



RESEARCH REPORT | Center for American Freedom

AT-WILL EMPLOYMENT IN THE CAREER SERVICE WOULD IMPROVE MISSISSIPPI STATE GOVERNMENT

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TOPLINE POINTS

- ★ Removal protections cover more than 80% of Mississippi state government employees. State agencies have long objected that these protections make removing problematic employees difficult.
- ★ The Mississippi legislature has periodically exempted many agencies from civil service protections, temporarily converting them into at-will agencies. Both Georgia and Texas have made their entire state workforces at-will.
- ★ Human Resources directors in Mississippi, Texas, and Georgia report at-will employment improves state operations with few abuses. Making state government entirely at-will would give Mississippians better government.

Mississippi's civil service laws protect state service employees from removal. Most state employees can only be dismissed "for cause." If fired, they can appeal their removal administratively and then in the courts. Administrative appeals take an average of six months to complete. These removal protections make removing incompetent or intransigent state employees more difficult. Mississippi partially addressed these problems with a series of incremental and temporary reforms. State Human Resources (HR) directors report that these reforms improved state government operations.

Other states that have made their entire workforces at-will found it made them more efficient and responsive to elected officials. Mississippi could make state government work better for Mississippians by extending at-will status to all state employees.

Removal Restrictions in Mississippi State Government

Employees in the Mississippi state government's "state service" enjoy for-cause removal protections.¹ State agencies frequently object that these protections make removing poor

¹ The "State Service" covers most employees of state departments, agencies, and institutions, with certain statutory exceptions, e.g., elected officials, judges, gubernatorial appointees, and contract employees ([Miss. Code § 25-9-107](#)).



performers too difficult ([Mississippi Joint Legislative Committee, 2020, p. 1](#)).

State employees who complete a one-year probationary period can only be removed “for good cause.” About four-fifths of Mississippi state employees enjoy these removal protections ([Goodman & Mann, 2010, p. 183](#)). Once a state service employee gains tenure, their agency can only dismiss them after providing them with legal “due process” ([Miss. Code § 25-9-127 \(1\)](#); [Mississippi State Personnel Board, 2020, p. 38-41](#)). Agencies must provide a written notice explaining the basis for proposed disciplinary actions, at least five working days to prepare, and a hearing where they can respond to the charges ([Mississippi State Personnel Board, 2020, p. 40](#)).²

Employees can then appeal any resulting disciplinary actions ([Miss. Code § 25-9-131 \(1\)](#); [Mississippi State Personnel Board, 2020, p. 42-43, 47](#)). If the employee appeals, the Mississippi State Personnel Board (MSPB) will appoint an Employee Appeals Board (EAB) consisting of three hearing officers ([Miss. Code § 25-9-129](#)). Employees bear the burden of proof during appeals ([Mississippi State Personnel Board, 2020, p. 52](#)). If an employee meets their burden of proof, the EAB can order them reinstated with back pay ([Mississippi State Personnel Board, 2020, p. 52-53](#)). The MSPB reports dismissal appeals take an average of six months ([Mississippi State Personnel Board, 2022](#)).³ If the employee loses before

the EAB, they can appeal to state court ([Miss. Code § 25-9-132](#)).

Periodic Rollbacks of MSPB Coverage

Mississippi’s civil service system is a modern innovation; the legislature created it in 1980 ([Mississippi Joint Legislative Committee, 2020, p. 3](#)). The Mississippi legislature has responded to these concerns by periodically exempting agencies from MSPB jurisdiction temporarily—thus making agency employees temporarily at-will.

The legislature first limited MSPB coverage in 1988, exempting the Department of Economic Development from MSPB coverage for one year to facilitate a reorganization. The legislature wanted the department to be able to restructure without being tied up in lawsuits from employees who lost their jobs. In 1996 the legislature similarly exempted the Department of Agriculture and Commerce for a year to enable it to reorganize ([Goodman & French, 2011, p. 275](#)).

In 2004, then-Governor of Mississippi Haley Barbour asked the legislature to exempt all executive departments for one year to reorganize and allow “executive branch managers the flexibility to efficiently make personnel adjustments including terminations” ([Goodman & Mann, 2010, p. 183](#)).⁴ The bill passed in the Mississippi Senate but failed in the state House. Ultimately the legislature exempted only a portion of the

² The Mississippi State Employee Handbook provides a list of examples “illustrating inefficiency or other good cause for dismissal, but is not all-inclusive and is not intended to limit an appointing authority’s discretion in determining that inefficiency or other good cause exists” ([Mississippi State Personnel Board, 2020, p. 39-40](#)).

³ The Mississippi State Personnel Board reported that between FY 2017 and 2021 the average appeal took 188.55 days. This figure includes ongoing appeals that have not yet been concluded.

