

Introduction to the February 2026 edition of *Termination of Employment*

Termination of Employment, written by James O. Castagnera, Patrick J. Cihon, and Andrew P. Morriss, addresses important recent developments and trends in the termination of employees and discusses the federal and state regulation of employee terminations.

This February 2026 edition of *Termination of Employment* includes updated Chapters 3, 6, 11, 29, 31, 34, 40, 47, and 51. Among the highlights from these updated chapter are:

- **§ 3:12. Drug and alcohol testing:** The legalization of medical marijuana did not supersede or displace the legal principle that a police officer's detection of the smell of marijuana is probable cause to search a driver and their vehicle.
- **§ 3:27. General rules:** In determining public employee termination and disciplinary cases, county personnel boards generally cannot consider federal constitutional and statutory arguments, since these are beyond the county personnel boards' competency.
- **§ 3:31. Other tort claims:** In 2025, the Supreme Court of Alabama reiterated the five elements of a claim alleging a tortious interference with a business relationship, which are: (1) the existence of a protectible business relationship; (2) of which the defendant knew; (3) to which the defendant was a stranger; (4) with which the defendant intentionally interfered; and (5) damage.
- **§ 6:21. Whistleblowing:** Public employers are entitled to qualified immunity under the AWBA, unless the plaintiff-employee can show that they should reasonably have believed they were violating the employee's rights under the statute.
- **§ 6:35. Unemployment insurance:** When a claimant has voluntarily quit work and is seeking unemployment insurance benefits, the burden is on the claimant to show that he or she had good cause connected with the work for quitting.
- **§ 11:2. Race and color:** Where an African-American attorney failed to allege that Caucasian comparators were similarly situated, his race discrimination claim against his law firm failed.
- **§ 11:21. Whistleblowing:** While a trial court found that an ombudsman's concerns were mere policy disagreements, the court of appeals held the fact that the ombudsman reasonably believed the law was being broken was enough to require reversal and remand under the Whistleblower Protection Act.
- **§ 11:28. Covenant of good faith and fair dealing:** It has been suggested by the D.C. Circuit that under District of Columbia law, every contract contains an implied covenant of good faith and fair dealing; this would mean that the principle reaches employment contracts.

- **§ 29:27. Miscellaneous:** Montana law requires that employees provide unpaid leave for employees who hold public office, for up to 180 days per year.
- **§ 29:27. Miscellaneous:** Employers are prohibited from terminating employees who are volunteer emergency service providers and are absent from work during an emergency.
- **§ 31:26. Miscellaneous:** Nevada legislation provides that employers must grant employees who are volunteer members of the Nevada Wing of the Civil Air Patrol leave for training or emergency missions, without any loss of position, seniority, or accrued leave or benefits.
- **§ 31:28. Employment contracts:** The Nevada Supreme Court refused to enforce an arbitration clause incorporated into the National Football League constitution against a former football coach because the arbitration clause was both procedurally unconscionable and substantively unconscionable.
- **§ 34:21. Whistleblowing:** Healthcare entities, defined as hospitals, management services organizations and healthcare provider organizations that are owned or affiliated with health insurers, are required to adopt a whistleblower protection policy.
- **§ 34:27. Employment contracts:** A collective bargaining agreement requirement to arbitrate or otherwise waive an employee's individual statutory right must be clear and unmistakable.
- **§ 40:1. Fair employment practices overview:** Where the intermediate court of appeals reverses a trial court judgment, subsequent decisions of the trial court on the scope of post-appeal proceedings are not appealable, as the original judgment has been "negated."
- **§ 47:1. Fair employment practices overview:** The THRA does not abrogate common law tort claims that produce the same harm as discriminatory or retaliatory acts.
- **§ 51:17. Military service:** Public employees are entitled to 21 days of paid military leave each fiscal year for time spent on military duty, training, and drills.
- **§ 51:32. Payment of wages:** Washington's Department of Labor and Industries can sue employers for violations after it has determined that an employer has violated wage payment laws.
- **§ 51:39. Restrictive covenants and trade secrets:** In addition, employers cannot prohibit employees earning less than twice the state minimum wage from working multiple jobs.