

## Turning Back the Clock

As companies mull possible midyear layoffs in response to a slowing economy, executives should take another look at an October California Supreme Court decision that handed companies an at-will employment victory.

An at-will policy allows employers to terminate workers at the company's discretion. Since the 1970s, though, legislatures and the courts have tempered such policies: Laws were passed to prevent employers from dismissing workers for discriminatory reasons (sex, race, age, and the like) or for public-policy reasons (blowing the whistle on fraud). Furthermore, as a way to dilute a company's at-will powers, the courts expanded



the definition of an "implied contract."

It's in the implied contract area that the courts appear to be backpedaling. In *Guz v. Bechtel*, the California high court turned its back on a 12-year-old decision that established criteria for implied contracts for at-will employees. The criteria included such factors as employee longevity, raises, and favorable reviews. Essentially, the court upheld Bechtel National Inc.'s choice to cut John Guz loose due to a downturn in the company's workload. With the opinion, California joins such states as Montana, New Mexico, Nevada, and Idaho, where longevity and a policy of warning before discharge are insufficient evidence to infer an implied contract.

But some labor lawyers remain cautious about a possible resurgence of unfettered at-will employment. "There is always a risk that employees will challenge their termination if they are released for reasons not covered by a contractual provision," says Mark S. Dichter, a labor and employment attorney with Morgan, Lewis & Bockius, in Philadelphia. Marshall Bellovin, an employment attorney with Ballon Stoll Bader & Nadler, in New York, agrees, and recommends that companies remove all doubt by requiring a new hire to sign a statement that indicates he or she is an at-will worker. He also advises companies to omit any references to length of employment from offer letters. "If there's a term of years in that letter, then a CFO can get into trouble," asserts Bellovin. + J.P.M.

► *P-TOWN*: Purchasing-card spending, which grew by 104% in 2000, could double to \$80 billion by 2002, notes Palmer and Associates.