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ENFORCING EMPLOYMENT HANDBOOK DISCLAIMERS

KURT H. DECKER, ESQ.
Stevens & Lee
Reading Pennsylvania,
School of Law, Widener University
and St. Francis College
Loretto, Pennsylvania

ABSTRACT

This article reviews how binding commitments can be avoided in employment handbooks through the use of "disclaimers" to preserve the at-will employment relationship. It discusses the legal implications of drafting disclaimers properly by ensuring that they are prominently set forth, not inconsistent, based on adequate consideration, and are communicated.

It is only natural for employees to desire participation in determining their wages and hours along with the terms and conditions that govern their employment. Historically, many employees relied on unionization and collective bargaining to achieve these objectives. Today, however, employees themselves are increasingly asserting these issues with their employers. These challenges are arising through internal complaint procedures and litigation questioning the employer's unilateral decision-making powers as the at-will employment relationship continues to be modified [1].

The at-will employment relationship allows termination of employment by either an employee or employer at any time, for any or no reason, with or without notice [2]. Courts [3] and legislatures [4] are increasingly creating exceptions to the traditional *laissez faire* at-will employment relationship. Employee enforcement of employer commitments arising out of employment handbooks and employment policies are frequently part of these at-will employment challenges [5].

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Handbooks and policies are used by employers to communicate with their employees. Courts have, in certain circumstances, considered these employer communications as binding commitments [6]. To avoid these binding commitments, employers have added language to their handbooks and policies that "disclaim" that any binding commitments are created [6, 7]. Disclaimers are intended to preserve the at-will employment relationship and the employer's right to unilaterally terminate employees at any time, for any or no reason, with or without notice, despite contrary guidelines contained in any handbook or policy. This article examines the extent to which handbook disclaimers may preserve the at-will employment relationship.

DISCLAIMERS

An employer may wish to ensure, to the maximum extent possible, that its employment handbook is not legally enforceable because it creates no reasonable expectation that it is binding to preserve the at-will employment relationship. To maintain this nonenforceability of employer commitments, many employers have begun using disclaimers in their handbooks to preserve the at-will employment relationship and to avoid binding commitments [8].

Considerable litigation is developing over the circumstances under which these disclaimers will be enforced [9]. It is no longer a "given" that a disclaimer will always defeat an at-will employee's claim. Extreme care must be taken in drafting the handbook's disclaimer. Likewise, it must be regularly reviewed to ensure continued effectiveness in preserving the at-will employment relationship. Disclaimers are being challenged on the basis of their failure to be prominently set forth, inconsistency, lack of consideration, and dissemination [8].

For employee relations reasons, an employer may be unwilling to state clearly that its employment policies and rules are unenforceable. A disclaimer undermines the morale-boosting effect of any statement that termination will be fair or only for cause. Equally important, if an employer has promulgated carefully developed written policies preserving the at-will employment relationship, the employer should preclude the possibility that informal communication by a recruiter or supervisor constitutes an enforceable promise outside the scope of written policies.

When drafted with care, disclaimers will be enforced by the courts [10]. Disclaimers may appear on applications [11] and in handbooks [12]. For example, the effectiveness of a disclaimer to preserve the at-will employment relationship that was included on an employment application was illustrated where the employee claimed that termination after twelve years of employment was wrongful because the employer had a duty not to terminate without "just cause" [13].

Not all disclaimers, however, can defeat an employee's claim. The legal effect of disclaimers depends on their negating the reasonableness of employee reliance on subsequent employer statements or conduct that otherwise might support an

inference of an employment security promise. A disclaimer does not create the at-will employment relationship as a matter of law [14]. In many cases, the dispute over the legal effect to be given a disclaimer is factual [15].

For example, a handbook indicating that its purpose was to explain the employer's policies may create binding commitments despite a disclaimer [16]. Having announced this policy, presumably with a view to obtaining improved employee attitudes and behavior along with better work performance, the employer may not be able to treat its policies as illusory by using a disclaimer [16]. The employee may be entitled to enforce these handbook representations, despite a disclaimer's presence, where it can be demonstrated that:

1. The employer should have reasonably expected the employee to consider the representation as an employer commitment;
2. The employee reasonably relied upon the representation; and
3. Injustice can be avoided only by the representation's enforcement [17].

