

Carefully craft an escape clause in all job contracts

If you use employment contracts for independent contractors or senior-level managers, make sure those contracts contain enough "wiggle room" to terminate for cause based on your subjective performance assessment.

If you word the contract correctly and dismiss a manager or contractor early, that person likely won't be able to earn the rest of the pay promised in the contract.

Recent case: Jason Leedy went to work for Vis.align under a three-year employment agreement. The contract would pay Leedy a \$200,000 per year base salary plus benefits and bonuses. It also said Leedy could be terminated "for cause" if he, "in the judgment of the chief operating officer, the chief executive officer or the board ... has been grossly negligent, incompetent or insubordinate."

The company terminated Leedy when he didn't deliver on economic targets and got into disagreements with the CEO about his negotiations style. Leedy sued for the balance of his pay, claiming he hadn't been fired for cause. A jury agreed, but the company appealed.

The Pennsylvania Superior Court reversed the award, reasoning that, under Pennsylvania contract law, words are given their ordinary meaning. Because the contract said the determination of cause was to be "in the judgment of" company representatives, that judgment was meant to be subjective.

So long as their exercise of that subjective judgment was in good faith, it was up to the company to define whether Leedy had been insubordinate, incompetent or grossly negligent. (*Leedy v. Vis.align*, No.1805 EDA 2005, Pennsylvania Superior Court, 2006)