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Don't Unintentionally Enter Into A "Contract" with Your At-Will Employee

Most employers understand the importance of maintaining an "at-will" relationship with their employees. That is why they commonly include a prominent disclaimer in their handbooks emphasizing that employment is at-will and that there is no contract between the employer and the employee.

Nonetheless, some employers unintentionally undermine the "at-will" principle by making statements to employees that appear to be enforceable promises. This sometimes happens, for example, when an employee requests leave for disability or maternity.

In a recent pair of cases, a New Jersey state court and the federal court in New Jersey ruled in favor of the employees, based on the their employers' promises of reinstatement after leave. In this issue of NJHRLA, we will take a look at those cases to see how you can avoid making the same mistakes.

A Written "Guarantee of Reinstatement" Is Enforceable . . .

When Sarah Lapidoth went out on maternity leave from Telcordia Technologies, her employer sent her a form letter confirming the dates of her leave, and also saying, "This leave is granted with a guarantee of reinstatement up to 12 months to the same or comparable job." At Ms. Lapidoth's request, Telcordia granted an extension of her leave, confirming in a second form letter the same "guarantee of reinstatement."

Before Ms. Lapidoth returned from her maternity leave, Telcordia decided to terminate her employment and to replace her with the person who was substituting for her. Reasoning that Ms. Lapidoth was an employee at-will and that she had already had the benefit of far more leave than is required under the Family Medical Leave Act (FMLA) and the New Jersey Family Leave Act (NJFLA), Telcordia notified her while she was still on maternity leave that her employment was terminated.

Ms. Lapidoth sued under the FMLA and the NJFLA, and also included a claim of breach of contract based on the letters' "guarantee of reinstatement." The trial court granted Telcordia's motion for summary judgment on all claims.

On appeal, the New Jersey Appellate Division affirmed the dismissal of the FMLA and FLA claims, but reinstated the breach of contract claim. As to the FMLA and FLA claims, the court noted that those statutes mandate reinstatement only following a leave of 12 weeks or less, and are therefore inapplicable to the more extended leave at issue here.

As to Ms. Lapidoth's breach of contract claim, however, the court reasoned that Telcordia's letters to Ms. Lapidoth while she was out on maternity leave could be understood to create an enforceable contract, thereby entitling Ms. Lapidoth to a trial on that claim.

In reaching its conclusion, the Appellate Division made two important observations. First, the court noted that the employer had a typical "at-will" employment disclaimer in its handbook, but ruled that specific communications between an employer and employee may override such a general handbook provision. Second, the court held that the question of whether communications between employer and employee could give rise to a contract will be determined according to the "reasonable expectations" of the employee. Lapidoth vs. Telcordia Technologies, Inc., 420 N.J. Super 411 (App. Div. 2011).

. . . And So Are Oral Assurances to the Employee

Kristine Kuker worked for Eclipsys Corporation as an at-will employee. According to papers she filed in court, her human resources manager told her when she

went out on disability that she could return to her job after she fully recovered, and advised her "to remain at home until she was authorized by her physician to return to work." Similarly, Kuker claimed that her supervisor told her to "remain at home until [she] was fully recovered," and that she should delay her return until she was "100%" recovered from her infirmity."

Relying on those assurances from her employer, Ms. Kuker stayed out on an extended leave. Eclipsys eventually terminated her employment.

Ms. Kuker originally sued on various discrimination claims, but later sought to amend her complaint to add claims to breach of contract based on the oral assurances made to her by HR and her supervisor. Eclipsys opposed the amendment, arguing that Ms. Kuker was an at-will employee, and that the handbook provided that only the President could change her at-will status.

The federal court granted Ms. Kuker's motion to add a breach of contract claim to her complaint. The court reasoned that if a jury were to believe Ms. Kuker's claims about the assurances made to her by HR and her supervisor, then those assurances could be understood to create a contract of employment.

The court gave no weight to the handbook's provision that all employees were "at-will". As the court explained, Ms. Kuker was not arguing that she was no longer an at-will employee; rather she was simply arguing that Eclipsys "agreed to reinstate her as an at-will employee." Kuker vs. Eclipsys Corp., 2011 W.L. 4089583 (D.N.J., 9/8/2011).

Conclusion

Employers should have an even-handed policy about how long an employee may be absent without facing termination. That policy should apply regardless of the reason for the absence. Moreover, the employer should avoid "bending" that policy in favor of certain employees, lest the exception become the rule.

And, more specifically, supervisors and human resource managers should avoid giving assurances or advice to the employee, either in writing or orally, about when to return to work from a disability or maternity leave. That decision should be left to the employee in consultation with the employee's physician, and subject to the controlling policy of the employer.

Employers with questions about the adequacy or clarity of their leave policies should invest in the simple expedient of a review by employment counsel.

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Sean R. Kelly has over 32 years experience advising and defending employers. A graduate of Yale College and Georgetown Law, Sean is certified by the Supreme Court of New Jersey as a Civil Trial Attorney, has been repeatedly designated a "Super Lawyer" by the Law & Politics Survey of New Jersey Monthly Magazine, holds the highest rating by the Martindale-Hubbell Lawyers Directory, and is a former Master of New Jersey's Employment Law American Inn of Court.

DanaLynn Colao focuses her practice on business litigation with an emphasis on employment issues. She counsels clients, and provides training for business and professional organizations on issues that arise in the workplace, including medical leaves of absence, wage and hour claims, and employment agreements. Strategic thinking and affirmative measures enable DanaLynn to significantly reduce potential liability for her clients. DanaLynn has been repeatedly designated as a "Rising Star" by the Law & Politics Survey of New Jersey Monthly Magazine and, in 2009, was identified as one of the Top 40 Lawyers Under 40.

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