The wording and placement of the disclaimer is becoming increasingly important to preserve the at-will employment relationship. For example, where an employee had signed three separate employment agreements, each contained a provision stating that "the Employee's employment with the Company may be terminated by either party at any time" [18]. Despite written acknowledgment of this employment condition, the provision was silent regarding whether or not "good cause" was necessary for termination [18]. The statement could not be interpreted as creating an agreement that the employee could be terminated for merely any reason [18].

Limiting modifications of employment policies to writings may not preclude an inference that a written modification has occurred through publication of a handbook or other written personnel policies [19]. A disclaimer, no matter what its terms or clarity, however, may not be able to extinguish the covenant of good faith and fair dealing in a jurisdiction recognizing this doctrine [20].

Prominence

To be enforceable in preserving the at-will employment relationship, courts are increasingly finding that the disclaimer must be prominently displayed or conspicuous to the employee reading the employment handbook [21]. The question of whether a disclaimer is prominently displayed or conspicuous to the employee is a question of law to be determined by the court.

This concept was reviewed in *Arellano v. AMAX Coal Co.* [22]. In *Arellano*, the employer relied on the following language [22, p. 1402]:

> [This booklet] is not meant to cover everything and is not intended to be a contract between the Company and its employees. Rather, the handbook is intended to explain most procedures and policies that we try to operate by.

The disclaimer was located in the middle of a letter from the general manager of operations, which welcomed new employees. It was not underlined, highlighted, or set off, and its print was the same size as all other print preceding it. Based on these deficiencies, the court found that an employer could not make representations to employees that their employment would be governed by certain terms to procure employment, force loyalty, discourage unionization, or for whatever other reason, yet surreptitiously reserve for the employer the right to capriciously depart from those same terms [22]. Employees may read the disclaimer in conjunction with all other handbook provisions, but unless the disclaimer is made so prominent or conspicuous that the employee reading it would know that the representations made in the handbook may be deviated from by the employer at any time without notice, the disclaimer is not enforceable [22].

A similar result was reached in *McDonald v. Mobil Coal Producing, Inc.* [16]. The application form that the employee signed contained the following disclaimer [16, p. 988]:

> READ CAREFULLY BEFORE SIGNING
>
> I agree that any offer of employment, and acceptance thereof, does not constitute a binding contract of any length, and that such employment is terminable at the will of either party, subject to appropriate state and/or federal laws.

The handbook, which the employee received, contained the following disclaimer, located on its first page [16, p. 989]:

> WELCOME
>
> Mobile Coal Producing, Inc., Caballo Rojo Mine, is proud to welcome you as an employee. We believe you will find safety, opportunity and satisfaction while making your contribution to Mobil's growth as a major supplier of coal.
>
> This handbook is intended to be used as a guide for our nonexempt mine technicians and salaried support personnel, to help you understand and explain to you Mobil's policies and procedures. It is not a comprehensive policies and procedures manual, nor an employment contract. More detailed policies and procedures are maintained by the Employee Relations supervisor and your supervisor. While we intend to continue policies, benefits and rules contained in this handbook, changes or improvements may be made from time to time by the company. If you have any questions, please feel free to discuss them with your supervisor, a member of our Employee Relations staff, and/or any member of Caballo Rojo's Management. We urge you to read your handbook carefully and keep it in a safe and readily available place for future reference. Sections will be reviewed as conditions affecting your employment or benefits change.
>
> Sincerely,
> /s/ R. J. Kovacich
> Mine Manager
> Caballo Rojo Mine

The disclaimers in the application and handbook were not set off by a bolder, larger print, or capitalization. Additionally, the disclaimers were unclear as to their effect on the employment relationship. The attempted disclaimers in the application and handbook were insufficiently conspicuous to bind the employee [16]. However, where a disclaimer is prominently placed in the handbook on the first or last page, signed, detached, and understood by the employee, it will be enforced [23].