⁴ A state service employee “may be placed on a leave of absence for purposes of accepting an assignment in the nonstate service for a period not to exceed one (1) year with the consent of the head of the department, agency or institution and the concurrence of the state personnel director” ([Miss. Code § 25-9-125](#)).



Department of Corrections (DOC) ([Goodman & Mann, 2010, p. 189](#)). The DOC director noted that temporarily removing the department from MSPB coverage allowed the agency to “terminate ineffective employees regardless of seniority” ([Goodman & Mann, 2010, p. 189](#)).

Between 2014–2016 the legislature temporarily exempted the Mississippi Departments of Marine Resources, Education, Corrections, and Human Services from MSPB coverage. The legislature also temporarily exempted the Department of Child Protection Services for several years when it was created in 2016 ([Mississippi Joint Legislative Committee, 2020, pp. 1, 7, 9-10, 3](#)).⁵ Dismissal rates were substantially higher at most agencies when they operated at-will.⁶

In 2017 the Mississippi House of Representatives passed legislation exempting most state agencies and boards from MSPB coverage for three years ([H.B. 974](#)). However, the legislation was defeated in a Senate committee vote and never became law.

Mississippi’s At-Will Experiments Successful

These experiments with at-will employment have been successful. While the MSPB covers most state employees, these periodic suspensions of the civil service system have given many state supervisors experience with both at-will

and civil service environments. Some state employees also remain permanently outside the state service. A survey of Mississippi state HR directors shows they widely agree that at-will employment improves agency operations while feared downsides rarely materialize ([Goodman & French, 2011, pp. 280-283](#)).⁷ Table 1 presents key findings from that survey.

HR directors report that at-will employment improves employee responsiveness to the goals and priorities of agency administrators (60% agree/17% disagree), provides motivation for employee performance (56% agree/20% disagree), improves agency efficiency (53% agree/27% disagree), ensures managerial flexibility (54% agree/19% disagree), and represents an essential piece of modern government management (58% agree/15% disagree) ([Goodman & French, 2011, p. 280](#)).

HR directors also overwhelmingly agree that at-will terminations are for good cause (86% agree/5% disagree), and a large majority indicate that at-will employees have been terminated due to poor performance (82% agree/5% disagree). Only 16% report being aware of a case where a competent employee was fired at-will so someone with friends in government could get hired ([Goodman & French, 2011, p. 283](#)). At-will employment has worked in Mississippi.

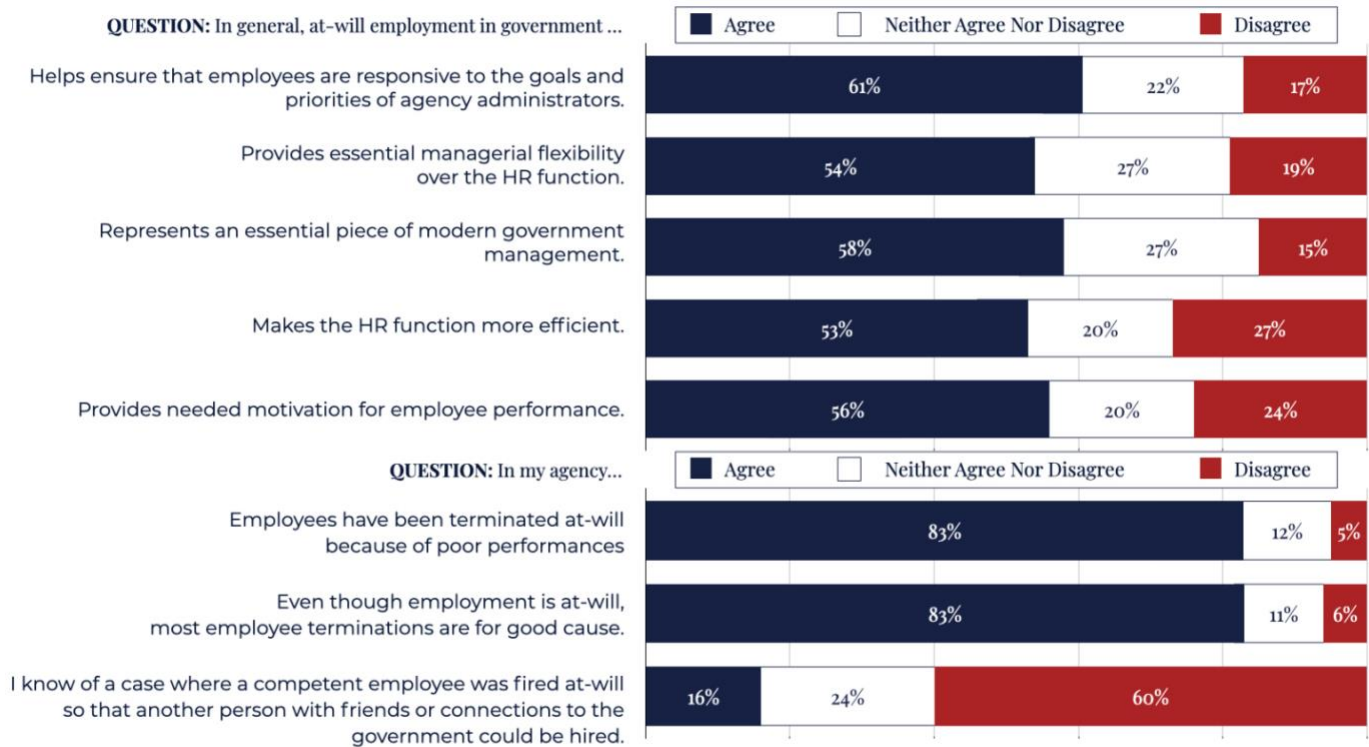
⁵ The Department of Child Protection Services was exempted from MSPB coverage between FY 2017–2020.

