioned that because of the inability of the employer to pay back its commercial debts and the employee's salaries, the employer closed down the operation, dissolved the company, terminated all employment contracts, and claimed bankruptcy. The court found that the employer did not notify and deliberate its financial problems with the Ministry of Labor prior to its bankruptcy. The court considered that if the employer had notified the Ministry of Labor during the company's financial problems, the Ministry and the employer would have softened the consequences of such termination. The court stated that the termination of employment contracts by the bankrupt employer is considered an unjust dismissal.²⁰

Furthermore, Article 50/C requires the employer to notify the employee of its intention to terminate the contract. This notification must be in writing and contains clarifications of the causes on which the termination is founded. Otherwise, the termination will be considered

an unfair dismissal. Accordingly, if the employer terminated the contract without notifying the employee ahead of time, the termination will be an unjust dismissal even if the cause of termination was just. Thus, terminating an employment contract without previous notification is considered misuse of employer's right *per se*.

The Doctrine of Prior Notification and the Termination of an Employment Contract

Terminating of an employment contract-at-will has many negative consequences for the employee. The unexpected layoff of the employee would financially and morally affect the employee and his or her family. This is true especially if new employment cannot immediately be found. Thus, the implementation of the doctrine of prior notification would reduce such consequences and might eliminate it. Article 50/C of the Labor Law has stipulates that:

the Company and the worker shall separately be obligated to counsel with the other of intent to end the contract, one month in advance in case a period equal or under three years has passed since the implementation of the work contract, two months in advance in case more than three years and less than six years have elapsed, quarter in advance in case more than six years and less than twelve years have passed, and four months in advance in case twelve years or more have passed.

Article 50/C is a public policy principle, which no one is allowed to choose not to implement it or honor it unless it was made for the benefit of the employee. Based on the rule of laws mentioned before, the termination notice should be specific, unequivocal, and clearly communicated.

Thus, termination of an employment contract without prior notification is definite evidence that the termination is an unjust dismissal. This understanding is well established in law and implemented by court. On November 11, 2009, the Tripoli Arbitral Labor Council ruled that terminating an employment contract by a local bank with a custodian without prior notification was unjust dismissal. The court stipulated that "since no evidence that the termination was based on just reason that justifies the termination of the plaintiff. In addition, the court stated that since it did not find any prior notification of such termination, the court considered that the termination was unjust dismissal."

Article 50 of the Labor Law lays down the legal requirements in which a termination of employment-at-will is regarded as an unjust dismissal. It also confirms the importance of the prior notification doctrine. However, it is important to mention situations that cannot be regarded as less significant than the above-mentioned ones stipulated in Article 50. Those cases are related to dismissal based on discrimination.

Employment Discrimination in Lebanese Laws

The scope of employment discrimination prohibits any discriminatory act by an employer on the basis of gender, color, national origin, religion, age, or race in the process of discharging. The Lebanese attitude toward prohibiting discriminations can be traced down to the preface of the Lebanese Constitution and Article 26 of the Lebanese Labor Law. First, the preface of the Lebanese Constitution explicitly states that “Lebanon is a parliamentary democratic republic based on respect... especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination.” Second, Lebanese Labor Law stipulates in Article 26 that the “employer may not discriminate against working men and women with about: type of work, amount of wage or salary, employment, promotion, professional qualification, and apparel.” Accordingly, discrimination is entirely prohibited by Lebanese laws. However, job postings in Lebanon always specify age, gender, religion, or race for the potential employee, which is direct discrimination. Thus, discrimination in Lebanon is forbidden in the text of the law but not in practice.²¹ This was clearly stated by a group of students and professors at major universities in Lebanon. They consider that “Lebanon—along with the rest of the Middle East—does not, and continues to allow candidates to be openly hired or denied according to gender, age and, more implicitly sect.”²²

Maamari and Chaanine (2013) and Fereidone *et al.* (2013) conducted research on employees’ satisfaction and security in Lebanon. The results indicate that the employees unions are too weak and cannot support their constituency due to political interference in the region. Over 92 percent of employees report a desire for more benefits including wage increase.²³

