

Illinois Court: Employee Handbook Created “Agreement” to Support Employees’ wage Claim, even Where Disclaimers Prevented “Contract”

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A federal district court judge in Northern Illinois has ruled that an employee handbook, while not a “contract”, may still be an “agreement” upon which employees may rely — and sue. In this particular case, the judge denied the employer’s motion to dismiss a claim under the Illinois Wage Payment and Collection Act (IWPCA), finding that the handbook’s statements regarding compensation were an “agreement” upon which the employees’ could base their claim, despite the handbook’s numerous disclaimers stating that no legally enforceable promise was being made. The ruling, while narrowly applied in this case to support an IWPCA claim, could potentially raise major issues for Illinois employers that rely on such disclaimers to protect themselves against claims based on handbook provisions.

The case, *Wharton v. Comcast Corp.*, No. 12-C-1157 (N.D. Ill. Dec. 6, 2012), arose when a group of employees’ brought various claims based upon their employer’s alleged failure to pay overtime wages. Among those claims was one under the IWPCA, which provides a cause of action to employees for any unpaid wages that they are owed “pursuant to an employment contract or agreement”. The employees pointed to their employee handbook as the “contract or agreement” upon which they based their claim. The employer moved to dismiss the IWPCA claim, arguing that the handbook contained repeated warnings that it was “not intended to create an express or implied contract”, that it did not create any “legally enforceable promise”, and that the employer “reserve[d] the right to change, delete, suspend, discontinue, or otherwise revise” the handbook.

Judge Holderman of the Northern District of Illinois disagreed with the employer, finding that the handbook could support the employees’ claim because it was an “agreement” under Illinois law. To make this finding, the judge drew a distinction between a contract (i.e., an “exchange of promises”) and an agreement (i.e., “mutual assent to terms”), and reasoned that “employment handbooks can still create an agreement, even if they do not create a contract.” The essential quote – and the statement that the plaintiffs’ bar is most likely to seize on – is the following:

It is irrelevant that the disclaimers in the ... handbooks prevent the creation of a “promise,” and it is similarly irrelevant that all the handbooks purport to be “guidelines” and retain [the employer’s] right to change the terms in the handbooks at any time. **Reserving the right to change the terms prevents the creation of a promise, but it does not vitiate [the employer’s] assent to the terms in the handbooks, at least so long as the handbooks were in effect. The absence of a promise thus does not preclude the existence of an agreement.**

Further, to the employer’s stated concern that the decision would discourage employers from making any statements regarding compensation in their handbooks, the judge wrote that “[t]he court does not share [the employer’s] worries.” Employers can avoid liability “by merely disclosing their compensation policies,” the judge wrote, and by “then complying with the policies they have disclosed.” As a result, the judge denied the employer’s motion and ordered the case, including the employees’ IWCPA claim, to go forward.

In the short term, this ruling presents a new risk for Illinois employers — employee wage claims under the IWCPA based on employee handbook provisions. All Illinois employers should therefore immediately review their handbooks to ensure that any statements regarding compensation are reasonable and are being complied with. In the long term, however, the decision could have even larger implications, insofar as it suggests that there is room for employees to rely on “mutually—assented terms” in a handbook in all types of cases, even where a “contract” has been expressly disclaimed. In particular, the judge’s reasoning for brushing off the employer’s stated concerns in this case — that all an employer needs to do to avoid liability is comply with its handbook — is questionable, and does not take into account the fact that Illinois employers would still have to deal with any lawsuits that spring from handbook provisions (and that would now survive a motion to dismiss, even if eventually found to be baseless). Hinshaw will continue to monitor this case for developments and will keep you informed.

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