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# **EMPLOYEE MANUALS AS IMPLIED CONTRACTS: THE GUIDELINES THAT BIND**

## **I. INTRODUCTION**

Increasingly in recent years, employers who promulgate employee policy manuals have been saddled with liability to former employees even though the employers believed that they had disclaimed that liability effectively and despite their intention to avoid it. Courts in several jurisdictions have held that even in an at-will employment relationship, an employee policy manual can render the issuing employer liable for breach of implied contract if the employer fails to comply with the procedures that the manual prescribes. In the leading cases in which courts have so held, former at-will employees typically allege that their employers failed to comply fully with their own procedures for the termination, review, or discipline of employees. Moreover, courts in certain jurisdictions have held that even in the absence of an express contract, the employee's reasonable reliance on the employer's pattern of adherence to termination, review, and disciplinary procedures described in an employee manual can give rise to an implied contract. Courts have held this despite the presence of a disclaimer in the manual which stated that the employer intended the manual to serve only as a set of guidelines for employee conduct and which expressly disavowed any intention to be bound contractually by any procedure set forth in it.

Perhaps the most troubling effect of these rulings is that they deter employers from promulgating what could be a useful tool for their employees. Since the purpose of issuing an employee manual is to provide employees with information about company policies and procedures, employees are deprived of the potential benefit of that information when employers do not circulate a manual.

Employers who have large numbers of employees or who have complicated company policies find themselves in a precarious position. If these employers do not promulgate any sort of policy manual, they may be required to formulate employee policy on an ad hoc basis and face administrative chaos. Conversely, if they do issue a manual and comply

with its procedures to such a degree that their employees reasonably expect them to continue to do so in the future, they may be subjected to unintended contractual liability. It is inevitable, then, that employers and their attorneys have sought the answer to this question: How can employers issue employee policy manuals that are specific enough to be useful to employees and at the same time avoid unintended contractual liability?

This comment has two purposes. First, it will discuss the approaches that Texas and Oklahoma courts have taken to the issue of employee manuals as implied contracts. Second, it will suggest methods by which employers who issue such manuals can effectively disclaim unintended implied contractual liability.

## II. BACKGROUND AND DEVELOPMENT OF THE AT-WILL DOCTRINE IN TEXAS AND OKLAHOMA

### A. *History of the Doctrine and Its Exceptions*

The doctrine of at-will employment, first articulated in 1877 in Professor Wood's treatise, *The Law of Master and Servant*,<sup>1</sup> provides that employment for an indefinite period is terminable at any time, with or without cause, by either the employer or the employee.<sup>2</sup> Since it originated in the 19th century, the at-will doctrine has lost much of its force and has been replaced in part with contract principles considered to be more fair to employees. Many states have allowed the doctrine to remain in place, but have adopted exceptions to it.<sup>3</sup> The result is that even in an apparently at-will employment relationship, an employer's right to fire an employee at will may be restricted. This comment addresses the implied contract exception, which protects the employee's expectation interests in the employer's future conduct.<sup>4</sup> For example, if an

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1. HORACE G. WOOD, *THE LAW OF MASTER AND SERVANT* (1877).

2. *Id.* at 265, 272-73. In his treatise, Professor Wood posited for the first time in American jurisprudence that employment for an indefinite time can be terminated at any time, with or without cause, by either the employer or the employee. *Id.* Before Wood devised what we now call the doctrine of at-will employment, American courts borrowed the presumption of their British counterparts that employment for an indefinite period gave rise to a one-year employment contract. See Harry F. Tepker, *Oklahoma's At-Will Rule: Heeding the Warnings of America's Evolving Employment Law?*, 39 OKLA. L. REV. 373, 379 (1986). This presumption was especially forceful when the written or oral contract stated an annual salary. *Id.* For many years, American courts applied the rule inflexibly and refused to allow any exceptions to it. *Id.* at 380-81. Even the United States Supreme Court eventually toed the line. *Adair v. United States*, 208 U.S. 161 (1908).

3. Tepker, *supra* note 2, at 373.

4. *Id.* at 393-94. It is important to recognize the difference between the implied contract exception and the public policy exception, which appear to be quite similar. While the effects of these

employer is widely known by its employees to follow specific pre-termination disciplinary procedures set forth in an employee manual, an employee terminated other than according to those procedures who sues for wrongful discharge will probably prevail. The court is likely to find that the employee acted reasonably in relying on the employer's pattern of adhering to certain procedures and create an implied contract that binds the employer to continue to adhere to them.

The United States Circuit Court of Appeals for the Tenth Circuit best articulated the test in *Zaccardi v. Zale Corp.*,<sup>5</sup> in which a manager, fired for refusing to submit to a polygraph test, sued for breach of contract and wrongful discharge.<sup>6</sup> He cited a provision in Zale's employee manual which stated that employees with more than ten years of seniority would not be discharged until "senior corporate management" had reviewed the proposed discharge.<sup>7</sup> Zale's established practice indicated that "senior corporate management" referred to identifiable individuals, none of whom was consulted before Zaccardi was fired.<sup>8</sup> In reversing summary judgment for Zale on Zaccardi's claim for breach of contract, the court held that where an employee manual controlled the employment relationship and where the employee reasonably expected the employer to follow its own procedures, an implied contract could exist.<sup>9</sup> Additionally, the court held that the mere presence in the employee policy manual of a disclaimer of contractual intent was not sufficient to negate the manual's "contractual status."<sup>10</sup> Instead the court pointed out,

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two exceptions are similar, the concepts that support them are quite easily distinguished. The former is predicated on the employer's failure to perform a contractual obligation, whether express or implied. The latter, which has been widely accepted, limits the employer's right to fire an employee for "bad cause." *Id.* at 394 (quoting *Wagenseller v. Scottsdale Memorial Hosp.*, 710 P.2d 1025, 1030 (Ariz. 1985)). This comment addresses only the implied contract exception.

5. 856 F.2d 1473 (10th Cir. 1988).

6. *Id.* at 1474.

7. The relevant portion of Zale's employee policy manual provided that "[n]o employee who has been employed for ten (10) years or longer is to be terminated from the company without the approval of senior corporate management . . ." *Id.* at 1477 (emphasis omitted). The manual further required Zaccardi's supervisors to provide senior corporate management with specific information before firing employees with ten or more years of service to the company. *Id.* at 1477 n.7.

8. The court was influenced by deposition testimony that "senior corporate management" referred to particular executives from Zale. *Id.* Presumably, these executives were identifiable because they had been involved in the terminations of other senior employees.

