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A composite image showing three different workers: a woman wearing a hard hat and safety glasses, a woman with curly hair, and a man with a beard, all smiling. They are set against a dark blue background.

Oregonians Need Just-Cause Employment

by Kathy Lara

Introduction

Oregon can improve the well-being of workers and their families by replacing the prevailing “at-will” employment standard with a “just-cause” standard. Most Oregon workers are at-will employees, meaning that they can be fired for any reason or no reason at all. At-will employment undermines labor protections – including the right to organize, protections against discrimination in the workplace, and safety standards. It also increases the economic vulnerability of workers and their families.

Although at-will employment is the current standard in Oregon and in the U.S., there is nothing inherently necessary about it. The standard emerged not from legislation but from cases in the late 1800s decided by judges friendly to corporate interests. Many other industrialized countries do not follow at-will employment, but rather a just-cause standard that usually requires that an employer follow a process for termination that includes offering valid reasons for the firing. In the U.S., just cause is the norm for unionized workers, public employees, and company executives. By extending just-cause employment to all workers, Oregon can improve the economic security of workers and better protect their labor rights.

At-will employment is the norm in the U.S., but exceptions exist

Most workers in the U.S. labor under at-will employment.^[1] This means an employer can fire an employee at any time for any reason or no reason at all.^[2] In at-will employment, workers do not have the right to prior notice or process before being terminated.^[3] In Oregon, nearly 75.5 percent of workers are at-will.^[4] Like in most of the U.S., except Montana and the territories of Puerto Rico and the U.S. Virgin Islands, at-will employment is the default rule in Oregon.^[5]

But exceptions exist, as some workers enjoy the protections that come with just-cause employment. Under just-cause employment, the employer typically must follow a process for firing an employee that involves providing written notice, a fair investigation, and a valid reason for termination.^[6] Unionized workers usually work in just-cause arrangements, as union contracts typically include a just-cause provision.^[7] Public sector employees also tend to work under just-cause employment, a right protected by statute and established through court rulings.^[8] For example, law enforcement, classified school employees, and other public sector employees in Oregon currently benefit from just-cause rights.^[9]

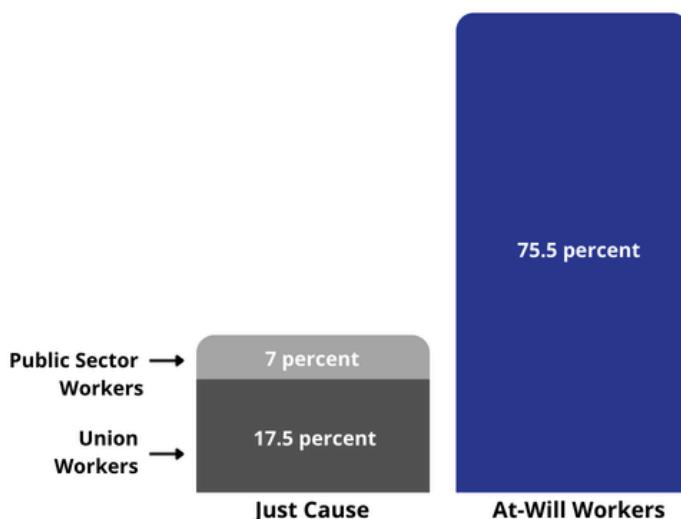


CEOs enjoy just-cause protections

Chief Executive Officers (CEOs) almost always enjoy just-cause protections. A study of hundreds of employment contracts of CEOs of the nation's largest corporations found that 97 percent of contracts outlined specific actions that would warrant termination, protecting these executives against arbitrary or unfair firings.[10] These contracts overwhelmingly included certain privileges for CEOs if they were dismissed without cause, such as receiving multiple years of severance pay.[11] And the majority of CEO employment contracts also required the company to provide notice before termination, regardless of whether the termination was with or without cause.[12]

At-will employment is the norm in Oregon

Share of workers with just-cause protections vs at-will employment.



Source: OCPP analysis of 2024 Union Stats data. Public Sector includes only non-union public sector workers. Union workers include both private and public sector workers covered by a collective bargaining agreement.

Just-cause employment is the norm in most other rich democracies.[13] This includes countries such as the United Kingdom, Canada, Germany, Australia, Finland, France, Spain, and Sweden.

