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A Cautionary Tale: Court Gives Employee Handbook Disclaimer Thumbs Down

Legal Alert

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New Jersey employers have relied on disclaimers in their employee handbooks to defend against breach of contract claims for more than 30 years. If you thought they had this worked out, you might be in for an unpleasant, and costly, surprise. On February 13, 2018, the Superior Court of New Jersey, Appellate Division, handed down a ruling in *Maselli v. Valley National Bancorp.,* refusing to uphold an employee handbook disclaimer as a matter of law, and deciding instead the disclaimer was ambiguous. This is precisely the result employers have been trying to avoid.

What was the ruling?

As you likely know, in New Jersey, unless there is an express or implied employment agreement, most employment is "at will." That means an employer may generally terminate an employment relationship at any time for any reason or no reason at all, unless the termination is in violation of another law, such as an anti-discrimination law. In *Maselli v. Valley National Bancorp.*, the plaintiff, a former employee of the defendant bank, sued his former employer, alleging the bank's Code of Conduct and Ethics (the "Code") (essentially an employee handbook) was binding on the employer, and that the bank had breached promises to proceed in accordance with that Code *before* the employee was terminated. The bank moved to dismiss the plaintiff's case because the bank's Code expressly stated it did not create a contract of employment. Although the trial court granted the bank's motion to dismiss, the plaintiff appealed.

The question presented on appeal was whether the trial court was right that the disclaimer in the Code of Conduct and Ethics was effective *as a matter of law*, which required the Court to conclude the disclaimer was susceptible of only one meaning – the one advanced by the bank. The appeals court ruled that it was not and overturned the trial court's ruling.

The disclaimer stated:

> Employment is at Will:
>
> Employees of Valley National Bank are generally employees-at-will. This means that both the employee and Valley have the unrestricted right to terminate the employment relationship, with or without cause, at any time. No employee or agent of Valley National Bank is authorized to make any oral or written representations altering the at-will employment relationship unless made the subject of a specific written contract of employment. Such contract can only be authorized by the Chairman, President, and CEO.

> It should be noted that nothing contained in this Valley Code of Conduct and Ethics or in any policy or work rule of Valley shall constitute a contract of employment or a contract or agreement for a definite or specified term of employment.

In New Jersey, disclaimers in employee handbooks are effective only if they are in a very prominent position and are clear.

Here, the Court found that, although the disclaimer was prominently positioned, it was ambiguous. The Court focused specifically on the phrase "contract of employment," which it found could be interpreted to mean "related to your employment in any way" (and, therefore, would be an effective disclaimer). However, the Court found the phrase could alternatively mean "a contract to employ," which would only disclaim an employment contract but would not disclaim the bank's promise to abide by the Code as long as an employee remained employed. Due to this ambiguity, the Court concluded that only a jury after a trial, and not the judge before a trial, could determine whether the disclaimer effectively disavowed all of the bank's potential contractual obligations under the handbook. As a result, it overturned the trial court's ruling.

Why does this matter?

An ineffective disclaimer will undermine an employer's expectations of a defense to employee claims based upon promises allegedly made in its handbook. While handbooks are useful tools for employers to communicate employment policies and often reflect the employer's best intentions, employers typically do not expect to be bound by law by the "promises" in their handbooks and want to retain the flexibility to manage employees in a manner that is best suited to the needs of the business. In any event, employers certainly do not want to bear the expense and suffer the disruption of defending themselves before a jury as to whether they honored a voluntarily instituted policy, which imposes greater obligations than the applicable law.

What should employers do?

Employers should consult with labor and employment counsel in light of this ruling to assess their handbooks and ensure they contain prominently displayed, clear and unambiguous disclaimers. This could make the difference between a case that is never brought or, at least, dismissed shortly after it is filed, and a case that goes through a costly trial. Flaster Greenberg can help. To learn how, we invite you to contact Adam Gersh, Phil Kirchner, Kenneth Gilberg, Jeremy Cole, or any member of Flaster Greenberg's Labor and Employment Practice Group.

One final word: When the Court gives you an explicit roadmap, use it.

In support of its decision, the appellate court cited an earlier case, *Woolley v. Hoffman-La Roche, 99 NJ 284, modified,* 101 NJ 10 (1985), in which the New Jersey Supreme Court spelled out verbatim what an effective disclaimer *could* say to effectively disclaim liability. Id. At 309. Although the Court in Woolley did not say its formulation was the only language that would work, a New Jersey employer's safest bet would be to use language in its handbook at least close to the language already endorsed by the highest court in the state. It is rare when a court draws a line for future reference as clear as the one announced over 30 years ago in

the Woolley case; when it does, be wise and use it.

ATTORNEYS MENTIONED

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