9. *Id.* at 1476. The court based its holding on New Mexico law. *Id.*

10. *Id.* The disclaimer of contractual intent warned employees that "[t]his manual is not intended and shall not be interpreted to be a formal legal contract, binding on the company." *Id.* at 1478. In spite of the outcome of this case, at least one of the three judges on the Tenth Circuit panel was persuaded by Zale's argument that the disclaimer prevented the formation of any contract, whether express or implied, between the company and Zaccardi. Judge Bohanon penned a dissent in which he questioned how the existence of a contract could be implied by the majority when there was no "meeting of the minds." *Id.* at 1477-78. He asserted that although under certain conditions

one must consider the manual and its potential status as a contract in light of "the norms of conduct and the expectations founded upon them."<sup>11</sup> Thus, where an employer's past adherence to procedures set forth in an employee manual reasonably leads an employee to expect that the employer will follow those procedures in the future, the employer can be held liable under an implied contract for failing to abide by them.

### B. *Texas: 100 Years of At-Will Employment*

Texas courts first adopted the at-will rule over a century ago and continue to give it considerable deference today. The Supreme Court of Texas held in *East Line R.R.R. Co. v. Scott*<sup>12</sup> that employment for an indefinite period of time is terminable at the will of either the employer or the employee with or without cause and at any time.<sup>13</sup> Scott settled a claim against the railroad company for personal injuries by accepting the railroad's offer of employment as an engineer for "so long as he desired to be employed."<sup>14</sup> When the company refused to accept his services, Scott sued for breach of contract and prevailed at trial.<sup>15</sup> The Supreme Court of Texas reversed and formally incorporated the doctrine of at-will employment into Texas jurisprudence. In its analysis, the court noted that numerous other states had adopted the rule.<sup>16</sup>

Since 1888, Texas courts have clung steadfastly to the rule adopted by their predecessors, and have only grudgingly allowed a narrow public

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an employee manual could create an implied contract, the one at issue in this case did not. Citing the definition of an implied contract, he opined that it could not be inferred from the circumstances that Zaccardi and Zale assumed the existence of a contract "by tacit understanding." *Id.* at 1478 (citing BLACK'S LAW DICTIONARY 292 (5th ed. 1979)). More particularly, Judge Bohanon found that the language of the disclaimer clearly expressed Zale's subjective intention *not* to be bound by the procedures in its policy manual. Accordingly, neither the elements required to create an express contract nor those required to create an implied one were present. *Id.* at 1478-79.

11. *Id.* at 1476-77 (quoting *Greene v. Howard Univ.*, 412 F.2d 1128, 1135 (D.C. Cir. 1969)). See also *Miller v. Independent Sch. Dist. No. 56*, 609 P.2d 756 (Okla. 1980) (statement of policy expressed in school board's "General Policies" was included by implication in discharged teacher's contract and obligated the board to give the teacher timely notice of nonrenewal of her contract). In *Miller*, the court noted that "[a] contract includes not only the promises set forth in express words, but . . . [also any implied provisions that reflect the intentions of the parties and which] arise from the language of the contract and the circumstances under which it was made." *Id.* at 758 (citing *Cox v. Curnutt*, 271 P.2d 342, 345 (Okla. 1954)).

12. 10 S.W. 99 (Tex. 1888).

13. *Id.* at 102.

14. *Id.* at 99-100.

15. *Id.*

16. *Id.* at 102. The court also addressed Scott's claim for breach of contract specifically, holding that in an at-will employment relationship, "it is no breach of contract [for an employer] to refuse to receive further services . . . . There was no contract binding [the railroad company] to employ [Scott] for any fixed period; the minds of the parties had not met as to . . . the period of service." *Id.*

policy exception.<sup>17</sup> In *Sabine Pilot Service, Inc. v. Hauck*,<sup>18</sup> the Supreme Court of Texas held that an at-will employee allegedly fired for no other reason than his refusal to perform an illegal act at his employer's request stated a valid cause of action in a suit for wrongful discharge.<sup>19</sup> Hauck, an at-will employee who worked on a barge, was terminated for refusing to illegally pump the boat's bilges into the water.<sup>20</sup> The Texas Court of Civil Appeals reversed summary judgment in favor of the employer and remanded the case for trial.<sup>21</sup> Citing "changes in American society and in the employer/employee relationship" since 1888,<sup>22</sup> the Texas Supreme Court affirmed and held that public policy required a "very narrow" exception to the at-will doctrine in Texas.<sup>23</sup> However, the court demonstrated its reluctance to stray too far from the jurisprudential tradition established in *Scott*<sup>24</sup> by restricting the exception to cases in which the *only* reason for an employee's discharge was the refusal to do an illegal act. Further, the court imposed on the employee plaintiff who brought such an action the burden to prove that there was no other reason for his

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17. See *supra* note 2 and accompanying text.

18. 687 S.W.2d 733 (Tex. 1985). *Hauck* overruled *Molder v. Southwestern Bell Tel.*, 665 S.W.2d 175 (Tex. App.—Houston [1st Dist] 1983, writ ref'd n.r.e.). In *Molder*, the Texas Court of Civil Appeals rejected the plaintiff employee's contention that it was contrary to public policy to allow an employer to benefit from the fruits of an employee's services and then terminate the employee without warning the employee or stating a reason. *Molder*, 665 S.W.2d at 177. The employee posited that his dismissal without notice after 28 years of service to the employer for allegedly refusing to perform an illegal act was improper. *Id.* The court recognized that numerous other states had adopted the public policy exception to the at-will rule, but deferred to the Texas legislature to recognize that exception in Texas law. *Id.*

19. *Hauck*, 687 S.W.2d at 734.

20. *Id.* at 733. Hauck learned that it was illegal to pump bilges into the water when he read a sign posted by his employer on the boat on which he worked. He verified this information with the United States Coast Guard before he refused his superior's order to do the illegal act. *Id.*

21. *Id.*

22. *Id.* at 734. Justices Kilgarlin and Ray joined in a concurring opinion that heartily praised the court's decision. *Id.* at 735-36. Justice Kilgarlin wrote that the strict application of the at-will rule reminded him of the sweatshops made famous in the works of Charles Dickens and called it an anachronism, suggesting that "[t]he doctrine belongs in a museum, not in [Texas] law." *Id.* at 735. He added that the narrowness of the exception adopted in this case did not limit the authority of the court to broaden it or to allow other exceptions. *Id.* Even the majority opinion concluded that since Texas' at-will rule was created by judicial action, the court had the power to modify it. *Id.* at 734. *Hauck* is similar in its effect to *Wagenseller v. Scottsdale Memorial Hosp.*, 710 P.2d 1025 (Ariz. 1985), in which the Supreme Court of Arizona sought not to limit the right of employers to fire employees for *no* reason, but rather their right to fire employees for *bad* reasons. The at-will rule thus remains largely intact, subject only to a weak public policy exception.