In Canada, for instance, a worker not covered by a union contract but who has been at a job for at least 12 consecutive months can appeal an unjust dismissal, with remedies being severance or reinstatement. [14]

The rise of at-will employment as the default rule in the U.S. in some ways reflects the racial history of the country. "Following the abolition of slavery in 1865, employers sought new ways to exert power and control over formerly enslaved Black people and immigrant laborers," explains Rebecca Dixon of the National Employment Law Project.[15] These employers, including powerful railroad companies, began arguing that just as the newly



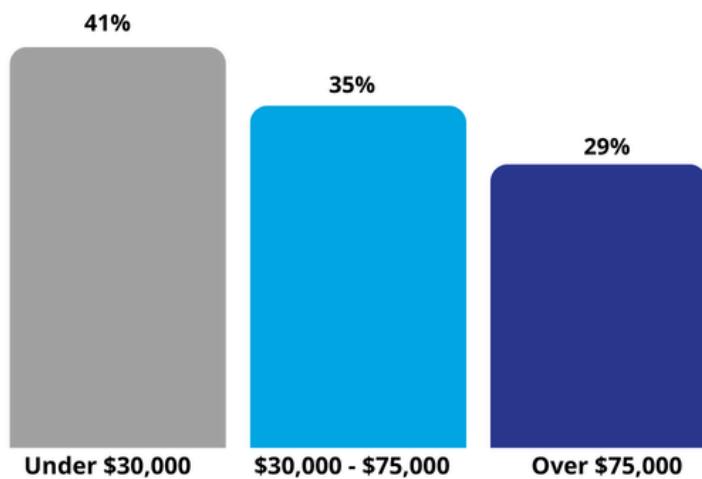
enacted 13th Amendment allowed workers to quit at any time, so too could employers fire workers at any time.[16] This was a perverse reading of the 13th Amendment that ignored the power imbalances between employer and employee. Nevertheless, judges friendly to railroad companies began adopting the at-will rule, a doctrine eventually endorsed by the U.S. Supreme Court.[17]

Unfair firings are widespread and workers of color are more likely to be unfairly dismissed

The at-will system makes unfair or arbitrary firings a common reality for many workers and workplaces. A 2020 Data for Progress survey found that 47 percent of respondents had been fired for "no reason or a bad reason."^[18]

Unfair firings are more common among low-paid workers

Rate of unfair firings for workers in Illinois.



Source: OCPP visualization of the National Employment Law Project data.

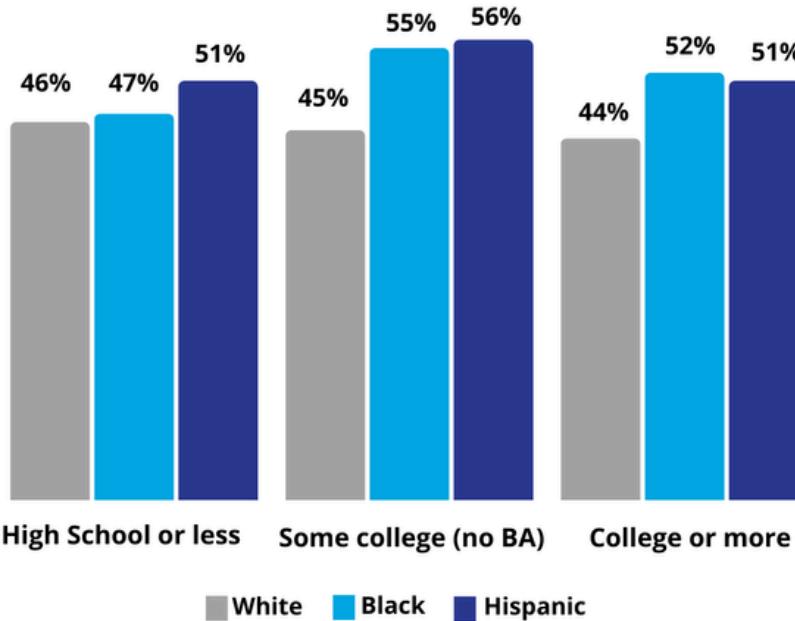


With at-will employment, workers of color are more likely than white workers to experience unfair or arbitrary dismissals. In the Illinois survey previously mentioned, Black workers experienced the highest rates of unfair or unjust dismissals, followed by Latino and white workers.^[20] This disparity remains true among workers with higher education. Black and Latino workers with higher education levels report higher rates of arbitrary firings than their equally educated white peers.^[21] For workers of color, higher education is not a shield against the unchecked power to unfairly dismiss them.



Black and Latino workers are more likely to be fired unfairly

Rate of unfair firings for workers by race and education.



Source: OCPP visualization of Roosevelt Institute data.