⁶ The Departments of Marine Resources and Education dismissed an average of four times as many employees annually while at-will than while under MSPB jurisdiction ([Mississippi Joint Legislative Committee, 2020, pp. 8, 10](#)). The Department of Child Protection Services dismissed an average of more than twice as many employees annually while at-will than while under MSPB coverage ([Mississippi Joint Legislative Committee, 2022, p. 6](#)). Data on terminations at the Department of Human Services was unavailable. However, dismissal rates fell at the Department of Corrections when it became at-will ([Mississippi Joint Legislative Committee, 2020, p. 12](#)).

⁷ A survey questionnaire was mailed to human resource directors of state agencies in Mississippi. This study assessed state human resource directors’ attitudes toward the use of at-will employment in their agencies. The agencies included executive and judicial departments.



Mississippi HR Directors Opinions on the Effects of At-Will Employment



Source: D. Goodman & P. E. French, "Assessing the Temporary Use of At-Will Employment for Reorganization and Workforce Reduction in Mississippi State Government" **TABLE 1** Review of Public Personnel Administration, Vol. 31, No. 3 (Sept. 2011), Tables 2 & 3.

Expanding at-will Employment to All State Employees Would Improve State Operations

Mississippi could further improve state government by making all state service employees at-will. Several other states have made their state workforces partially or entirely at-will.⁸ Their experience suggests universal at-will employment would improve Mississippi government operations.

Texas, often called the “grandfather of civil-service-free states,” abolished the Texas Merit Council—and thus its civil service system—in 1985 (Walters, 2002, p. 16). Every employee in Texas state government currently serves at-will. A

survey of Texas HR directors found that they widely believe at-will employment makes employees more responsive to the goals and priorities of agency administrators, provides essential managerial flexibility, helps remove poor performers, and is an essential component of modern government management. Texas state HR directors also report that nearly all separations occur for good cause and patronage appointments are virtually nonexistent (Coggburn, 2006, pp. 163-69).

Another study of Texas state HR directors reports they “highly value the discretion they receive as a product of the state’s decentralized approach. In fact, there was

⁸ In addition to Texas and Georgia, both Missouri and Arizona have made their state workforces entirely at-will. Academic researchers have not yet surveyed HR directors in those states.



widespread agreement—even among those respondents lacking in HR expertise—that HR flexibility was key to state agencies’ effectiveness.” Texas HR managers also report “virtually no pressure on them to make personnel decisions based on someone’s political loyalty or lack thereof” ([Walters, 2002, pp. 19-21](#)).

Georgia enacted legislation in 1996 that made all newly hired state employees at-will. Almost all Georgia state employees now serve at-will. Managerial abuses of Georgia’s civil service system are almost nonexistent.⁹ Florida also made its state managers and supervisors at-will in 2001.