23. *Hauck*, 687 S.W.2d at 734. The court appears to have been heavily influenced by the fact that twenty-two other states had adopted exceptions to the at-will doctrine. It acknowledged the diversity of proposals for exceptions forwarded by different commentators. See generally Claudia E. Decker, *The At-Will Doctrine: A Proposal to Modify the Texas Employment Relationship*, 36 BAYLOR L. REV. 667 (1984).

24. See *supra* notes 12-16 and accompanying text.

or her discharge.<sup>25</sup>

### C. Oklahoma: The Rule Becomes the Exception

Although Oklahoma continues to presume that employment for an indefinite period is at will,<sup>26</sup> it recognizes a version of the doctrine that has been weakened by a good faith or public policy exception. This exception proscribes the firing of employees for reasons that contravene public policy.<sup>27</sup>

Additionally, Oklahoma courts allow a cause of action for wrongful discharge based on breach of implied contract. The implied contract often arises from an employer's employee policy manual. This is best illustrated in *Grayson v. American Airlines, Inc.*<sup>28</sup> When Grayson started work for American, he signed a form on which he acknowledged that his employment was at will.<sup>29</sup> The same form obligated Grayson to comply with all of the rules and regulations contained in American's employee

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25. *Hauck*, 687 S.W.2d at 734. The narrow limits that the court placed on the public policy exception can and should be viewed as a reflection of the court's loyalty to the rule laid down in *East Line R.R. v. Scott*, 10 S.W. 99 (Tex. 1888). Although the court clearly established its freedom and authority to amend the at-will rule, it chose to exercise that authority only to the extent necessary to avoid a manifest injustice by allowing Hauck's case to proceed to trial. *Hauck*, 687 S.W.2d at 734. Had the court wished to carve out a broader exception, it could easily have done so. The refusal since 1985 of Texas courts, and most notably of the Texas Supreme Court, to recognize breach of contract as a cause of action in wrongful discharge suits arising from at-will employment relationships suggests that they continue to regard the doctrine of at-will employment as fundamentally sound.

26. In Oklahoma, courts, employers, and employees presume that employment for an undetermined period is at-will. See Tepker, *supra* note 2, at 373-74. See also *Singh v. Cities Serv. Oil Co.*, 554 P.2d 1367 (Okla. 1976). In *Singh*, the Supreme Court of Oklahoma held that an employment contract specifying the amount of the employee's compensation per year but not specifying the duration of the employment did not constitute an agreement by the employer to retain the employee for the period of compensation. *Id.* at 1369. That is, a contract that promises to pay an employee a stated sum per year does not create a contract of employment for one year. Even if the contract contains no *express* time provision, the court concluded, it is possible to imply such a provision from the particular circumstances surrounding the making of the contract. If those circumstances do not indicate the existence of an agreement on the period of employment, the employment is at-will and can be terminated at any time by either the employer or the employee. *Id.*

Oklahoma recognizes the at-will doctrine subject to two exceptions: public policy torts, *Burk v. K-Mart Corp.*, 770 P.2d 24, 29 (Okla. 1989); and breach of contract, *Hinson v. Cameron*, 742 P.2d 549, 552 (Okla. 1987). This comment addresses only the second exception.

27. Under this exception, an employee fired for a "bad" reason has a cause of action against his or her former employer for wrongful discharge. The employer must state a "good" reason in its defense. See *Burk*, 770 P.2d at 29.

28. 803 F.2d 1097 (10th Cir. 1986) (*Grayson I*). The Tenth Circuit applied Oklahoma law in a manner consistent with that of Oklahoma state courts. See Tepker, *supra* note 2, at 562.

29. *Grayson I*, 803 F.2d at 1098.

policy manual.<sup>30</sup> One of those rules stated that American could not discharge any employee "without good cause."<sup>31</sup> When Grayson was discharged in 1982 during a labor cutback, he sued, alleging that American's own employee manual prohibited the airline from terminating him without good cause.<sup>32</sup> The district court granted summary judgment for American, holding that there could be no breach of an at-will employment contract.<sup>33</sup> The Tenth Circuit reversed and concluded that a promise in an employee policy manual, like American's promise not to dismiss employees without cause, could create a binding contractual obligation on an employer.<sup>34</sup>

*Grayson I* articulates well the Oklahoma rule that provisions in employee manuals regarding the firing of employees can contractually bind the employers who issue the manuals even if they intend not to be bound.<sup>35</sup> American probably never considered that its right to reduce its work force in hard times would be limited by a statement in its own policy manual that it could not fire employees except for good cause. Still, exactly this result ensued.<sup>36</sup> American discovered that under Oklahoma law, its employee manual, intended only to provide guidelines for employee conduct, obligated the company to follow its own procedures to the letter.<sup>37</sup> Employers who are unfamiliar with Oklahoma's

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30. *Id.*

31. *Id.* The court in *Grayson I* cited the "without good cause" language used throughout American's employee manual. *Id.*

32. *Id.* American cut its labor force in response to a downturn in the economy.

33. *Id.*

34. *Id.* at 1099. Even the district court found, by virtue of the provision quoted above, that Grayson was not an at-will employee and could not be discharged without cause. *Id.* Whether the reason cited by American for his firing constituted good cause was a question of fact. *Id.*

35. See Tepker, *supra* note 2, at 562-63.

36. Grayson's victory in *Grayson I*, however, was pyrrhic. Although the court affirmed that Grayson had stated a valid cause of action for breach of implied contract, it concluded that the downturn in the airline industry constituted the good cause that American needed to justify his discharge. *Grayson I*, 803 F.2d at 1099. For a further discussion of *Grayson I*, see Tepker, *supra* note 2, at 562-63.

