

EMPLOYMENT AT WILL: THE EMPLOYEE HANDBOOK EXCEPTION

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CASE DESCRIPTION

The primary subject matter of this case is the employment at will doctrine and how it may be modified by an employee handbook. This case has a difficulty level of three intended for an upper division undergraduate course. This case is designed to be taught in one class hour, and is expected to require two to three hours of outside preparation by students.

CASE SYNOPSIS

This case begins by discussion of the employment at will doctrine, which governs most employment relationships in the U.S. The “at will” rule provides that where an employment relationship is of an indefinite duration either party may terminate the relationship at any time for any reason or for no reason at all. This usually bright line doctrine, however, is subject to three general exceptions: (1) the public policy exception; (2) the employee handbook contract exception; and (3) an implied covenant of “good faith and fair dealing” exception. This case will focus on the employment handbook contract exception. The case presents several vignettes in involving employment discharge and discipline and the effect of an employee handbook, if any, upon the right of the employer to terminate an employee “at will”. The student is asked to examine the details of each situation, and determine whether employment at will applies or whether the handbook will be deemed to modify the “at will” nature of the relationship.

INTRODUCTION

In general, employment relationships are governed by a doctrine called employment at will. Essentially, this means that an indefinite employment relationship with no specified duration may be ended by either party at any time for good reason, bad reason, or no reason at all unless prohibited by law or public policy (*Monaco v. American General Assurance Company*, 2004).

The rationale for the rule is that it permits either the employee or employer to terminate the employment relationship for any reason without liability to the other (*Mizell v. Sara Lee Corporation*, 2005). Thus an at-will employee may resign at any time and an employer may discharge an employee at any time. Neither act is a breach of contract (*Jimenez v. Colorado Interstate Gas Company*, 1988).

EXCEPTIONS

In defining when the employment at will doctrine will apply, the first, and most obvious exception, is the presence of a formal employment contract that specifies a definite term of employment or definite discharge procedures. This may be either in the form of a two party contract between the employer and employee (Niznik, 2007a), or a collective bargaining agreement between a union and the employer (Niznik, 2007b). In either case, the “at will” rule is modified per the

contract terms. Moreover, a contract is not always necessary for limitations to employment at will. Law and public policy often limit the ability of an employer to terminate employees, for example, terminations that violate equal employment laws.

A more vexing, and less clear exception, is the implied contract. This usually manifests itself through an employee handbook, or company policy manual. Over the past two decades many courts have modified the traditional “at will” employment rule when an employer’s handbook or policy manual contains language that provides that discharge will occur for cause or only after certain conditions have been met (*Meier v. Family Dollar Services, Inc.*, 2006). Under such circumstances the employee handbook does not change the fundamental nature of the “at will” doctrine but requires that the employer follow the handbook’s disciplinary and discharge procedures or face litigation for damages (*Deutsch v. Chesapeake Center*, 1998).

DISCLAIMERS

The good news for employers, however, is that there is a way to avoid an implied contract when issuing a policy manual or employee handbook. An employer may offer a disclaimer, specifically stating that the handbook or policy manual is not a contract. A typical disclaimer may state: “This manual is not a contract. Nothing in this manual constitutes an expressed or implied contract of employment or warranty of any benefits. Your continued employment with _____ is based upon mutual consent. The employment relationship is voluntary and either the employee or the Company may terminate it at any time. It is our hope to have a mutually beneficial and rewarding relationship with you” (*Mizell v. Sara Lee Corporation*, 2005).

Courts have ruled that a clear and forthright disclaimer, in general, will prevent the handbook’s terms from being an enforceable contract and will afford an employer a complete defense to a suit for breach of contract based on a handbook (*Workman v. United Parcel Service, Inc.*, 2000). Nevertheless, the presence of a disclaimer in the company handbook will not always prevent the handbook from modifying the “at will” employment doctrine or prevent the handbook from being deemed an enforceable contract. The courts have required that disclaimers meet certain requirements in order to be effective.

INEFFECTIVE DISCLAIMERS.

Disclaimers have failed to achieve the desired result in cases where the disclaimers were ambiguous; or, where the disclaimers were not apparent and were essentially “hidden”; or, where the disclaimers were not reasonably conspicuous; or where the disclaimers were not communicated to the employee.

Ambiguity.

Ambiguity arises when the employer uses a multitude of documents to communicate company policy. In such cases, the courts have held that while the handbook did contain a disclaimer the employer created ambiguity by providing employees with other policy documents without a disclaimer. In short, disclaimers must be clear and unambiguous in order to negate the contractual effect of an employee handbook (*Johnson v. Nasca*, 1990).

Placement.

Faulty placement can occur and defeat the intent of the disclaimer when the disclaimer is not placed in a prominent place in the handbook and could easily be overlooked by a reasonable employee (*Perman v. Arcventures, Inc.*, 1990). The courts have found a disclaimer to be ineffective

when it was not distinctly set out separate and apart from the handbook text and is effectively hidden (Long v. Tazewell/Pekin Consolidated Communications Center, 1991).