Inconsistency

Inconsistencies negating the disclaimer's ability to preserve the at-will employment relationship may arise out of what is or is not contained in different documents, within the same document, or in oral representations whether implied or explicit. For example, in *McLain v. Great American Insurance* [24], a disclaimer's effectiveness on an application was reviewed where no similar disclaimer existed in the employment handbook. The back page of the application contained the following provision [24 at 208 Cal App. 3d 1477, 256 Cal. Rptr. 864]:

> In consideration of my employment, I agree to conform to the rules and regulations of the GREAT AMERICAN INSURANCE COMPANY, and I agree that my employment and compensation can be terminated with or without cause, and with or without notice, at any time, at the option of either the GREAT AMERICAN INSURANCE COMPANY or myself. I also understand and agree that the terms and conditions of my employment may be changed, with or without cause, and with or without notice, at any time by the GREAT AMERICAN INSURANCE COMPANY. I understand that no representative of the GREAT AMERICAN INSURANCE COMPANY, has any authority to enter into an agreement for any specified period of time, or to make an agreement contrary to the foregoing.

The employee signed a few lines below this provision, but testified that he had not read it and that no one from the employer had even pointed it out or discussed it with him [24]. The handbook contained a disclaimer. Because the application did not contain an integration clause, the disclaimer was not effective where parole evidence proved the existence of a just cause termination standard in the handbook and through the employer's termination practices [24, 25].

Clarity in the disclaimer's language is likewise important in avoiding inconsistencies. It would be unfair to allow an employer to distribute a handbook that makes the employees believe that certain promises have been made and then to permit the employer to renege on these promises. If the employer does not want the handbook to be capable of being construed as a binding commitment, the employer can include in a very prominent position an appropriate statement "that there is no promise of any kind by the employer contained in the manual; that regardless of what the manual says or provides, the employer promises nothing and remains free to change wage and all other working conditions without having

to consult anyone and without anyone's agreement; and that the employer continues to have the absolute power to fire anyone with or without good cause." [26, 99 N.J. 309, 491 A. 2d 1271]. To be consistent with this statement, the handbook must avoid any contrary implied or specific reference to a cause, good cause, reasonable cause, just cause, fair discipline, or similar termination standard. Job security references pertaining to regular, permanent, or life employment should also be removed [1].

Consideration

The concept of consideration becomes important where an employment handbook is modified to include a disclaimer to reestablish the at-will employment relationship when previous binding commitments existed. For the disclaimer to be enforceable, additional consideration must be provided [27]. The rationale for imposing the additional consideration requirement is similar to that used when restrictive covenant obligations are imposed upon a current employee [28].

Restrictive covenants are generally used by employers to curtail an employee's competing activities after the employment relationship is terminated [28 at §§3.54-3.75]. They usually limit the employee's ability to engage in competing employment or a business for a given time period and within a specific geographical area [28 and §§3.54-3.75]. To be enforceable, a restrictive covenant must be given in exchange for something, either some benefit to the employee or some detriment to the employer's interest, and cannot impose undue hardship on the employee. Some form of consideration must be present. When supported by consideration ancillary to a legitimate employment contract, and reasonable and consistent with the public interest, restrictive covenants are enforceable.

Employment may not be sufficient consideration if the employee can be terminated at will [29]. The right to be employed may be an illusory consideration because the employer can terminate at any time, for any or no reason, with or without notice. Employment contracts based on illusory consideration will not support a restrictive covenant [30]. Nominal consideration, that is, the payment of $1.00, will not support a restrictive covenant [31].

Continued employment presents other consideration problems. The employer's continued agreement to employ an employee can constitute valid consideration for a restrictive covenant when the employee cannot be terminated at will [32].