37. See also *Dangott v. ASG Indus.*, 558 P.2d 379 (Okla. 1976). Dangott was terminated during a reduction in ASG's labor force and not for any other reason (and specifically not for cause). *Id.* at 381. After he found a new job, Dangott sued to recover severance pay that ASG promised to its employees in an "Administrative Procedure" which provided that employees fired in labor cutbacks were entitled to certain severance benefits. *Id.* The trial court found for Dangott and held that ASG had created an enforceable bilateral contract when it promulgated the disputed severance pay provision. Dangott was thus entitled to the promised benefits. *Id.*

ASG appealed the trial court's judgment and the Oklahoma Court of Appeals reversed. *Id.* Dangott appealed the reversal and the Supreme Court of Oklahoma reinstated the judgment of the trial court. *Id.* at 384. The court found that contract principles controlled the relationship between Dangott and ASG and held that Dangott's continued employment with ASG constituted consideration for ASG's promise to pay severance benefits upon his termination. *Id.* In support of this conclusion, the court cited the principle that "[t]he employer's offered promise becomes irrevocable . . .



exception to the at-will rule are likely to find themselves in American's position if they fail to sufficiently abide by their policy manuals.

### III. CONTRASTING RESULTS IN TEXAS AND OKLAHOMA CASES

Courts in Texas and Oklahoma have adopted fundamentally different approaches to the question of whether an employee manual creates contractual liability when the employer does not comply fully with its own policies and procedures. Texas courts adhere strictly to the doctrine of at-will employment and are reluctant to alter the employee's at-will status.<sup>38</sup> Accordingly, an employee manual does not create contractually binding obligations on an employer, regardless of whether it contains a specific disclaimer of the employer's contractual intent.<sup>39</sup> Conversely, Oklahoma courts recognize that an employee might well view a personnel manual as an authoritative statement of company policy. If the employee so views the manual and relies on it, not only as a guide for behavior but as binding on the employer, courts have held the employer bound by the terms of the manual.<sup>40</sup> Oklahoma courts protect the employee's expectation interest by creating an implied contract from the terms and procedures set forth in the manual.

#### A. *The Texas Approach: A Safe Harbor for Employers*

##### 1. At-Will Employment Presumed

Texas courts adhere strictly to the at-will doctrine and presume that

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as soon as the employee has rendered any substantial service [such as continued employment] in the process of accepting . . . and in spite of the fact that the employee may be privileged to quit the service at any time." *Id.* at 382-83 (quoting 1A ARTHUR L. CORBIN, CORBIN ON CONTRACTS § 153 (1963)). This holding is prophetic of the willingness of Oklahoma courts to create implied contracts on the basis of employee manuals and the procedures contained in them. *See infra* notes 67-104 and accompanying text.

Additionally, the court noted that in some jurisdictions, employers' provisions for severance benefits are treated as offers for unilateral contracts which employees accept by remaining in the service of their employers. *Dangott*, 558 P.2d at 382 (citing *Amicone v. Kennecott Copper Corp.*, 431 P.2d 130 (Utah 1967)). Oklahoma courts would eventually come to adopt the same reasoning in *Langdon v. Saga Corp.*, 569 P.2d 524 (Okla. Ct. App. 1976).

*Dangott* is also noteworthy because the court recognized (or at least made passing mention of) the reason that employers issue policy manuals. The court acknowledged that "ASG promulgated the controversial administrative procedure . . . and sent it to supervisory parties for no other purpose except to give notice and impart knowledge of [its severance policy] to its employees, and thus stabilize and promote a contented work force." *Dangott*, 558 P.2d at 383 (emphasis added). Today, Oklahoma courts seem to have lost sight of that reason.

38. *See Sabine Pilot Serv. Inc. v. Hauck*, 687 S.W.2d 733 (Tex. 1985).

39. *Benoit v. Polysar Gulf Coast, Inc.*, 728 S.W.2d 403 (Tex. App.—Beaumont 1987, writ ref'd n.r.e.).

40. *Johnson v. Nasca*, 802 P.2d 1294, 1297 n.2 (Okla. Ct. App. 1990) (citing *Toussaint v. Blue Cross & Blue Shield*, 292 N.W.2d 880, 892 (Mich. 1980)).

employment for an indefinite time constitutes at-will employment.<sup>41</sup> They have listed specific elements that an employee must establish to prevail in a wrongful discharge action. In *Benoit v. Polysar Gulf Coast, Inc.*,<sup>42</sup> the Texas Court of Civil Appeals affirmed summary judgment in favor of an employer in a wrongful discharge suit based on the employer's alleged noncompliance with pre-termination procedures contained in an employee policy manual.<sup>43</sup> Benoit had been fired for excessive absenteeism and sued Polysar for failing to suspend him for three days before terminating him, as provided in the employee policy manual.<sup>44</sup> The court held for the employer on the grounds that the plaintiff employee failed to prove: (1) that an employment contract which limited the employer's right to terminate the contract at will existed between the employer and the employee,<sup>45</sup> and (2) that the alleged contract was in writing and thus within the Statute of Frauds.<sup>46</sup> The court deferred to Texas' well-established tradition of adherence to the at-will rule<sup>47</sup> and held specifically that an employee manual designed to encourage regular attendance and timely arrival by employees does not create a written employment contract that restricts the employer's right to fire an employee at will.<sup>48</sup> The holding in *Benoit* makes plain the position of the Texas courts that the mere existence of an employee manual does not create contractually binding obligations on an employer.

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41. See *supra* notes 12-16 and accompanying text.

42. 728 S.W.2d 403 (Tex. App.—Beaumont 1987, writ ref'd n.re).

43. *Id.* at 407.

44. *Id.* at 404. The three-day suspension before termination is typical of "progressive discipline" schemes often found in employee policy manuals.

45. *Id.* at 406. The court added that according to well-developed case law, the written contract must limit an employer's right to fire an employee at will in a "meaningful and special way." *Id.*

46. Texas' Statute of Frauds requires a written contract if performance cannot be completed within one year. *Id.* (citing TEX. BUS. & COM. CODE ANN. § 26.01(b)(6) (Vernon 1987)). Since the contract that Benoit alleged to exist between himself and Polysar promised employment until the age of 65 years, and as Benoit was under the age of 64 years, the alleged contract fell within the Statute of Frauds and had to be in writing: performance of the contract could not possibly have been completed in one year. Because it was not, Benoit failed to establish this second element.

47. *Id.* at 406.

48. *Id.* at 407. *Benoit* recognizes the reasons that employers issue employee policy manuals: To provide guidelines for employee conduct and to inform employees about company policies. *Id.* Further, the holding makes it plain that even when an employee manual is *not* accompanied by a disclaimer of intent to contract (as in *Benoit*), it does not create a written employment contract. *Id.* For a discussion of the rationales for issuing employee manuals, see HUGH PERRITT, *EMPLOYEE DISMISSAL LAW AND PRACTICE* 458-66 (1987).

