

Employment Law Alert

EMPLOYER LIABLE FOR BREACH OF CONTRACT FOR FAILURE TO FOLLOW DISCIPLINE POLICY IN EMPLOYEE HANDBOOK

In *Buttrick v. Intercity Alarms, LLC*, the Appellate Division of the state District Court upheld a jury verdict that the company breached an implied contract with Buttrick when it terminated his employment without resort to the progressive discipline policy set out in the employee handbook.

Buttrick alleged that he had been terminated without any warning, contrary to the progressive disciplinary steps outlined in the handbook. The failure to follow the policy, he argued, constituted a breach of an implied contract. The jury agreed and awarded \$41,888.00 in lost wages. The company appealed.

The Court upheld the verdict even though the handbook contained a disclaimer that it was only a guide – not a contract of employment – and notwithstanding the fact that the employer expressly reserved the right to modify the terms of the handbook unilaterally. The Court acknowledged that these factors were relevant to its analysis, but held that the “central question” was whether an employee would reasonably conclude that the handbook set out the “conditions under which employment could continue.” Although the Court noted that Buttrick did not negotiate any of the terms of the manual and that the manual did not state a term of employment, it gave significant weight to evidence that the employer had called “special attention” to its handbook on several occasions. Specifically, the employer’s operations manager had told Buttrick that it was “very necessary” that he sign an earlier version of the handbook because it contained a noncompetition provision and Buttrick testified that he honored that provision following his termination because he believed it was binding. In addition, another manager asked Buttrick to sign the handbook that was in effect at the time of Buttrick’s termination no fewer than three times. Although Buttrick did not in fact sign this handbook, he testified that he had seen it and the Court concluded that, under all of the circumstances, it was reasonable for Buttrick to believe that he was bound by its terms.

While this decision is binding only on the state district courts, it serves as a cautionary note. Employers should not assume that they are insulated from contract claims simply because they insert disclaimers in their handbooks. Promises that an employer wants to enforce, like non-compete provisions, should be set out in separate agreements. Where an employer wishes to have maximum flexibility and discretion, the handbook should expressly so state. Finally, an employer should carefully review its employee handbook to ensure that it contains only policies that the employer is prepared to enforce and that are, in fact, followed by all managers.

This *Alert* was prepared for the clients and friends of Sugarman, Rogers, Barshak & Cohen, P.C. It is provided for educational and informational purposes only and is not a substitute for professional advice on your specific legal situation.

For more information, please contact Jean A. Musiker, musiker@srbc.com (Chair, Employment Law Group), or your attorney contact at SRBC.