Continued employment, however, cannot be the sole consideration given in exchange for a restrictive covenant if the employee is already employed and the covenant is sought to be imposed [33]. Because the employee is already employed, simply continuing employment does not provide anything new. For valid consideration to exist, the employer must give the employee something new in addition to the continued employment; for example, more money, another fringe benefit, greater responsibility, or a new position [34]. If the consideration is to be additional compensation, it must be new [35], although even new

consideration may be insufficient [36]. When an employee has an existing right to receive a benefit, the employer cannot condition that right on an employee's willingness to sign a restrictive covenant [30]. For example, when the employer required the employee to sign the restrictive covenant to receive a lump sum profit-sharing benefit to which the employee was already entitled, it was not enforced [37].

These analogous principles for determining the enforceability of restrictive covenants on current employees were applied to a handbook in *Thompson v. Kings Entertainment Co.* [27]. In *Thompson*, the additional consideration requirement was found absent in enforcing a new disclaimer that attempted to reestablish the at-will employment relationship for current employees [27].

Two handbooks were involved. The handbook under which the employee began working defined a "dismissal" as a "separation . . . for cause" [27, p. 872]. Subsequently, a new handbook was placed into effect providing that either the employee or the employer "may terminate [the] employment at any time with or without cause and with or without notice" [27, p. 872]. Analyzing the subsequent handbook within the contractual framework of restrictive covenants was found consonant with the public policy behind handbook commitment enforceability. In finding handbooks as contracts, it was pointed out that courts have been receptive to the argument that employers should be bound by their expressed policies to preclude their offering "with one hand what [they] take away with the other" [27, p. 875].

In *Thompson*, it was assumed that the employer bargained away its right to terminate the employee with just cause by issuing the second handbook [27]. To permit the employer to unilaterally convert the employee's status to an at-will employment relationship merely by issuing a second handbook to that effect would violate this policy. By requiring the elements of contract modification to be met, it would be ensured that the employee had assented to and received consideration in exchange for the status change [27].

Dissemination

To enforce a disclaimer that preserves the at-will employment relationship, it is becoming increasingly important that the employer physically disseminate, distribute, and communicate the employment handbook's disclaimer to the employee. For example, in *Rynar v. Ciba-Geigy Corp.* [38], undistributed personnel policies were found to create no binding employer commitments. Prior to employment, the employee was not informed or given a copy of the employer's policy regarding termination, but later received a copy of the policy solely to implement it in connection with a plant closing. Because no dissemination occurred, the policy had not become part of any employment agreement [38]. This rationale comports with the growing requirement that disclaimers be prominently and conspicuously displayed in the handbook [39].

DRAFTING DISCLAIMERS

In drafting the employment handbook's disclaimer clause, the following should be considered [8 at §3.4]:

1. Advise employees that the handbook does not set forth a binding commitment of any kind and that what is contained in the handbook is for guidance and illustration only;
2. Advise employees that the handbook reflects current procedures and policies that the employer may change at any time for any or no reason with or without advance notice;
3. Advise employees that the handbook sets forth the employer's procedures and policies in their entirety that can only be altered by an authorized written employer amendment;
4. Advise employees that the handbook does not constitute an employment contract and that employment is at-will in that it can be terminated at any time, for any or no reason, with or without notice by the employee or employer;
5. Place it in bold type at the handbook's beginning and anywhere else that it appears in the handbook; and
6. Make sure that the employee reads the disclaimer and signs an acknowledgment verifying that he or she has read and understands the disclaimer.

CONCLUSIONS

Employment handbooks can create binding employer commitments. Disclaimers when properly drafted can limit or avoid binding commitments and preserve the at-will employment relationship [39]. To ensure that disclaimers are effective, employers may have to take extra precautions. Some of these precautions may involve [40]:

1. Putting extra emphasis on the disclaimer to distinguish it from the handbook's general language, by placing it in bold type or in a different color [21];
2. Specifying that the disclaimer relates to every statement in the handbook and is not restricted by any contrary statement in the handbook [24];
3. Avoid placing mandatory statements in the employment handbook by using the terms "recommended," "suggested," "generally advisable," and so forth;
4. Providing that the disclaimer is operative "notwithstanding any oral or written statement to the contrary" and that no one has the authority to make commitments contrary to the disclaimer [24];
5. Giving additional consideration where the handbook modification or disclaimer is included after employment has commenced [27]; and

6. Disseminating the disclaimer so that the employee is aware of its contents before employment commences or continues along with ensuring that the employee has read and has understood the disclaimer by signing an acknowledgment [41].