According to a 2014 World Bank report, Lebanon is in the bottom 10 percent of countries when it comes to hourly wages. Moreover, all surveyed employees want labor unions or stronger unions.²⁴ Employers disregard labor protection law due to weak government enforcement. In addition to this, over 90 percent of employees in the country want to establish contracts with employers as a means of securing jobs. Employees in the Lebanese workforce (95 percent) at all levels (skilled and unskilled) do not trust that unions and/or government are capable of supporting them.

UNJUST DISMISSAL: LEGAL PROCEDURES AND REMEDIES

According to the law, wrongful discharge by an employer gives the employee the right to file a lawsuit before a special tribunal that is created to protect the rights of the employee. This tribunal is the Arbitral Labor Council, which has the ability to settle all types of disputes

between employer and employee. It also has the jurisdiction to impose legal sanctions and fines against the company in case of unjust dismissal.

Arbitral Labor Council

The Arbitral Labor Council was created by Article 77 of the Lebanese Labor Law that was issued on September 23, 1946. This Council is considered an extraordinary tribunal with a restricted jurisdiction. The law stipulates that such tribunal will be formed in each district and has the ability to settle disputes between employer and employee. This part will address the formation and competency of such tribunal and the benefits of adjudicating before it.

The Arbitral Labor Council: Formation and Jurisdiction

According to the Lebanese Supreme Court decision issued on February 5, 1969, the Labor Council is a special tribunal that is not part of the judicial structure. It is directly related to the ministry of justice and ministry of labor. According to Article 77 of Lebanese Labor Law, the Council is composed of:

1. A judge with a high seniority (11th grade or above) who will be appointed by Decree based on a proposal from the minister of justice and after the approval of the Higher Council of the Bench;
2. An employer's representative and an employee's representative who will be elected by a Decree based on the proposal of the minister of labor and social affairs. Another two deputy members will be nominated based on the same manner in case of absence or excuse; and
3. A Government Commissioner (with a law degree) to be selected from the civil servants of the third category of the general directorates.

Article 78 of the said law specifies the conditions that the employer's and the employee's representatives must have. Article 78 stipulates that the acting representatives of employer and employee shall meet the following requirements:

1. Lebanese nationality;
2. Twenty-years-old;
3. Never convicted of any dishonorable offenses or felony; and
4. Have practiced their profession for at least five years.

After providing the composition of the Arbitral Labor Council, it is important to specify its jurisdiction. The Council is charged to:

1. Settle disputes that arise from assessing the minimum pay, labor accident, dismissal, failure of work, fines, and all disputes between employer and employee in regards to the enforcement of the rules of labor law; and
2. Settle disputes that are stipulated in Article 85 of the Social Affaire Law.

Benefits of Adjudicating before the Arbitral Labor Council

The reason behind the creation of the Arbitral Labor Council was to protect the employee since the employee is the weakest party in the employment contract. For that reason, lawmakers stipulate rules and policies that enable the employee to obtain his or her indemnities in a fast, low-cost, and efficient manner. Thus, adjudication before the Arbitral Labor Council has the following characteristics:

1. Exemption from judicial fees (for the employee);
2. Exemption from court expenses (for the employee);
3. Disputes are adjudicated in accordance with urgent procedure; and
4. Executing the Council's decision without bail.

In addition to the abovementioned features, employee has the right to represent himself/herself before the Arbitral Labor Council without the presence of a lawyer.²⁵ Lawmakers have paved the road for employees to seek their rights with this low-cost and simple way; lawmakers aim to provide a healthy atmosphere and a legitimate compensation to the discharged employee. However, an important question should be asked in this respect. What are the types of benefits that an Arbitral Labor Council can give to a discharged employee?

Legal Sanctions and Compensations

Upon termination of an employment contract by an employer, the employee is entitled to benefits. Lebanese Labor Law lacks the ability to reinstate the discharged employee but can impose monetary rewards.