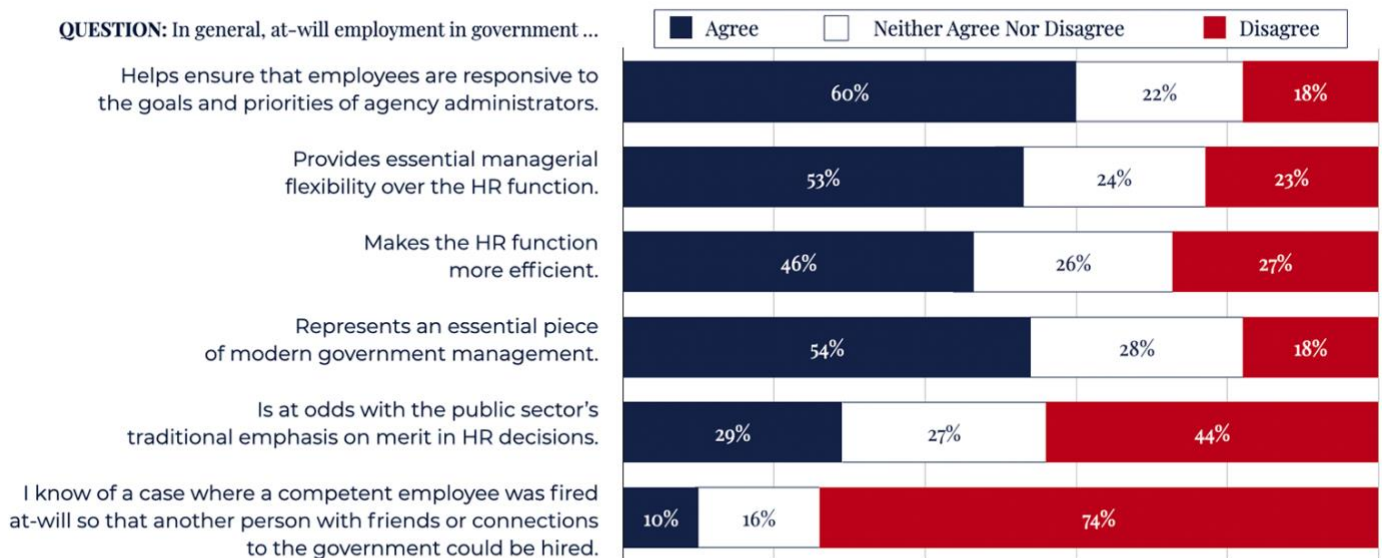
Researchers surveyed over 250 state HR professionals across Florida, Georgia, Texas, and Mississippi about their

experiences with at-will employment ([Coggburn et al., 2010, p. 196-97](#)). That survey showed these professionals widely believe that at-will employment makes employees responsive to agency administrators’ goals and priorities, make HR more efficient, provides essential managerial flexibility, and provides an essential piece of modern government management. Only 10% report knowing of a case where a competent employee was fired at-will to make room for another person with friends or connections to the government ([Coggburn et al., 2010, p. 196-97](#)).

States that have implemented at-will employment find that it improves government operations, while feared abuses have not materialized. Extending at-will employment to all state employees

HR Directors’ Opinions on the Effects of At-Will Employment in Georgia, Florida, Texas, and Mississippi

QUESTION: In general, at-will employment in government ...



Note: This study only posed some of the same questions asked in Coggburn (2006).

Source: J. D. Coggburn, R.P. Battaglio, J. S. Bowman, S. E. Condrey, D. Goodman, & J. P. West “State Government Human Resources Professionals’ Commitment to Employment at Will,” *The American Review of Public Administration*, Vol. 40 (2010), Tables 1 & 2. <https://sites.duke.edu/hriou/files/2011/05/Coggburn-et-al.-State-Government-Human-Resource-Professionals-Commitment-to-Employment-at-Will.pdf>

TABLE 2

⁹ “According to a University of Georgia report on the impacts of Act 1816, there’s been no decipherable pattern of abuses. One experienced personnel director in a large agency reports that he can ‘count on the fingers of two hands’ the number of questionable hires he’s seen under the current administration” ([Walters, 2002, p. 28](#)).



would allow Mississippi to realize these benefits across its entire state workforce. An appendix to this report presents model legislation that would make Mississippi state government at-will.

Conclusion

Civil service protections make dismissing Mississippi state service employees take as long as six months. Mississippi agencies have long complained these restrictions make it too difficult to remove poor performers. The legislature has responded by periodically temporarily excepting

agencies from the state service. Mississippi HR directors report these experiments with at-will employment have been highly successful. Several states have made their workforces entirely at-will. These states' HR professionals report doing so made state government more efficient, flexible, and responsive to senior leadership's priorities. At the same time, patronage-type abuses rarely occurred. Mississippi state government could operate more efficiently if all state service employees became at-will employees.



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Appendix – Model Legislation

Be It Enacted by the Legislature of the State of [State]:

Section 1. This act may be cited as the Public Service Reform Act.

Section 2. [Appropriate sections and subsections] of [State] statutes are amended by:

(a) Amending [appropriate (sub)section of state code] to read:

An employee may be dismissed for good cause, bad cause, or no cause at all; provided that an employee may not be dismissed for any reason prohibited by law, including but not limited to [section of state code prohibiting racial discrimination] and [section of state code prohibiting whistleblower retaliation].

(b) By striking [sections of state code that allow employees to grieve or appeal personnel actions outside their agency]

Section 3. This Act shall take effect July 1, 2023.