Conspicuity.

Lack of conspicuity occurs when the disclaimer is of insufficient size or appearance that an ordinary reasonable employee would not see and note its contents. Where a handbook disclaimer was not set off in any way, was placed under a general subheading, was not capitalized and was of the same type size as another provision on the same page it was held to be not adequately conspicuous (McDonald v. Mobil Coal Producing, Inc., 1991).

Notice.

Failure to show that the disclaimer was communicated to the employee may be fatal to its enforcement. An employer must bring its handbook disclaimer to the personal attention of its employees (Morriss v. Coleman Company, Inc., 1987).

CASES TO EXAMINE

You have recently been hired into an HR department at a major corporation. In order to teach you about employment at will, your company has given you five cases, each describing a situation involving an employee being terminated under what the company in each case deemed to be employment at will. Examine the following five cases, and answer the questions that follow for each case.

Case 1 - The Pharmaceutical Manager.

In November, 1989, Mr. Norton, an indefinite term employee, was discharged by his employer. Before his termination, Norton had been general manager of a Minneapolis pharmaceutical services company. In Minnesota, employment for an indefinite term is considered “at will” and terminable by either party for no reason. During the course of Norton’s employment, Caremark supplied Norton with a document entitled Disciplinary Action Guidelines and explained the Guidelines to him. The company stated that the Guidelines’ termination procedure and policy “must be adhered to strictly” when an employee “deviates below an acceptable level of performance”. The Guidelines proceeded to provide for progressive discipline with a process that was to involve four steps: (1) a verbal warning; (2) a written warning; (3) a final corrective performance upgrade program; and (4) termination. Mr. Norton’s vice-president said Norton was fired for poor performance but he did not bother to follow the Guidelines beforehand. The vice-president felt justified in firing Norton because Norton was an “at will” employee.

Case 2 – Peek-A-Boo

Patricia was employed as a telecommunications dispatcher and was a permanent employee. Her company furnished her with an employee handbook entitled “Rules and Regulations Manual” that stated its contents were “designed to clarify your rights and duties”. The handbook provided that termination “cannot occur without proper notice and investigation” and advised that permanent employees “are never dismissed without prior written admonitions and/or an investigation that has been properly documented”. Contained in the section describing the duties of a telecommunications dispatcher in the same type, font, style and size as the job description text were the words: “the employer may discharge the employee at any time”. Patricia received two letters from her employer

on one day in September. The first letter set forth five complaints about her job performance. The second letter terminated her employment effective immediately. The employer felt justified in the discharge because Patricia was an "at will" employee and the manual contained a disclaimer which applied to Patricia's situation.

Case 3 – The Mortgage Company

Mark Wojcik was an employee at Commonwealth Mortgage Corporation. Mr. Wojcik was terminated by Commonwealth, for "poor performance and poor attitude" Commonwealth Mortgage does have an employee handbook, a policy manual, as well as a set of "disciplinary guidelines" that are at issue in this case. The employee handbook states the following: "The language of this handbook is not intended to create a contract between the company and any of its employees. Furthermore, the policy manual states "In no event will the hiring of an employee be considered as creating a contractual relationship between the employee and the company. Their relationship is defined as 'employment at will' where either party, with appropriate notice, may dissolve the relationship. However, the company also has a "disciplinary guideline," in a document called HR 510, that states: "Appropriate measures for correcting performance problems are coaching, memoranda outlining specific steps for improvement and probation. Termination for performance issues occurs only after the employee has been given the opportunity and support necessary for improvement. The company alleges that the statements in the employee handbook and policy manual make clear that the conditions of employment are "at will". Mr. Wojcik alleges that HR 510 creates an implied contract, which requires remediation prior to termination.

Case 4 – Monkey Business

Bonnie Eckhart and Bridget Mueller were employed without a contract by the Yerkes Regional Primate Center in Atlanta, Georgia. They complained to their superiors about transfer procedures that the company used in shipping of Macaque monkeys to research institutions. They indicated that there was a significant health risk to the public if the monkeys infected with the deadly Herpes B virus happened to escape into public places. The employees were subsequently terminated. They complained that the discharge was unfair and against public policy because they were attempting to perform a public safety measure. The company did not have a policy or handbook that dealt with whistleblowing. Georgia does not have a whistleblower statute.

QUESTIONS

Answer the following questions, for each of the above cases:

- 1) Was this a pure employment-at-will situation, or did one of the exemptions apply? If an exemption was applicable, which one?
- 2) Did the employee handbook, or other document exist, that included language that could have been deemed to create an implied contract?
- 3) If the answer to question 2 is yes, did the employer also include a disclaimer? Was the disclaimer adequate, or was it ineffective?
- 4) What would you have done differently, if anything, if you were the manager in charge at each of these companies?

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