Unless the above procedures are followed, it is apparent that courts will no longer without question enforce the disclaimer to preserve the at-will employment relationship.

Despite these precautions, the signs are on the horizon that any disclaimer, no matter how conspicuous or prominent, may not be enforced in the future because what appears after it will be considered illusory and employers will no longer be permitted to offer "with one hand what [they] take away with the other" [27, p. 875]. In reality, this is not an inconsistent or unfair result for employees or employers in that each should clearly say what they mean in the employment relationship. Employers should not be permitted to hide behind legal technicalities that have no supportable rationale. In other words, disclaimers should be given no enforceable effect where they are illusory [27, p. 875].

* * *

Kurt H. Decker is a partner with the law firm of Stevens & Lee in Reading, Valley Forge, Allentown, and Harrisburg, Pennsylvania. He serves as an adjunct professor with the School of Law, Widener University and with the Graduate School of Industrial Relations at Saint Francis College in Loretto, Pennsylvania. Mr. Decker is the author of numerous books and articles on employment law, published by John Wiley & Sons. He is also the author of the *Individual Employment Rights Primer* (1991), published by Baywood Publishing Company, Inc.

REFERENCES

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2. Restatement (Second) of Agency § 442 (1958).
3. *See, e.g., Pugh v. See's Candies, Inc.*, 116 Cal. App.3d 311, 171 Cal. Rptr. 917 (1981) (oral promise created where the employer's practice was to terminate only for just cause); *Cleary v. American Airlines, Inc.*, 111 Cal. App.3d 443, 168 Cal. Rptr. 722 (1980) (implied covenant of good faith and fair dealing created through longevity of service requiring just cause for termination); *Tameny v. Atlantic Richfield Co.*, 27 Cal.3d 167, 610 P.2d 1330, 164 Cal. Rptr. 839 (1980) (refusing to participate in an illegal price-fixing scheme).

4. *See, e.g.,* Mont. Code §§ 39-2-901 to 39-2-914 (1988) (Montana's Wrongful Discharge from Employment Act); *see Barnes v. Stone Container Corp.*, 942 F.2d 689 (9th Cir. 1991) (employee who is covered by a collective bargaining agreement and files a claim under Montana's Wrongful Discharge from Employment Act is preempted from proceeding by federal Labor Management Relations Act); *Allmaras v. Yellowstone Basin Prop.*, 248 Mont. 477, 812 P.2d 770 (1991) (Montana's Wrongful Discharge from Employment Act does not violate any constitutional right to a jury trial); *Johnson v. Montana*, 238 Mont. 215, 776 P.2d 1221 (Mont. 1989) (classifications created under Montana's Wrongful Discharge from Employment Act do not violate equal protection guarantees under state's constitution); *Meech v. Hillhaven West, Inc.*, 238 Mont. 21, 776 P.2d 488 (Mont. 1989) (elimination of common-law tort actions in Montana's Wrongful Discharge from Employment Act do not violate state's constitution); *see also* H. Perritt, *Employee Dismissal Laws and Practice*, (3rd Edition), John Wiley & Sons, Inc., New York, 3d ed. Ch. 9, 1992; B. Rosemann, Summary of Model Employment Termination Act in H. Perritt, *1992 Wiley Employment Law Update*, Ch. 8, 1992; K. Decker, At-Will Employment in Pennsylvania after "Banas" and "Darlington" New Concerns for a Legislative Solution, 32 *Vill. L. Rev.* 101 (1987); K. Decker, Federal Regulation of At-Will Employment, 61 *U. Det. J. Urban L.* 351 (1984); K. Decker, At-Will Employment in Pennsylvania—A Proposal for its Abolition and Statutory Regulation, 87 *Dickinson L. Rev.* 477 (1983); K. Decker, At-Will Employment: A Proposal for its Statutory Regulation, 1 *Hofstra Labor.* L.J. 107 (1983); H. Perritt, Wrongful Discharge Legislation, 35 *UCLA L. Rev.* 65 (1987).
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6. *See, e.g., Toussaint v. Blue Cross & Blue Shield*, 408 Mich. 579, 292 N.W.2d 880 (1980) (oral statements combined with employment handbook may create binding commitments; however, disclaimer can preserve at-will employment relationship).
7. *See, e.g., Batchelor v. Sears, Roebuck & Co.*, 574 F. Supp. 1480 (E.D. Mich. 1983) (disclaimer can avoid binding commitments).
8. *See*, K. Decker and H. Felix, *Drafting and Revising Employment Handbooks*, John Wiley & Sons, Inc., New York, Ch. 2, 1991.
9. *See, e.g., Tazewell/Pekin Communications Ctr.*, 211 App.3d 134, 158 Ill. Dec. 798, 574 N.E.2d 1191 (1991) (inconspicuous disclaimer not enforceable); *McDonald v. Mobil Coal Producing, Inc.*, 820 P.2d 986 (Wyo. 1991) (summary judgment should not have been granted for the employer where a material issue of fact existed regarding whether the employee reasonably could rely on an employment handbook that