Reinstatement of Discharge Employee

Generally, the Lebanese jurisprudence is very reluctant to impose reinstatement of a discharged employee because it breaches the autonomy principle²⁶ and affects the productivity of work. Lebanese Labor Law has distinguished between two types of employees in regards to reinstatement. The first type is an employee who *is not* an elected member of a Trade Union Board, while the second kind is an employee who *is* an elected member of a Trade Union Board.

Regarding the first type, there is no rule of law in the Labor Law that can compel the employer to reinstate an employee who was discharged based on unjust cause. However, Lebanese Labor Law introduces certain measures to compel reinstatement if the discharged employee falls into the second category. Article 50 (e) stipulates that

...dismissal of the members of Trade Unions Boards, duly elected, shall depend on, during the period of their tenure, on recourse to the competent Arbitral Labor Council. In this event, the employer shall be required to set out the reasons behind dismissal, and he may immediately suspend the worker from further employment pending the delivering of the decision of the Arbitral Labor Council on the substance of the case. The Arbitral Labor Council Chairman shall hold a special meeting to which both parties shall be convened for conciliation within five days dating from recourse.

In case dismissal is approved, the Arbitral Labor Council shall decide that the worker's rights be liquidated in conformity with the code of the Labor Law. In case dismissal is not approved, the Arbitral Labor Council shall decide to compel the employer to reinstate the worker, under penalty of having to pay him, in addition to the legal indemnities to which the employee is entitled, a supplementary amount of reimbursement ranging from twofold and threefold the amount mentioned in paragraph A of the present article.²⁷

The court may try to force the employer to reinstate a dismissed employee through introducing additional indemnities. Therefore, if the company insists on not reinstating the employee, the employer must pay the dismissed employee additional amounts. On other words, the company must in case of unjust dismissal either make additional payments or reinstate the employee. The court does not have the legal capability to implement the reinstatement against the will of the employer. Thus, reinstatement of a discharged employee does not apply under the Lebanese Labor Law.

Monetary Compensation

Unlike reinstatement, Lebanese Labor Law provides monetary damages to the employee who was fired based on unjust cause. The financial

compensation given to the discharged employee is the primary type of settlement. The Arbitral Labor Council has the ability to measure the size of the injury that the discharged employee has suffered. Article 50 of Lebanese Labor Law stipulates that if the unjust termination was done by the employer, the employee will be compensated “in accordance with the nature of the employee’s job, age, service period, family status, health condition, scope of the prejudice and the extent of misuse of the that right, on condition that indemnity as awarded by the Court shall be neither less than the wages of two months nor higher than the salaries of twelve months, over and above those indemnities reverting to the employee due to the fact of his dismissal.” The said article clearly articulates that the discharged employee is entitled to:

1. monetary compensation from the employer as mentioned above;
2. financial compensation from the Social Affair Department (the amount of last salary multiply by the number of employment years);
3. payment equal to the amount of wages of the time-limit of the annual leave (15 days); and
4. an indemnity equal to the amount of salaries of the time-limit of notification set by law (two months).

The monetary compensation that is based on unjust dismissal is a public policy rule that can never be amended under any circumstances.

MANAGERS’ OPINION REGARDING EMPLOYMENT-AT-WILL DOCTRINE

A survey was conducted in order to assess managers’ opinions regarding employment-at-will. The objective of the survey was to understand how managers in the two different countries (U.S. and Lebanon) view employment-at-will and if that view varies based on the industry. The questionnaire comprised questions related to the impact of establishing an employment contract between employee and employers and the impact of such a contract on issues such as quality, productivity, and employee morale from a manager’s perspective.

The target population of the survey was employees in managerial position (skilled employees) who are currently managing skilled or unskilled employees. The questionnaire was distributed *via* email and phone calls to 450 managers in seven diverse industries at 160 different companies (80 in the U.S. and 80 in Lebanon). The total amount of questionnaires returned were 270, in which 238 (126 U.S. and 112 Lebanese managers) were usable, yielding a response rate of 53 percent.