## 2. Employee Manual Does Not Constitute an Express Modification of an Employee's At-Will Status

Texas courts have held that a disclaimer of intent to contract appended to an employee manual destroys any claim that the manual creates an employment contract. In *Berry v. Doctor's Health Facilities*,<sup>49</sup> the Texas Court of Civil Appeals affirmed summary judgment in favor of an employer who had prevailed at the trial court level.<sup>50</sup> The employee policy manual that the employee alleged created an employment contract contained a disclaimer that the employee had signed. The disclaimer stated unequivocally that the sole purpose of the manual was to provide guidelines for employee conduct, and reserved for the employer the right to amend the manual at any time and without notice.<sup>51</sup> Significantly, the disclaimer provided specifically that the manual did not constitute a contract or a guarantee of employment.<sup>52</sup>

The court weighed heavily the fact that the employee testified in his deposition that he understood clearly that the manual neither guaranteed his employment nor offered an employment contract.<sup>53</sup> In light of this evidence, the court held that nothing in the record could be construed to "elevate the employee handbook beyond its self-proclaimed status of a revocable general guideline."<sup>54</sup> Thus, an employee manual does not constitute an express modification of an employee's at-will status unless a written employment contract states otherwise. Further, in the absence of a written contract, the presence in a manual of a disclaimer is sufficient to defeat a plaintiff's claim that the manual creates an implied contract.<sup>55</sup>

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49. 715 S.W.2d 60 (Tex. App.—Dallas 1986, no writ).

50. *Id.* at 63.

51. *Id.* at 61-62. The disclaimer read: "I understand that this handbook is a general guide and that the provisions of this handbook do not constitute an employment agreement (contract) or a guarantee to continue employment. I further understand that Doctors [sic] Hospital reserves the right to change the provisions of this handbook at anytime [sic]." *Id.* Additionally, Berry's application for employment stated, "I understand and agree that, if hired, my employment is for no definite period and may, regardless of the date of payment of my wages and salary, be terminated at any time without any prior notice." *Id.* at 62.

52. *Id.* at 61.

53. *Id.* at 62.

54. *Id.*

55. But see *United Transp. Union v. Brown*, 694 S.W.2d 630, 632 (Tex. App.—Texarkana 1985, writ ref'd n.r.e.), in which the court held that an employee manual which expressly stated that the employer could not fire an employee without cause *did* impair the employer's right to terminate employees at will. The effect of the rule in *Brown* is minimal, however, and can be easily avoided. It applies only where the language of the manual expressly proscribes the dismissal of employees except for cause. If the manual does not contain such a proscription, the rule does not apply.

### 3. Employee Manual Does Not Implicitly Modify At-Will Status

An employee manual does not constitute an implied modification of an employee's at-will status. Accordingly, only an express modification of the relationship effectively changes the employee's status. Texas jurisprudence provides that employee manuals and procedures contained therein do not modify an employee's at-will status impliedly or limit an employer's right to terminate an employee at will.

The leading case in Texas on the potentially, contractually binding effect of employee manuals is *Reynolds Manufacturing Co. v. Mendoza*,<sup>56</sup> in which an employer appealed a jury verdict in favor of a former employee in a wrongful discharge action based on the employer's failure to comply with pre-termination procedures set forth in an employee manual.<sup>57</sup> Citing, among other cases, *East Line R.R.R. v. Scott*,<sup>58</sup> the court reasoned that unless the employment relationship is modified *expressly*, employment for an indefinite period is at will and can be terminated at any time, with or without cause, by either the employer or the employee.<sup>59</sup> The court found no evidence that the employee policy manual at issue contained any express agreement concerning procedures for the discharge of employees and noted that the language of the manual permitted the employer to amend the manual unilaterally or even to withdraw it altogether.<sup>60</sup> In its reversal of the jury verdict, the court held that the manual was nothing more than a set of non-comprehensive guidelines and that the procedures contained in it regarding the firing of employees were not intended as exclusive.<sup>61</sup>

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56. 644 S.W.2d 536 (Tex. App.—Corpus Christi 1982, no writ).

57. *Id.* Mendoza alleged that Reynolds failed to comply with procedures in the manual that prescribed "progressive disciplin[e]" before termination. *Id.* at 537. This allegation is common in wrongful discharge and breach of contract cases brought by terminated at-will employees.

58. See *supra* notes 12-16 and accompanying text.

59. *Mendoza*, 644 S.W.2d at 538 (citing *NHA, Inc. v. Jones*, 500 S.W.2d 940 (Tex. Civ. App.—Fort Worth 1973, writ ref'd n.r.e.)). Nonetheless, employers can limit their own power to fire employees at will by making express contractual agreements to follow specific pre-termination procedures. *Id.* at 538-39 (citing *Hardison v. A.H. Belo Corp.*, 247 S.W.2d 167 (Tex. Civ. App.—Dallas 1951, no writ)). See also *Mansell v. Texas & P. Ry. Co.*, 137 S.W.2d 997 (Tex. Civ. App.—Comm'n. 1940, no writ). In these cases, the employers and employees agreed expressly that the employers would adhere to certain procedural guidelines when terminating employees. *Mendoza*, 644 S.W.2d at 538-39. In each case, the court held that the employer's right to terminate the employee, other than by the mutually agreed upon procedures, was restricted. *Id.* The *Mendoza* court rejected the assertion that these cases applied on the grounds that there was "no evidence of any express agreement which dealt with procedures for [the] discharge of employees . . ." *Id.* at 539.

60. *Mendoza*, 644 S.W.2d at 539. The court reasoned that Reynolds' power to modify or withdraw the manual precluded any reading of it as an express contract. *Id.* In support of this conclusion, the court noted that Reynolds did in fact change the manual once during Mendoza's employment. *Id.*

61. *Id.* This holding reflects the view of Texas courts that employers issue policy manuals to

The effect of the holding in *Mendoza* is to deprive employees of a cause of action for breach of contract based merely on the presence in a policy manual of pre-termination, disciplinary, or other procedures. Employees who still desire to bring such a suit are thus faced with one alternative—to ask the court to *imply* the existence of a contract from the procedures contained in the manual. Plaintiff employees have done this, but Texas courts have refused to allow it.