established fair treatment and disciplinary proceedings, even though a contract disclaimer was also included).

10. *See, e.g., Doe v. First Nat'l. Bank*, 865 F.2d 864, 872-873 (7th Cir. 1989) (prominent disclaimer in employment handbook precluded any promise element of implied contract).
11. *See Holloway v. K-Mart Corp.*, 113 Wis.2d 143, 334 N.W.2d 570 (1983). *See also Leahy v. Federal Express Corp.*, 609 F.Supp. 668, 671-672 (S.D.N.Y. 1985) (statement in application reserving the right to terminate precluded action based on employment handbook representations); *Ferraro v. Koelsch*, 119 Wis.2d 407, 360 N.W.2d 735, 736 (Ct. App. 1984) ("I agree that my employment may be terminated by this Company at any time without liability," contained in application precludes enforceable employment tenure based on subsequently distributed handbook), *aff'd by different rationale*, 124 Wis.2d 154, 368 N.W.2d 666 (1985).
12. *See Doe v. First Nat'l Bank*, 865 F.2d 864, 872-873 (7th Cir. 1989) (prominent disclaimer in employment handbook precluded any promise element of implied contract); *Pratt v. Brown Mach Co.*, 855 F.2d 1225, 1233-1236 (6th Cir. 1988) (employment handbook page reserving right to terminate at will precluded reasonable reliance on later general assurances by supervisor and modified any contract resulting from earlier oral assurance that termination would occur only for just cause); *Dell v. Montgomery Ward & Co.*, 811 F.2d 970, 973 (6th Cir. 1987) (statement in employment handbook that procedural provisions "do not form an employment contract" prevented implied contract from arising despite ambiguous messages given to employee by documents); *Edwards v. Whirlpool Corp.*, 678 F. Supp. 1284, 1291, (W.D. Mich. 1987) (statement at beginning of employment handbook that it is "not deemed to constitute . . . a contract of employment" sufficient to prevent handbook from serving as basis for implied contract to terminate only for just cause); *Finney v. Aetna Life & Casualty Co.*, 202 Conn. 190, 520 A.2d 208, 214 n. 5 (1987) (employers can protect themselves against liability based on employment handbooks by including appropriate disclaimers; dictum); *Simonson v. Meader Distrib. Co.*, 413 N.W.2d 146, 148 (Minn. Ct. App. 1987) (reservation of management right in disclaimer to deviate from employment handbook precluded suit on handbook provisions).
13. *Novosel v. Sears, Roebuck & Co.*, 495 F. Supp. 344 (E.D. Mich. 1980).
14. *See, e.g., Jones v. Central Peninsula Gen. Hosp.*, 779 P.2d 783 (Alaska 1989) (single sentence in employment handbook stating that handbook was informational only and not an employment contract was too ambiguous and inconspicuous to be effective disclaimer); *Wilkerson v. Wells Fargo Bank*, 212 Cal. App.3d 1217, 261 Cal. Rptr. 185 (1989) (at-will provisions in a bank's employment handbook do not establish at-will employment as a matter of law where evidence was presented that the bank's policy was only to terminate for good cause).
15. *See Uebelacker v. Cincom Sys., Inc.*, 48 Ohio App.3d 268, 549 N.E.2d 1210, 1216-17 (1988) (disclaimer in employment handbook prevented contract status for handbook, but subsequent oral assurances entitled employee to trial on promissory estoppel theory); *Tohline v. Central Trust Co.*, 48 Ohio App.3d 280, 549 N.E.2d 1223, 1227 (1988) (disclaimer of intent to form contract negated possibility of assent to first employment handbook, but second handbook lacking disclaimer could be basis of