The result indicates the following:

1. The majority of employees at companies interviewed (U.S. and Lebanon) are skilled except for those at U.S. auto companies.
2. The majority of managers in Lebanese industry (74 percent) indicate that establishing a contract with employees would improve operational performance metrics. On the other hand, this was not the case in the U.S., where only 26 percent of managers stated that establishing a contract will impact performance metrics, as illustrated in Table 1.
3. The majority of companies in Lebanon are nonunion companies and all employees interviewed want to establish strong unions that can support employee rights and or benefits. On the other hand, only 40 percent of managers interviewed in the U.S. want to establish unions and even the companies that currently have unions do not see a point in having them, especially after 2009 economic collapse. This difference is mainly driven by the belief and trust of the employee in government enforcement of labor law in the U.S. (the same does not apply in Lebanon).
4. The majority of Lebanese managers (77 percent) are highly against employment-at-will, while only 20 percent of Lebanese managers support employment-at-will, as illustrated in Table 1.
5. When asked about supporting employment-at-will, it was clear that the managers in U.S. industry vary significantly (they follow a normal distribution). For example, 20 percent of managers are highly against it, while at the same time there are 20 percent that highly support it. On the other hand, over 97 percent of managers in Lebanon are against or highly against employment-at-will, as illustrated in Table 1.
6. Lebanese managers (97 percent) strongly believe that government does not enforce labor laws and that employers are not held accountable.
7. Lebanese managers (97 percent) feel that the labor unions are weak and unable to support their constituency.
8. U.S. managers (93 percent) that the government and labor union are strong enough and they support employees when needed.

Managers interviewed (74 percent) at U.S. companies indicated that employment-at-will should be illegal because it leaves the employee

Table 1: Survey Result of Managers Input by Company and Country

Type of Industry	Number of companies	Number of Employees Range	Employee Skill level %			Number of managers interviewed	Contract agreement will improve employee moral, motivation, productivity...etc		Union employees	Support Employee at will					Support A new Law of 90 days	
			Low	Medium	High		Yes	No		Very High	High	Neutral	Not Much	High against		
Automotive																
US	5	3000-3500	70	20	10	8	6	2	Yes	1	1	5	1	100%		
Lebanon																
Textile																
US	6	950-1200	10	30	60	24	6	18	Yes	3	5	10	6	100%		
Lebanon	5	61-145	10	35	55	18	14	4	No				18			
Banking																
US	12	10-25		25	75	12	1	11	No	1	3	1	3	4	100%	
Lebanon	10	8-16	10	10	80	15	15		Yes					15		

(Continued)

subject to employer subjectivity (*i.e.*, discrimination, favoritism, etc). Only three percent of managers in Lebanon indicate that employment-at-will should be supported. Lebanese managers who support employment-at-will indicate that:

1. Commitment to employees should only be given after employees prove themselves.
2. Organizational commitment to employee benefits (employment-at-will does not require the company to provide benefits), such as medical insurance and other indirect costs, puts the company under financial constrain and can lead to bankruptcy. This issue is related to political instability and the inability of the organization to determine customer demand.
3. Skill level of employee plays a significant role in organizational advancement. Only employees with medium to high skills should be provided a contract to insure retention for a certain period of time.

In summary, the majority of Lebanese managers do not support employment-at-will and that percentage is less than half in the U.S. The majority of Lebanese managers link establishing contact agreements between employees and employers to improvement of operational metrics, while only 40 percent of U.S managers agree. All Lebanese managers support establishing unions and request more government enforcement of labor law, only 40 percent of managers in the U.S. agree.

CONCLUSION

Despite the exceptions stipulated in the U.S. law and the protections provided by the Lebanese legal system, the employment-at-will doctrine still exists and creates social and economic problems. However, the damage of such doctrine is more limited in U.S law than in the Lebanese system. This is true since reinstatement is possible under the American law, while Lebanese courts can never be able to administer reinstatement of a dismissed employee against the employer's will. Accordingly, employers should be careful when they decide to terminate an employment agreement especially when it is based on unjust cause.

