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SUMMARY
OF
IDAHO EMPLOYMENT
TERMINATION LAW

Dedicated to:
my students over the years,
who have taught me so much

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- The opinions discussed in this Summary tell the partial stories of difficult moments in the lives of real people, workers, supervisors, and employers; there is more to these individuals than what is revealed in the pages of the Idaho Reports. I wish them all well, and thank them for letting us learn from their lives.

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Preface

“You’re hired.” With those words, a relationship is formed. Workers and employees need each other, which is why they enter into this relationship which has its legal basis in contract, but which has relational and emotional footings as well. Workers need their jobs for money, benefits, security and identity. Employers need workers to get things done, as efficiently as possible. Often employers’ identities are tied to the people they employ, as those people form the face of the company. And, vice versa, many people define themselves by their jobs. Most of us spend far more of our waking hours with our co-workers than with our families.

“You’re fired.” With those words, the relationship is severed. In this Summary I use the words “firing,” “termination,” and “discharge” interchangeably. But whichever words are chosen, they bring change, for better or for worse, and the mourning - on both sides - that comes with lost security, transition of identity, disruption of group, and modification of relationship. And the words carry legal ramifications.

This Summary attempts to set out Idaho law as it pertains to involuntary separation from employment. It is written for Idaho lawyers who do not specialize in employment law, and for out-of-state lawyers who want to get started on Idaho research. I intend each chapter to stand alone, so full citations are repeated in each chapter, and some points are repeated; I have attempted to cross reference as appropriate.

I have endeavored to be as even-handed as possible, considering the concerns and desires of both employees and employers.

Employees do not fare well in the reported cases of Idaho. Many deserving plaintiffs may settle before they reach the courthouse steps. More fundamentally, in Idaho as in most of the United States, the employment relationship is presumptively at-will, meaning it can legally be terminated by either side for any reason, without notice. The exceptions to this are narrowly drawn – and form the bulk of the law of employment termination.¹ Thus most of the cases described in this Summary involve alleged exceptions to the at-will rule.

I have concentrated on the law for private workplaces, although I do note some causes of action available exclusively to public employees, like the Public Whistleblower Act. I do not detail free speech, procedural due process, or substantive due process rights of governmental workers.² I have not discussed covenants not to

¹ See, for one of many examples, *Bollinger v. Fall River Rural Elec. Co-op, Inc.*, 152 Idaho 632, 640, 272 P.3d 1263, 1271 (2012). Exceptions to at-will are narrow and the circumstances must be sufficient to overcome the presumption.

² See, e.g., *Cantwell v. City of Boise*, 146 Idaho 127, 191 P.3d 205 (2008) discussing procedural due process rights. Free speech rights implicate federal jurisprudence as well as Idaho law. See, e.g., *Summers v. City of McCall*, 84 F.Supp.3d 1126, 1152-58 (D. Idaho 2015). See also Tim Davis, *The*

compete, although those controversies do often arise upon termination of employment by one party or the other. Nor have I looked for or found cases where the employer is suing the employee for terminating the relationship.

This book is divided into five sections. The first addresses the preliminary and definitional questions of whether an employment relationship exists and whether a termination has occurred. Then I move to the meat of the question, namely, whether the employer is acting within its legal rights to terminate the relationship. Then I canvas other causes of action that often arise in conjunction with termination. Then I turn to procedural and practical matters, including wage payment, unemployment hearing, arbitration agreements, remedies and attorney fees. At the end I transition to more of an essay style, musing on how to prove or refute suspect motivations, practical concerns for both sides, and the limits of the law.

Idaho Personnel Commission – A General overview of State Employment Dispute Resolution, THE ADVOCATE, February 2002, 19-21; *Idaho Personnel Comm’n*, DHR.GOV, <http://dhr.idaho.gov/ipc.html> (last visited 11/3/2016); and Lauren I. Scholnick and Erika Birch, *The Impact of Leaving Idaho’s Government Employees Unprotected*, THE ADVOCATE, May 2014, 35-37.