implied contract; finding no breach by termination for misuse of credit union withdrawal procedure), *dismissed*, 41 Ohio St.3d 703, 534 N.E.2d 1202 (1989).

16. *See McDonald v. Mobil Coal Producing, Inc.*, 820 P.2d 986 (Wyo. 1991) (summary judgment should not have been granted for the employer where a material issue of fact existed regarding whether the employee reasonably could rely on an employment handbook that established fair treatment and disciplinary procedures even though a contract disclaimer was also included).
17. *See Cronk v. Intermountain Rural Electric Association*, 765 P.2d 619, 624 (Colo. App. 1988).
18. *Morris v. Chem-Lawn Corp.*, 541 F.Supp. 479 (E.D. Mich. 1982).
19. *See, e.g., Butzer v. Camelot Hall Convalescent Ctr., Inc.*, 183 Mich. App. 194, 454 N.W.2d 122, 124 (1989) (jury question presented as to whether employment handbook was writing within terms of disclaimer provision limiting authority to modify employment at-will).
20. *See Stark v. Circle K. Corp.*, 751 P.2d 162, 166 (Mont. 1988) (affirming jury verdict of $270,000 for employee terminated for refusing to sign dispute probation notice; reservation in application of right to terminate at will could not override covenant of good faith and fair dealing, which exists as matter of law and policy).
21. *See, e.g., Jimenez v. Colorado Interstate Gas Co.*, 690 F. Supp. 977 (D. Wyo. 1988) (to be effective, disclaimer must be conspicuously displayed).
22. *Arellano v. AMAX Coal Co.*, 6 I.E.R. Cas. (BNA) 1399 (D. Wyo. 1991).
23. *See, e.g., Habighurst v. Edlong Corp.*, 209 Ill. App.3d 426, 568 N.E.2d 226 (1991) (disclaimer prominently placed on the employment handbook's final page, signed, detached, and understood by the employee negated any handbook commitments and preserved the at-will employment relationship).
24. *McClain v. Great American Insurance*, 208 Cal. App.3d 1476, 256 Cal. Rpts. 863 (1989).
25. *See also Harden v. Maybelline Sales Corp.*, 230 Cal. App.3d 1550, 282 Cal. Rptr. 96 (1991) (at-will employment clause in standardized preprinted application cannot be sole basis for determining whether just cause termination standard exists where application is only solicitation of employment offer and not an employment contract and cannot be partially integrated to preclude consideration of contemporaneous oral agreement sunder parol-evidence doctrine).
26. *Wooley v. Hoffman-LaRoche, Inc.*, 99 N.J. 284, 309, 491 A.2d 1257, 1271 (1989), *modified*, 101 N.J. 10, 499 A.2d 515 (1985); *see also Martin v. Capital Cities Media, Inc.*, 354 Pa. Super. 199, 511 A.2d 830 (1986) (suggesting the use of disclaimers by employers to preserve the at-will employment relationship).
27. *See, e.g., Thompson v. Kings Entertainment Co.*, 653 F. Supp. 871 (E.D. Va. 1987) (an employer who has bargained away the right to terminate employees without just cause through an employment handbook cannot unilaterally convert an employee's status to an at-will employment relationship by merely issuing a second handbook; the employer must comply with contract modification requirements before doing so to ensure that the employee has assented to and received additional consideration for a status change).
28. *See* K. Decker and H. Felix, *Drafting and Revising Employment Contracts* §3.56, John Wiley & Sons, Inc., New York, 1991.