The survey conducted shows clearly the gap between how managers in the United States and Lebanon view employment-at-will. The main reason driving Lebanese managers (95 percent) to support establishing a contract with employers and their strong recommendation for eliminating employment-at-will was driven mainly by the understanding and the believe that neither unions or government under current labor law provide enough support and protection for employees. Lebanese managers

(100 percent) indicate that if labor law is enforced by the government in order to provide more accountability employees might change the way they view employment-at-will. On the other hand, the only sector/industry in the U.S. which was highly against employment-at-will is the automotive industry. The majority of employees (80 percent to 90 percent) in the automotive industry are unskilled workers and that is one of the reasons the managers in the automotive industry explain that due to bad economy this industry manpower has decreased by about 50 percent in the past seven years and that also add to the reason for rejecting employment-at-will.

NOTES

1. International Covenant on Economic, Social, and Cultural Rights. Office of the United Nations High Commissioner for Human Rights. 1966.
2. Gordan E. Jackson, *Labor and Employment Law Desk Book*, 549 (Prentice Hall, 2d ed., 1993). See also H.G. Wood, Law of Master and Servant § 134 272-273 (Albany, NY: J.D. Parson, Jr., 2d ed., 1877).
3. Gordan E. Jackson, *Labor and Employment Law Desk Book*, 549 (Prentice Hall, 2d ed., 1993). See also Payne v. Western and Atlantic Railroad, 81 Tenn. 507, 519-520 (1884).
4. Charles J. Muhl, "The Employment-at-will Doctrine: three significant exceptions," *Monthly Labor Review*, 3, (2001) (employee without a written employment contract generally can be fired for good cause, bad cause, or no cause at all: judicial exceptions to the rule seek to prevent wrongful termination).
5. U.S. Equal Employment Opportunity Commission, available at <http://www.eeoc.gov/laws/statutes/titlevii.cfm>.
6. John R. Boatwright, *Ethics and the Conduct of Business*, 96 (Prentice Hall, 5th ed., 2006).
7. Civil Liabilities Whistleblower Act, 174/740 ILCS. §§ 30, available at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2495&ChapterID=57>.
8. 408 Mich. 579; 292 N.W.2d 880 (1980).
9. *Id.*
10. *Id.*
11. 333 N.W.2d 622 (1983).
12. *Id.*
13. Gordan E. Jackson, *Labor and Employment Law Desk Book*, 552 (Prentice Hall, 2d ed., 1993).
14. 114 N.H. 130, 316 A.2d 549 (1974).
15. 111 Cal. App.3d 443 (1980).
16. *Id.*

17. Lebanese Labor Law [L.L.L] [CIVIL CODE] art. 50 (LEB.).
18. This concept is applied in the United States legal system through the case Lawrence M. Cleary v. American Airlines, Inc., in which the court considered that “plaintiff’s allegation that he was discharged due to his union organizing activities pleaded one of the recognized public policy exceptions to the rule of Lab. Code, § 2922, and thus stated a cause of action.” 111 Cal. App. 3d 443, *supra*.
19. Lebanese Supreme Court, Eighth Chamber, Decision 2007/67.
20. Lebanese Supreme Court, Eighth Chamber, Decision 2006/48.
21. <http://dailystar.com.lb/News/Lebanon-News/2014/Mar-29/251612-equal-opportunity-employers-in-lebanon-dream-on.aspx>.
22. *Id.*
23. SHRM, 2012.
24. WBR, 2014.
25. Law issued in October 21, 1980.
26. The principle of autonomy is the “right...to protect the freedom of individuals to choose whether or not to perform certain acts....” Available at http://www.law.cornell.edu/wex/personal_autonomy.
27. Lebanese Labor Law [L.L.L] [CIVIL CODE] art. 50 § e (LEB.).

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.