

“No Contract” Disclaimer in Employee Handbook Upheld by Illinois Court

By **Brian T. Bedinghaus**, Associate

Employee handbooks have long been a trap for the unwary employer that desires merely to establish a set of rules and policies without undermining an at-will employment relationship with its employees. To avoid establishing unintentional contracts with employees, employers should include in their handbook a clear and conspicuous disclaimer that the handbook is “not a contract” and merely contains “guidelines” or “policies.”

In a recent unpublished decision, the Illinois Appellate Court upheld a “no contract” handbook disclaimer and dismissed an employee’s breach of contract claim filed against his former employer, Advocate Condell Medical Center (“Advocate”). In that case, the employee alleged that he had an “oral and implied” employment contract consisting of Advocate’s “Associate Handbook” and other personnel practices, memoranda, policies, and procedures. In particular, the handbook established a detailed employee Conflict Resolution Program, which, according to the employee, created a formal administrative process in which employment disputes were to be thoroughly investigated prior to an employee being discharged. The employee alleged that he was subjected to harassment, intimidation, and hostility by other employees, and that Advocate breached the employment agreement by terminating him without a proper investigation or hearing as provided by the handbook.

Advocate argued that the plaintiff was an at-will employee, and the handbook was not a contract between Advocate and its employees. The circuit court agreed with Advocate and dismissed the complaint. On appeal, the Appellate Court recognized that even an at-will employment relationship can become contractual if an employee handbook or other set of policies establish the traditional elements of a contract. However, where the handbook contains a disclaimer indicating that the handbook promises nothing and does not act as a contract, no contractual rights are conferred on the employee.

Advocate’s handbook expressly provided that its “policies and procedures serve as guides,” and that Advocate reserved “the right – at its sole discretion – to change, suspend or cancel, with or without notice, all or any part of the policies, procedures, programs, and benefits discussed in this handbook.” Most importantly, Advocate’s handbook contained the following disclaimer:

Neither the provisions of this handbook nor any other Advocate policy statements establish contractual rights, in whole or in part, between Advocate and its associates. Neither Advocate nor its associates are committed to any employment relationship for a definite period of time and either party may terminate the relationship at any time for any reason, with or without cause.

The Appellate Court found that this disclaimer was unambiguous and no employee could reasonably construe the handbook as a contract. The case is *Diefenbacher v. Advocate Condell Medical Center*, 2016 IL App (2d) 160047-U (filed Nov. 17, 2016).

The Appellate Court in *Diefenbacher* contrasted Advocate’s handbook with the handbook in another case, *Wheeler v. Phoenix Company of Chicago*, 276 Ill. App. 3d 156 (1995). The handbook in *Wheeler* contained a disclaimer in the form of an employee acknowledgment stating, “I understand that I can be discharged at any time, with or without notice for violation of any of the rules in the handbook.” However, the handbook also provided terms for a mandatory disciplinary procedure that “will be used,” and in the case of immediate termination of an employee, written permission for the employer’s president “will be obtained.” The *Wheeler*

court concluded that where the disclaimer does not contain the “unequivocal statement” that the handbook is “not a contract,” it is ineffective to negate other express promises in the handbook. Only a clear and conspicuous disclaimer can negate contractual promises.

Sometimes, even a disclaimer using the magic words is not enough. The handbook at issue in *Perman v. ArcVentures, Inc.*, 196 Ill. App. 3d 758 (1990) presented such a case. In *Perman*, the handbook’s introduction section contained what would appear to be an effective disclaimer, providing that the ensuing policies and procedures are meant to provide “guidance” and “do not constitute, modify, or otherwise alter the terms or conditions of employment of any employee, do not restrict the right of management to terminate or otherwise discipline any employee, and do not constitute an employment agreement contract with any employee.” The handbook proceeded to list specific activities that could result in termination, but it required that “discharges *must* be approved in advance by the director of employee relations or designees, and *are* subject to employee appeal through *established* grievance procedures.” It also stated that it was the employer’s policy “to *assure* every employee of the right of appeal, through an established grievance procedure from an unfavorable decision affecting his employment.” The *Perman* court concluded that although the handbook contained an otherwise appropriate disclaimer, it was not sufficiently set off from the rest of the text, printed in capital letters, or conspicuously titled to negate the effect of the unequivocal contractual terms elsewhere in the handbook.

Employers should be certain that disclaimers are not only clear and unambiguous, but also conspicuous. It is not enough to simply state that the handbook is “not a contract.” Disclaimers should be prominently set off from the rest of the handbook text, printed in capital letters or larger font, and titled appropriately. Moreover, employment handbooks should describe policies and procedures as “guidelines,” express that certain disciplinary action “may” or “may not” result, and avoid using mandatory language of commitment such as “will” and “must.” Failure to follow these steps could result in an unintentional employment contract and subject the employer to substantial liability.

If you have any other questions regarding this topic, please contact one of the listed Roetzel attorneys below.

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