At-will employment weakens labor protections

At-will employment undermines labor protections – including the right to organize, protections against discrimination in the workplace, and safeguards against wage theft and unsafe working conditions.[22]

The ability of employers to fire workers without notice or reason weakens the right to organize that most workers possess under the law, since it makes it easier for the employer to get rid of workers seeking to form a union. Although the National Labor Relations Act makes it illegal to fire a worker for seeking to organize their workplace, at-will employment does not require that a reason be given for the firing. At first suspicion of union support or activity, an employer can immediately fire a worker, and it is up to the



worker to prove the discharge was based on anti-union motivation.[23] One analysis showed that in 20 percent of union elections, employers fired workers illegally.[24] Combined with the National Labor Relation Act's weak remedies for employer retaliation, at-will employment can create an environment where workers become fearful and abandon unionization efforts altogether.[25]

At-will employment also diminishes the effectiveness of workplace protections against discrimination.[26] Title VII protects workers from discrimination on the basis of race, gender, religion, and national origin.[27] Yet, under at-will employment, employers can fire workers for any reason, even if the motive is unfair, trivial, or irrational.[28] This kind of power makes it easier for employers to explain away firings or disciplinary actions when discrimination is the actual cause.[29] For example, in cases where employees perceive a consistent pattern of racial discrimination in punishments or firings, courts often accept the non-discriminatory explanations offered by employers.[30] These justifications do not need to be tied to "productivity, efficiency, safety, or other business related reasons," making it difficult for employees to prove discrimination.[31]

At-will employment also leaves pregnant workers vulnerable to unfair firings. Researchers found that many pregnant workers experienced firings immediately or soon after they reveal their pregnancy status.[32] And in 2024 alone, 80 percent of pregnancy-related discrimination cases filed with the Equal Employment Opportunity Commission (EEOC) contained discriminatory firings.[33] Because the at-will system doesn't require employers to consistently enforce rules, employers try to frame this type of unfair firing as a standard business outcome – often portraying their pregnant employee as underperforming or undependable and using neutral workplace policy as the reason for the firing.[34] Yet, this seemingly "neutral" business decision often happens immediately after a worker reveals their pregnancy.[35]

The extreme power imbalance that at-will employment creates also results in workers having to accept dangerous or degrading working conditions just to keep their jobs. Data from the survey on Illinois workers also found nearly 70 percent of workers surveyed said that they or a co-worker had worked while sick or hurt to avoid being terminated.[36] About 40 percent felt pressured by their employer to work unpaid extra hours. Workers also reported that their employers would discipline employees for taking sick leave or asking for a schedule change.[37] A survey of California workers found 34 percent of workers surveyed were forced to accept less money than they earned just to keep their jobs. Another 35 percent of workers worked at an unreasonable speed out of fear of being



terminated.[38] A nationally representative survey found that one in three workers worked under hazardous or unhealthy conditions to avoid being fired. And almost half of those surveyed put up with hostile or verbally abusive treatment from managers to avoid losing their jobs.[39]

For undocumented workers, at-will employment puts them in an even more vulnerable position. Undocumented workers often face heightened risks to their employment due to their immigration status.[40] Employers exploit these workers' anxiety of speaking up about their working conditions for fear of being fired, or worse, being deported. Countless cases exist of undocumented workers who were fired for raising concerns of unfair treatment or unsafe working conditions.[41] The at-will system allows employers to further take advantage of an already vulnerable population.[42]

At-will employment increases the economic vulnerability of workers and families

At-will employment paves the way for sudden job terminations, which can quickly undermine family finances.[43] Researchers found that many workers faced financial strain following unfair dismissals. In fact, a survey of unfairly-fired workers revealed that "71 percent of workers had to go into debt, two-thirds depleted their savings, and more than half of workers were unable to pay their bills on time."[44] Similarly, in a survey of New York fast food employees, 62 percent of workers who were unjustly terminated or forced to quit by employers experienced financial struggles. This included being evicted, having to stay with relatives or friends, living in a shelter, being unable to pay childcare, or facing food insecurity.[45]

Oregon should replace at-will employment with just-cause employment

Oregon should expand just-cause employment to all workers. A just-cause policy would protect workers from arbitrary or unfair terminations by establishing standards that employers must follow before firing an employee. This would enhance job security, empower workers to address unsafe conditions, and protect against discriminatory dismissals.



