THE
NATIONAL LAW REVIEW

Utah Supreme Court Highlights Importance of Disclaimers in Employee Handbooks

jackson lewis.
Article By
Conrad Shawn Kee
Jackson Lewis P.C.
Workplace Resource Center Update

- Labor & Employment
- Litigation / Trial Practice

- Utah

Wednesday, April 29, 2015

Guidance for employers seeking to maintain the at-will status of their employees and prevent employee handbooks and policies from becoming implied-in-fact contracts has come from the Utah Supreme Court, confirming the importance of a clear and conspicuous disclaimer prominently placed in an employee manual.*Tomlinson v. NCR Corporation*, 2014 UT 55 (2014). The Court also stressed that (1) the absence of a disclaimer does not automatically transform an employee manual into a contract, and (2) to be valid, the disclaimer language need not use the magic words, "at-will."

Background

Mitch Tomlinson was a customer engineer servicing and repairing ATMs at customer locations for NCR Corporation for approximately 10 years when he was terminated for "failure to properly manage [his] time reporting and improve [his] call management procedures."

Following his termination, Tomlinson sued NCR alleging 13 causes of action. Two survived NCR's motion to dismiss: (1) wrongful termination in breach of an employment contract; and (2) breach of the implied covenant of good faith and fair dealing. The trial court subsequently granted the employer's motion for summary judgment on both claims, finding Tomlinson had failed to present any evidence of an employment contract. Tomlinson appealed.

The court of appeals affirmed the dismissals, but reversed the lower court's grant of summary judgment as to Tomlinson's employment contract claims. Tomlinson's wrongful termination and breach of implied covenant claims were based on the employer's Corporate Management Policy Manual. The court of appeals held a reasonable jury could find the Policy Manual created an implied-in-fact contract limiting the employer's right to terminate Tomlinson based on an at-will employment relationship.

The Utah Supreme Court reversed the court of appeals and dismissed Tomlinson's claims.

Presumption of At-Will Employment

In a unanimous decision, the Utah Supreme Court found Tomlinson had failed to present evidence that the employer's alleged intent to enter into an agreement was sufficient to overcome Utah's presumption of at-will employment.

Tomlinson did not have an express employment agreement. However, he argued the Policy Manual created an implied employment contract. The Supreme Court first noted that "[i]n the absence of an express employment agreement, the employee bears 'the burden of establishing the existence of an implied-in-fact contract provision.'" Tomlinson pointed to two specific policies in the Policy Manual in support of his argument:

- Policy 422, which made a distinction between tactical and core workforce employees, and
- Policy 210, which stated the procedures for addressing employee misconduct and deficient performance.

The Supreme Court held that the absence of a disclaimer alone cannot transform an employer's policy into an implied-in-fact contract. It stated, "[M]ere silence is not sufficient evidence to rebut the presumption of at-will employment." In the absence of a disclaimer, the Court held, an employee policy becomes a contract only when there are also definitive statements in the policy evidencing an implied-in-fact contract. Thus, because Policy 422 did not contain definitive provisions, even in the absence of a disclaimer, the Court ruled Policy 422 did not become an implied-in-fact contract.

The Supreme Court ruled that even if Policy 210 contained definitive provisions that would have otherwise transformed the Policy into an implied-in-fact contract, the employer's clear and conspicuous disclaimer prevented the Policy from creating a contract. Policy 210 contained a disclaimer in bold text, set off by a text box, stating:

These guidelines are not intended to be contractual in nature, nor should they be interpreted as strict rules for responses to individual activity. The appropriate response to each unique situation may differ. For example, some circumstances may call for immediate action, either in the way of written warning or termination, depending upon the frequency or severity of the offense.

The Court held this disclaimer was sufficient, as a matter of law, to disclaim any contractual requirement that the employer comply with the requirements of Policy 210 despite the fact that the disclaimer was not at the beginning of the policy manual and did not contain explicit “at-will” language. The Court found the key inquiry was whether the disclaimer conveyed an express intent that the provisions of the company employment policies do not give rise to an enforceable contract.

Lessons Learned

From the opinion, it appears NCR, like many other employers, maintained an online collection of workplace policies rather than a traditional, printed employee handbook. This poses the risk of employees asserting claims based on the lack of adequate disclaimers. Employers should consider obtaining employee’s signatures on disclaimers for their employee files even in these cases.

Tomlinson clarified two issues. First, employers can avoid an employee manual or policy becoming an implied-in-fact contract by including a clear and conspicuous disclaimer. No “magic” language or words, such as “at-will,” are necessary. However, it must clearly convey the employer’s express intent that no enforceable contract arises from the manual or policy. Additionally, although recommended, the disclaimer need not be placed on the first page of the manual or policy to be valid; rather, as the Utah court explained, a court will consider the disclaimer’s text, placement, and language together.

Second, Tomlinson clarified that the absence of a disclaimer cannot, by itself, transform an employee manual or policy into an implied-in-fact contract. The proper inquiry is whether the manual or policy contains definitive, mandatory provisions. Employers involved in litigation or disputes with their employees or former employees may find this helpful; however, to avoid future claims based on a manual or policy, employers should include a clear and conspicuous disclaimer, preferably at the beginning of the handbook, to significantly hinder attempts by employees to argue a contractual right based on the terms of a manual or policy.

Employers should regularly review employee handbooks and policies to ensure they are current with recent case law and other requirements, as well as developments at the National Labor Relations Board, which has been giving extra scrutiny to workplace rules (see our article, NLRB General Counsel Issues Guidance to Employers on ‘Chilling Effects’ of Personnel Policies under National Labor Relations Act).