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PERSPECTIVE

Lessons learned when a termination goes sideways

By Leonid M. Zilberman

One of the mantras of Silicon Valley, perhaps best espoused by Meta's CEO Mark Zuckerberg as a model for any technology company is: "Move fast and break things." The same cannot be said of employment termination in California and the recent Sam Altman saga is perhaps Exhibit "A" why all California employers should have a good business reason before making any snap termination decision.

Employers are often confused by the concept of "at-will" employment because they wrongly believe that it provides a "get-out-of-jail" card to fire anyone at any time and for no good reason. The U.S. is one of a handful of countries where employment is at-will. Most countries around the world allow employers to dismiss employees only for a specific cause, not whenever they want or for no reason because employment is viewed as a contract. That's not the case in California and almost every other state based on a historic respect for freedom of contract, employer deference, and the belief that employees favor the ability to leave one job for another at any time, without a reason.

Effectively, at-will employment is an agreement between an employer and employee that states that employment is indefinite. Either the employer or employee can terminate the agreement at any time, for any reason, or for no reason. But wait! That's not how it works in practice. If an employer doesn't provide a business reason or rational basis for the termination decision,



Sam Altman, CEO of OpenAI | The New York Times

then the employee may offer their own "illegal" or prohibited reason (and often do), leading to a wrongful termination lawsuit, which we routinely see filed daily in California and elsewhere.

Here's how the Altman drama unfolded last month, amidst the whirlwind of innovation that has been on everyone's newsfeed about how artificial intelligence is going to change the world. OpenAI is a unique non-profit research company known for ChatGPT, a chatbot that can generate human-like responses based on user prompts. OpenAI has received billions of dollars in funding from several large technology companies, including Microsoft, Amazon and some

of the largest VC funds in Silicon Valley. Sam Altman, was (and now again is) OpenAI's visionary CEO, dedicated to research on ensuring that artificial intelligence benefits humanity, instead of killing it. In textbook Silicon Valley fashion, he was abruptly and without explanation fired on Nov. 16, by receiving a text message to join a Google Meet, where he heard the bad news without prior warning or even a counseling note.

At the meeting, Altman was let go with Microsoft being one of the first to hear the news. Within the next two days, OpenAI appointed three different CEOs in succession, who all promptly were removed or quickly stepped down,

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only to have Altman reinstated five days later to his former CEO position, after Microsoft offered him a job one day after he was terminated. This tumultuous episode is a terrific example of the pitfalls of “at-will” employment and serves as a stark reminder for any employer about the delicate balance between leadership, decision-making, and the potential consequences of rash actions. Of course, as CEO, Altman was the highest-ranking employee, but these lessons can be equally applied to any employee, even the lowest person in the organization.

While the news of Altman’s dismissal sent shockwaves through the tech community, the Board did not provide any concrete reasons or business justification for its actions, other than to state that there were unspecified “disagreements” with Altman’s leadership style. This lack of transparency fueled speculation about the Board’s true motives. Another unforeseen consequence of the hasty dismissal, without any business justification, was that Altman’s ouster ignited a firestorm of criticism among OpenAI employees. In other words, this blindside of employees who were loyal to Altman made them question the validity of the decision and their own future positions within the organization.

Perhaps to garner more support and sympathy, in the first hours after his brief separation, Altman sent appreciative text messages (which were made public) to dozens of co-workers who he had led, using heart emojis. Next, over 700 employees (indeed close to 90% of all workers), including prominent researchers, threatened to resign if

Altman was not reinstated. The immediate public outcry was equally strong, with high profile technology leaders like Elon Musk and Satya Nadella questioning the board’s judgment and the wisdom of disrupting the leadership, especially because there did not appear to be any basis to conclude that Altman had done anything wrong, illegal or deserving of this swift termination.

Faced with mounting pressure from employees, investors, and the public, the OpenAI board was forced to quickly reconsider its decision and reverse course when it became clear that both Altman and the majority of other key employees – OpenAI’s primary assets – were going to walk out the door and set up shop at Microsoft, which would have been the end of the entire organization. So, after intense negotiations, Altman was rehired as CEO, and the board members who voted for his dismissal were ousted and resigned. This turnaround underscored the power of collective action and the importance of clear communication from leadership.

Four lessons learned from the Altman termination saga for any organization:

1. Transparency and Communication are Critical to Decision-making: Transparency is vital in making difficult decisions, especially those affecting the leadership and direction of an organization, including termination decisions. Open and honest communication with employees (and when necessary, the public) can mitigate the impact of disruptive events such as changes in leadership.

2. The Power of Employee Voice: Employees are an organization’s

biggest asset, as stakeholders in an organization’s success, employees have a louder voice in the decision-making processes than organizational leadership thinks it does. Ignoring employee concerns and disregarding their collective opinions may have severe consequences, as witnessed by various labor disputes seen around the nation in 2023.

3. The Perils of “At-Will” Employment: While “at-will” employment provides flexibility for employers, it does not remove an employer’s need for business justification regarding termination decisions. Additionally, valuable employees will always be able to obtain jobs with competitors and could result in unintended negative consequences.

4. The Need for Due Diligence: Before making drastic decisions, organizations must conduct thorough due diligence and gather concrete evidence to support their actions, including competent advice from outside employment counsel. Acting impulsively or based on unsubstantiated claims to terminate key employees can lead to irreparable damage.

These lessons learned apply to OpenAI as much as they do to any employer. Whether you run a cutting-edge technology company or janitorial company, all employers must carefully consider the consequences of arbitrary firings, beyond the wrongful termination lawsuits that typically follow. Decision makers and managers must strive to create an environment that fosters trust, collaboration, and informed decision-making. The Altman saga highlights the importance of having a carefully considered termination policy that is based on clear

performance expectations as well as documented and factual reasons for any separation. This story also illustrates how an arbitrary firing, especially of high-performing employees, can have a devastating impact on morale, productivity, and reputation.

The turmoil surrounding Altman’s firing not only damaged OpenAI’s reputation but also severely undermined employee morale, which may never be fully recovered. The company’s credibility was tarnished, and its ability to attract and retain top talent was jeopardized. Moreover, the decision sent a chilling message to employees, suggesting that even the most valued members of the team were not immune to arbitrary dismissal. By making informed fact-based decisions, employers can avoid the pitfalls of “at will” employment and create a more sustainable and successful organization.

The Altman saga served as another reminder that leadership is not about wielding authority but about inspiring and empowering others. In this case, it appears that Altman’s charisma, vision, and ability to connect with employees were instrumental in bringing him back into his CEO role. It appears that Altman’s return signaled a return to stability and a reaffirmation of OpenAI’s mission. Finally, this roller-coaster experience serves as a valuable lesson that any organization looking to fire its CEO or any member of top leadership should get some good advice in advance from an employment attorney.

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