In *Vallone v. Agip Petroleum Co.*,<sup>62</sup> the plaintiff employee alleged bad faith discharge on the basis of the belief that her employer would retain her as long as her work was satisfactory.<sup>63</sup> This belief was the sole foundation of the employee's claim, and she never asserted that any express contract, written or oral, existed between herself and her former employer.<sup>64</sup> In affirming summary judgment for the employer, the court intimated that only an agreement implied from the employee manual could be interpreted to restrict the employer's right to terminate the employee at will.<sup>65</sup> The court then rejected the employee's contention that an implied agreement modified her at-will status. Accordingly, the court held that an employee manual which is not accompanied by an *express* agreement regarding termination procedures does not contractually bind an employer to adhere to termination procedures.<sup>66</sup>

### B. *The Oklahoma Approach: Employers Beware*

Courts in Oklahoma are much less sympathetic to employers who issue employee manuals than Texas courts and have shown no hesitation to hold an employer who fails to comply with its own procedures liable

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provide employees with information about company policy and without any intention to limit or bind their own conduct. The employee policy manual serves the employer's interest in administrative efficiency. See also PERRITT, *supra* note 48, at 458-66.

62. 705 S.W.2d 757 (Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.).

63. *Id.* at 758.

64. *Id.*

65. *Id.* at 759. Vallone believed that Agip's employee policy manual provided that employees could not be fired without good cause. Thus, an implied employment contract protected her from at-will termination. *Id.*

66. *Id.* Significantly, Vallone never alleged that Agip's employee discharge policy was "bargained for in a mutual agreement." *Id.* The absence of mutuality prevented the court from being able to find the existence of an implied contract. *Id.*

The Fifth Circuit, however, adheres less rigidly than Texas state courts to the traditional rules of contract formation and has held that the inclusion in a policy manual of specific disciplinary procedures can limit an employer's right to fire an employee at will. See *Aiello v. United Air Lines Inc.*, 818 F.2d 1196 (5th Cir. 1987) (employee fired without prior disciplinary action where employee manual required such action before termination stated valid cause of action); *Smith v. Kerrville Bus Co.*, 799 F.2d 1079 (5th Cir. 1986) (collective bargaining agreement implied "just cause" requirement for dismissal of otherwise at-will employee).

for breach of implied contract.<sup>67</sup> This is particularly true when the disputed procedure involves the termination, review, or discipline of employees, and when the procedure is set forth in precise detail.<sup>68</sup> Oklahoma courts have shown little regard for employers' efforts to avoid implied contractual liability through the use of disclaimers in policy manuals: courts have held that the manual can create an implied contract if the employee has relied on it beyond a certain degree, even when the manual contains a disclaimer of intent to contract.<sup>69</sup> A disclaimer must be clear and unequivocal in order to be given effect by Oklahoma courts.<sup>70</sup>

Oklahoma courts imply contractual obligations that require employers to follow procedures concerning the termination, review, and discipline of employees in two ways. The first is based on the employee's reliance on an employer's established pattern of behavior,<sup>71</sup> and functions much like estoppel. The second approach considers the employee manual as an offer to the employee for a unilateral contract.<sup>72</sup> The employee accepts the offer and forms a contract by continuing to work for the employer.<sup>73</sup>

#### 1. *Hinson v. Cameron* and General Guidelines Established by Oklahoma Courts

The seminal case in Oklahoma jurisprudence on the issue of employee manuals as implied contracts is *Hinson v. Cameron*.<sup>74</sup> Nita Hinson had worked for the Comanche County Hospital Authority for seventeen years as a nurse's assistant before she was fired for failing to follow orders.<sup>75</sup> She sued for wrongful discharge on the theory that the hospital's employee manual, which comprised part of her employment contract, prohibited the hospital from terminating her without good cause.<sup>76</sup> The trial court awarded summary judgment to the hospital and

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67. See Tepker, *supra* note 2, at 411-13.

68. *Id.* See also Theresa L. Kruk, Annotation, *Right to Discharge Allegedly "At-Will" Employee as Affected by Employer's Promulgation of Employment Policies as to Discharge*, 33 A.L.R.4TH 120 (1984).

69. Johnson v. Nasca, 802 P.2d 1294, 1297 n.2 (Okla. Ct. App. 1990) (citing Toussaint v. Blue Cross & Blue Shield, 292 N.W.2d 880, 892 (Mich. 1980)).

70. *Id.* at 1297.

71. *Id.* at 1296-97.

72. Langdon v. Saga Corp., 569 P.2d 524, 527-28 (Okla. Ct. App. 1976).

73. *Id.* at 527.

74. 742 P.2d 549 (Okla. 1987).

75. *Id.* at 551. Hinson was an at-will employee. *Id.*

76. *Id.* The manual stated that "[i]t shall be the policy of the hospital to . . . [o]ffer steady

the Oklahoma Court of Appeals reversed.<sup>77</sup> The Supreme Court of Oklahoma reinstated the judgement of the trial court,<sup>78</sup> holding that the list in the manual of reasons for discharge was not exclusive.<sup>79</sup>

In its analysis, the court named five factors that suggest the existence of an implied contract: (1) evidence of "separate consideration" to support the alleged implied contract; (2) the length of the employee's service with the employer; (3) employee manuals; (4) the employee's reliance on the employer's verbal assurances of job security and the employer's past conduct; and (5) promotions.<sup>80</sup> The court found that none of the evidence indicated that any sort of contract restricting the hospital's freedom to fire Hinson for the stated reason existed.<sup>81</sup> Oklahoma courts have combined the third and fourth factors to create the implied contract exception to the at-will rule.

## 2. The Employee Reliance Approach

If an employee manual could suggest to a reasonable mind that its terms and procedures are binding contractually on the employer, Oklahoma courts hold that a manual constitutes an implied contract whose terms are dictated by the policies and procedures set forth in it. This result is supported by the employer's customary practice of complying with the procedures prescribed in the manual and established by the employee's reasonable reliance on the employer's continued compliance with those procedures.

The employee reliance theory is derived from the holding in *Johnson v. Nasca*,<sup>82</sup> in which the plaintiff employee sued her former employer, a hospital, after being fired without notice that her performance was unsatisfactory.<sup>83</sup> Johnson claimed that the hospital should not have dismissed

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employment to those who perform their duties conscientiously." *Id.* at 556 n.29. The manual also listed specific grounds for termination. *Id.* at 556-57 n.30.

77. *Id.* at 550.