For it to be effective, a just-cause standard would need to specify the reasons deemed valid for terminating an employee. Such reasons could include an employee's failure to perform job duties satisfactorily, misconduct that is harmful to the business, or bona fide economic reasons. This standard should also include progressive discipline and fair notice to correct job performance.[46] And in any just-cause measure, employers would be required to provide advance notice before termination.[47]

Small businesses and non-profits should receive help implementing just cause

Every worker in Oregon should have a transparent and fair process for being fired from their job, regardless of employee size. Although protections for workers should not be dependent on the size of the employer, small employers have fewer existing staff and technical capacity to transition to a just-cause standard.

To ensure the success of just cause, Oregon should provide templates of just-cause policies and procedures that small businesses and non-profits can easily implement, as well as training and technical assistance to make the transition as seamless as possible for workers and employers. There should also be a phase-in process for just cause based on the number of employees to ensure the state has the resources to handle the demand.

With these considerations in mind, just cause will help Oregon small businesses and non-profits benefit from reduced employee turnover and greater employee job satisfaction and performance.[48]

Oregon and other localities have seen efforts to implement just cause. In 2023, the Just Cause for Oregon Employees Act petition aimed to enact just cause for discipline and discharge of employees.[49] However, that initiative was withdrawn.[50] The Just Cause petition was refiled for the 2026 election.[51] Likewise, localities, like the city of Philadelphia in 2019, established just-cause standards for discipline and discharge for parking lot workers.[52] And in 2021, New York City implemented similar measures for fast food workers.[53]



Establishing just-cause employment would benefit Oregonians in several ways. Specifically, it would:

Improve the economic security of workers and families. Just-cause protections would provide workers and their families economic stability and security. Currently, nearly 90 percent of Oregon private-sector workers are at-will. Making just cause the default standard would extend this protection to approximately 1.4 million Oregon workers, enhancing their job security and safeguarding their financial well-being.[54]

Protect workers' right to organize. A just-cause standard would protect against dismissals aimed at undermining union activities. With just cause, there would be standards in place for employers to follow before discharging an employee, making it harder for employers to retaliate against workers, and giving workers more freedom to exercise their labor rights.[55]

Enhance worker productivity. A just-cause standard can enhance productivity. Feeling secure in their jobs makes employees more loyal and invested in the company's success. [56] Workers who trust that they are treated fairly are also more likely to contribute positively to the business.[57] Likewise, workplace studies have shown that job security for workers is associated with an increase in overall workplace performance.[v] Essentially, just-cause policies can support a company's long-term success.

About the author

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Appendix

To be effective, a just-cause standard should include the following elements.

- **Just cause required for firing:** With just cause, employers would need to prove that they had a valid reason for firing an employee. Such a reason could include an employee's failure or inability to perform job responsibilities to a satisfactory level or misconduct that is harmful to the business' legitimate interests.
- **Progressive discipline:** Under a just-cause policy, employers need to use progressive discipline before discharging an employee. Progressive discipline means that the employer uses gradually escalating discipline responses when an employee fails to satisfactorily perform their job duties and employees have an opportunity to improve before being fired.
- **Probationary period:** A just-cause standard should also make sure that probationary periods are reasonable and clearly defined. This allows employers reasonable time to determine whether a new employee is suitable for the position while ensuring the probationary period is not used to delay the start of just-cause protections.
- **Written explanation:** Another key component of just cause is providing a written explanation for disciplining or firing an employee at the time of disciplinary action. A written explanation is part of a fair and transparent process that allows employees to know the reason for their discharge.
- **Bona fide economic layoff:** Part of a just cause process also allows employers to lay off workers for valid economic reasons, such as restructuring, closing operations, or other changes made necessary by a drop in production, revenue, or profit.
- **Egregious misconduct:** Employers can fire an employee immediately if they engage in misconduct like violence, harassment, or theft. These types of egregious behavior do not require progressive discipline.
- **Anti-retaliation:** Under a just-cause policy, employers cannot retaliate against workers who chose to exercise their rights. Employers are prohibited from threatening, demoting, or suspending an employee for exercising their rights.



- **Enforcement:** An effective just-cause policy also requires strong enforcement tools. This should include clear avenues for workers to assert their rights or seek remedies when they experience violations.
- **Implementation:** The implementation of a just-cause policy must consider how to support employers and employees in navigating a new standard across the labor market. The state needs to offer technical assistance, sample policies, and other support.

Endnotes

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- [14] Ibid.



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- [21] Kate Andrias and Alexander Herterl-Fernandez, Ending At-Will Employment: A Guide for Just Cause Reform, Roosevelt Institute, January 2021.
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