29. *See, e.g., Super Maid Cook-Ware Corp. v. Hamil*, 50 F.2d 830 (5th Cir.), *cert. denied*, 284 U.S. 677 (1931) (restrictive covenant not enforced when no employment term was specified or other consideration was present); *Ridley v. Krout*, 63 Wyo. 252, 180 P.2d 124 (1947) (same).
30. *See, e.g., Markson Bros. v. Redick*, 164 Pa. Super. 499, 66 A.2d 218 (1949) (week-to-week employment not sufficient consideration to support a restrictive covenant).
31. *See, e.g., George W. Kistler, Inc. v. O'Brien*, 464 Pa. 475, 347 A.2d 311 (1975) ($1.00, along with nominal consideration not sufficient to support a restrictive covenant).
32. *See, e.g., Tasty Box Lunch Co. v. Kennedy*, 121 So.2d 52 (Fla. App. 1960) (continuing employment and commitment to pay commissions were sufficient consideration for restrictive covenant); *see also Knight, Vale & Gregory v. McDaniel*, 37 Wash. App. 366, 680 P.2d 448, *petition denied*, 101 Wash.2d 1025 (1984) (restrictive covenant enforceable when signed on first workday and employment continued over a three-year period).
33. *See, e.g., Kadis v. Britt*, 224 N.C. 154, 29 S.E.2d 543 (1944) (restrictive covenant not enforced when entered into several years after original employment commenced, absent any additional consideration outside of continued employment); *Schneller v. Hayes*, 176 Wash. 115, 28 P.2d 273 (1934) (same).
34. *See, e.g., Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1324 (9th Cir. 1980) (for a valid restrictive covenant to exist after employment commences, some change in the employee's status must occur); *Maintenance Specialties, Inc. v. Gottas*, 455 Pa. 327, 314 A.2d 279 (1974) (same); *Jacobson & Co. v. International Env't Corp.*, 427 Pa. 439, 235 A.2d 612 (1967) (profit-sharing plan and continued employment sufficient to enforce restrictive covenant).
35. *See, e.g., Perthon v. Stewart*, 243 F. Supp. 655 (D. Or. 1965) (no new consideration exchanged for restrictive covenant entered into after employment commenced).
36. *See, e.g., Capital Bakers, Inc. v. Townsend*, 426 Pa. 188, 231 A.2d 292 (1967) (change of status from house bakery salesman to supervisor not sufficient consideration to enforce subsequent restrictive covenant not ancillary with taking of employment).
37. *See, e.g., Mason Corp. v. Kennedy*, 286 Ala. 639, 244 So.2d 585 (1971) (no additional consideration received by employee for enforcement of restrictive covenant).
38. *See Rynar v. Ciba-Geigy Corp.*, 560 F.Supp. 619 (N.D. Ill. 1983) (undistributed personnel policies found to create no binding employer commitments).
39. *See, e.g., Doe v. First Nat'l Bank*, 865 F.2d 864, 872-873 (7th Cir. 1989) (prominent disclaimer in employment handbook precluded any promise element of implied contracts).
40. *See* K. McCullough, 4 *Termination of Employment: Employer and Employees Rights Bulletin*, 4 (Dec. 5, 1988).
41. *See, e.g., Montgomery v. Association of American Railroads*, 741 F. Supp. 1313 (N.D. Ill. 1990).

Direct reprint requests to:

Kurt H. Decker, Esq.
Stevens & Lee
P.O. Box 679
607 Washington Street
Reading, PA 19601