78. *Id.* at 558.

79. *Id.* at 556.

80. *Id.* at 554-55. The court opined that promises or representations intended by an employer to induce employees to accept or continue employment can also give rise to implied contracts. *Id.* at 555 n.20. See *id.* for other bases for the creation of implied contracts.

81. *Id.* at 557.

82. 802 P.2d 1294 (Okla. Ct. App. 1990).

83. *Id.* at 1295.

her until it had exhausted specific "problem solving" and "corrective action" procedures outlined in its employee manual.<sup>84</sup> The hospital defended by invoking the manual's disclaimer of contractual intent,<sup>85</sup> and the trial court awarded summary judgment to the hospital.<sup>86</sup>

The Oklahoma Court of Appeals reversed,<sup>87</sup> citing *Hinson v. Cameron*,<sup>88</sup> and held that an employer's disclaimer of contractual intent must be clear to be effective.<sup>89</sup> Further, the existence of the manual, coupled with the hospital's "pattern of practice indicating the adoption and consistent use" of the procedures contained in it, could lead reasonable minds to believe that implied contractual rights existed in favor of Johnson as to the hospital's use of such procedures.<sup>90</sup> Summary judgment for the hospital was thus improper.<sup>91</sup>

The rule from *Johnson* has the same effect on employers against whom it is applied as estoppel. An employee fired according to a procedure not customarily used by the employer, or who is not given the benefit of a consistently used procedure, has a cause of action based on his or

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84. *Id.* The manual provided that "the following procedure will be followed when possible, at the Hospital's discretion, to attempt to give all employees fair treatment, and . . . [the] opportunity to improve their performance or correct their conduct." *Id.* at 1295-96.

85. *Id.* at 1296. The disclaimer read as follows:

This employee handbook has been written as a guide for employees. It should not be considered a contract or employment agreement between the hospital and employee. The hospital reserves the right to change any information in the handbook at any time. The hospital also reserves the right at any time to take any action it deems necessary in its sole discretion for the best interest of the hospital.

*Id.* at 1295.

86. *Id.*

87. *Id.* at 1297.

88. See *Hinson*, 742 P.2d at 549.

89. *Johnson*, 802 P.2d at 1297. The court was apparently persuaded by Johnson's argument that the language of the disclaimer was ambiguous. On one hand, the disclaimer reserved for the hospital the unlimited right to amend the manual without notice and warned that the manual was not intended as any sort of employment agreement. *Id.* at 1295. On the other, it described specific remedial procedures and provided that those procedures should "apply equally to all employees." *Id.* at 1297. The inconsistency between the hospital's seemingly unfettered power to amend the manual as it pleased and the right of each employee to equal treatment appears to have persuaded the court that a fact question remained about whether any contract or agreement existed.

90. *Id.* at 1297. The court's analysis on this point tracks closely with that of the Supreme Court of Michigan in *Toussaint v. Blue Cross & Blue Shield*, 292 N.W.2d 880 (Mich. 1980) (in suit for wrongful discharge brought by former at-will employee, provision that employee could not be fired except for cause was legally enforceable despite indefinite period of employment).

According to the court in *Toussaint*, it is not necessary for an employer to establish rules for employee conduct. *Id.* at 892. However, if the employer does establish such rules, it creates a situation "instinct with an obligation" by applying them uniformly to all employees. *Id.* (citation omitted). "Where such an environment is created, [an employee's] reliance upon the established policy may give rise to an implied contract." *Johnson*, 802 P.2d at 1297 n.2.

91. *Johnson*, 802 P.2d at 1297.



her expectation that the employer would apply its routine discharge procedures to that employee.

### 3. The Unilateral Contract Approach

The second approach adopted by Oklahoma courts to the question of employee manuals as implied contracts treats the manual as an offer for a unilateral contract. The policies in the manual become terms of a contract which binds the employer when the employee accepts the offer by continuing to work for the employer. The courts regard the continued employment as the employee's consideration.

The effect of this rule is demonstrated in *Langdon v. Saga Corp.*<sup>92</sup> In *Langdon*, an employee sued his former employer for wrongful discharge and to recover vacation pay, which the employer's personnel manual promised would be paid upon the employee's termination.<sup>93</sup> A jury found for the employee, and the employer appealed. The Oklahoma Court of Appeals affirmed.<sup>94</sup>

On appeal, Saga asserted that its manual could not create a contract because there was no mutuality of obligation, and because the manual did not alter Langdon's at-will employment status.<sup>95</sup> Saga also contended that the payment of the contested benefits was conditioned, and that Langdon had not fulfilled the conditions precedent to payment.<sup>96</sup> Finally, Saga argued that the employee manual did not create binding contractual obligations because it retained the right to amend the manual unilaterally.<sup>97</sup>

The court rejected Saga's assertions.<sup>98</sup> Instead, it found that the employee manual was offered to induce employees to produce more and to stay with the company.<sup>99</sup> Accordingly, the court held that the manual

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92. 569 P.2d 524 (Okla. Ct. App. 1976).

93. *Id.* at 526. Langdon was employed on the basis of an oral contract which provided for his compensation, but did not contain a term of employment. *Id.*

94. *Id.* at 529. Saga, which succeeded Langdon's previous employer by merger, offered specific benefits to management personnel (including Langdon) whose services it acquired in the merger. The benefits were described in Saga's employee manual and included payments for unused vacation time and severance allowances. *Id.* at 526.

95. *Id.* If the manual did not modify Langdon's at-will status, Saga had the right to fire him at any time.

96. *Id.*

97. *Id.* Additionally, Saga urged that no contract existed since Langdon could have quit at any time and was not obliged to remain with the company for any set period. *Id.*

98. *Id.* The court wrote that Saga "misperceive[d] the essence of the employer-employee relationship where either party may terminate the relationship at will." *Id.*

99. *Id.* at 527.

constituted an offer to the employees for a unilateral contract.<sup>100</sup> Langdon accepted the offer by remaining in Saga's employment and thus forgoing his option to resign.<sup>101</sup> This act supplied the consideration required to complete the contract.<sup>102</sup> The court stated that when an at-will employee "forgoes options to refuse [to perform in the future] . . . in partial reliance on articulated personnel policies of the employer," the employer is obligated to adhere to those policies.<sup>103</sup>

The court also addressed Saga's contention that no contract existed for lack of mutuality. It held that unilateral contracts do not lack mutuality unless the consideration that supports them fails.<sup>104</sup>

#### 4. Analysis

The effect of the approaches adopted by Oklahoma courts to the creation of implied contracts from employee manuals ignores altogether the reasons for issuing such manuals in the first place. Employers promulgate employee manuals to increase administrative efficiency and to educate their employees about company policies and procedures.<sup>105</sup> The need for some sort of manual is especially pressing for employers of large numbers of employees or whose personnel policies are complicated.

