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What being fired 'for cause' means

California law gives parties in an employment relationship substantial freedom to define for themselves what cause means.

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Late last month, President Donald Trump sent Federal Reserve Governor Lisa Cook a letter firing her. The Federal Reserve Act (FRA) establishing the Board of Governors says: "Each member shall hold office for a term of 14 years from the expiration of the term of his predecessor, unless sooner removed for cause by the president." The FRA does not define "cause." The president cited Cook's alleged misstatements about her primary residence on mortgage application(s) as "cause" for his action.

Cook is challenging the dismissal in federal court. Relying on statutes defining the required "cause" to dismiss other high-level federal appointees and on a recent Supreme Court ruling recognizing the Federal Reserve Board's special need for freedom from political interference, Cook asserts she could only be fired for "inefficiency, neglect of duty, or malfeasance in office." She argues her alleged mortgage application misstatements before she assumed office do not qualify, and that her dismissal was procedurally defective and motivated by illegitimate political considerations.

Administration lawyers counter that the president has broad discretion to determine what "cause" means. In a recent article on Cook's dismissal, The New York Times cited a 2021 Columbia Law Review article in which two legal scholars concluded the absence of a definition of "cause" in the FRA gives Federal Reserve governors the "weakest protection" from dismissal in relation to other officials appointed to defined terms at independent federal agencies. The FRA, wrote the scholars, was not limited to dismissal for inefficiency, neglect of duty, or malfeasance, but also included "immorality, ineligibility, offenses involving moral turpitude and conviction of a crime."

"For cause" under California law

Most California private sector employment is at-will: an employee hired for no specified term may be fired for any reason or no reason as long as the termination is not for a reason prohibited by public policy. That includes laws prohibiting discrimination based on race, gender, and other classifications and laws protecting whistleblowers from retaliation.

The California Supreme Court repeatedly has held that the employment relationship is "fundamentally contractual." An employer and employee may agree to express or implied limits on the employer's ability to terminate. The high court has said an express or implied agreement to require "good cause" for termination generally means an employer must have "a fair and honest cause or reason regulated by good faith as opposed to one that is trivial, capricious, unrelated to business needs or goals or pretextual" to terminate the relationship.

Contractual causes for termination

Termination limitations may be implied by oral assurances of continued employment or even by the practices of the industry in which the employee is engaged. More commonly, a written employment agreement will define what constitutes cause for termination. Employers usually make those agreements only with high-level executives or other key personnel.

California law gives parties in an employment relationship substantial freedom to define for themselves what cause means. That term typically is defined to include dissatisfaction with the employee's performance, the employee's neglect of duty, insubordination, criminal misconduct and employee actions that harm the company's reputation,

Such contracts also may define "cause" for an employee to resign, including a material change in an employee's compensation or responsibilities, and a change in control of the company.

Where the employer terminates the relationship for cause or the employee quits without cause, an employee gets only what she has earned, including the value of any unused vacation time. When an employer terminates, or is found to have terminated, an employee without cause, the contract (outside of the unionized setting) seldom entitles the employee to ger her job back. Even where there is a written employment agreement, a private sector employer generally will retain the right to end the relationship with or without cause.

The contract, however, may entitle the employee terminated without cause or who resigns with cause to receive certain severance benefits to which the employee otherwise would not be entitled. Those additional benefits may be conditioned on the employee signing an agreement releasing any claims he or she may have against the employer.

If Cook wins her lawsuit challenging the legitimacy of her termination, she will get her job back, something a California private sector employee who proves she was fired without contractually required cause virtually never would.

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