If the goals that employers circulate policy manuals to further are clear, it is equally clear that the employers desire not to be bound contractually by what they include in their manuals. While some employers are more careful than others to include disclaimers, there is little doubt that few, if any, intend to bind themselves contractually by dispensing employee manuals.<sup>106</sup>

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100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* However, the court noted that the employer retains the power to modify its policies as long as no benefits have accrued to employees under the existing policies. *Id.* at 527-28. If any benefits have accrued, the employer can still change the policy, but must pay out any benefits that accrued to employees under the old policy. Thus, the accrual of benefits owed to Langdon effectively estopped Saga from amending its benefits policies.

104. *Id.* at 527 (citing 1 ARTHUR L. CORBIN, CORBIN ON CONTRACTS § 70 (1963)).

105. See PERRITT, *supra* note 48, at 458-66. See *supra* note 37 and accompanying text. Employees who do not have access to a policy manual or any other source of company policy waste administrative time in two ways. First, they pester their supervisors with questions that they would not have to ask if they had access to a policy manual. Second, they are more likely to make mistakes that they would not have made if they had been properly educated about company policies and procedures.

106. Further, it is doubtful that most employees regard the procedures contained in personnel manuals as binding on their employers until, after they have been fired, their lawyers tell the employees that it would be prudent to do so. See *supra* note 37 and accompanying text.

The willingness of Oklahoma courts to create contracts that employers intended clearly not to create frustrates the underlying rationale for the dissemination of employee manuals. Employers whose circumstances make it imperative to issue manuals are placed in an impossible situation. They have the option not to issue manuals at all, which forces their managers and supervisors to respond daily to a steady stream of employee questions about company policy. Alternatively, they may find that the manuals they issued only to educate their employees about routine policies and procedures expose them to unintended contractual liability. Employers might reasonably determine that the risks and potential costs arising from the latter situation outweigh the benefits of distributing employee manuals. The next section of this comment suggests means by which employers who must issue such manuals can avoid unintended implied contractual liability.

#### IV. RECOMMENDATIONS FOR OKLAHOMA EMPLOYERS: AVOIDING UNINTENDED IMPLIED CONTRACTUAL LIABILITY

While Oklahoma courts have often held that employee manuals written only to serve as guides for employee conduct create implied contracts, they have also identified the elements which must be present before they will hold that an implied contract exists. In so doing, the courts have provided a path for employers to follow and avoid the mine field of unintended and unwittingly created contractual liability. This comment's suggestions are designed to enable employers who must issue employee manuals to negotiate this path more safely and certainly.

##### A. *Make the Disclaimer Clear and Consistent with the Manual's Other Provisions: Avoid Ambiguous or Conflicting Policies*

In *Johnson v. Nasca*, the Supreme Court of Oklahoma stated that a disclaimer of an employer's intent to form a contract on the basis of an employee manual must be clear to be effective.<sup>107</sup> However, the court did not define what constituted a sufficiently clear disclaimer. In *Johnson*, the court ignored the employer's argument that its impressive sounding disclaimer<sup>108</sup> defeated the plaintiff employee's claim that the employee manual gave rise to an implied contract.<sup>109</sup> The disclaimer at issue in *Johnson* warned that the employee manual was prepared only to serve as

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107. See *supra* notes 82-91 and accompanying text.

108. See *supra* notes 85-91 and accompanying text.

109. See *supra* notes 85-91 and accompanying text.

a guide for employee conduct.<sup>110</sup> Additionally, the disclaimer stated that employees should not interpret the manual as an employment contract that bound the employer and reserved for the employer the right to change the manual at any time without notice.<sup>111</sup> But while the language of the disclaimer was clear, other provisions in the manual required the employer to apply the procedures prescribed in the manual equally to all employees.<sup>112</sup> The court found that the employer's past conduct was inconsistent with the language of the disclaimer. On this basis, the court held that an implied contract, which obligated the employer to follow specific disciplinary procedures, could exist, and remanded the case to the trial court to resolve the relevant factual issues.<sup>113</sup>

The rule in *Johnson* suggests that courts in Oklahoma will only honor disclaimers that are consistent with the other provisions contained in the manuals that they accompany. Courts likely will give no effect to disclaimers which declare employees to be at will, if the manuals in which they appear proscribe the firing of employees without cause. Oklahoma courts have shown a tendency to resolve questions arising from ambiguous language in favor of employees.<sup>114</sup>

#### B. *Avoid Establishing a Pattern of Behavior*

A good rule of thumb is that the more specific the procedure that appears in an employee manual, especially when the procedure concerns the termination, review, or discipline of employees, the more likely it is that a court will use that procedure to create an implied contract. Accordingly, employers should make any policy concerning these critical areas of employee conduct as general as possible. The best course of action is to list specific policies, procedures, or grounds for termination merely as examples of procedures which the employer might choose to follow. The manual should then reserve the employer's right to terminate employees for reasons *not* included in the list, or to amend the list without further notice to the employees.<sup>115</sup> In this manner, the employer

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110. See *supra* notes 85-91 and accompanying text.

111. See *supra* notes 82-91 and accompanying text.

112. See *supra* note 89 and accompanying text.

113. See *supra* note 89 and accompanying text.

114. This tendency is consistent with the well-established maxim of contract law that documents shall be construed strictly against their drafters. Thus, Oklahoma courts protect the reliance interest of employees, who do not know precisely how employers intend their employee manuals to be used. The employees do not know their employers' intentions and have few means other than the manual, if one exists, to discern those intentions.

115. Another option is to state expressly in the manual that policies in those areas will be formulated on an ad hoc basis and as particular circumstances dictate.

preserves sufficient latitude to treat each employee's case individually, without fear of setting a precedent that will bind it in the future: the employee has no established pattern of behavior on which to rely.<sup>116</sup>

#### V. CONCLUSION

While employers in Texas have little reason to fear that courts will create implied contracts from employee manuals in suits brought by former at-will employees, employers in Oklahoma do not enjoy the same feeling of security. Oklahoma courts have shown that regardless of the reason for its issuance, an employee manual can easily give rise to an implied contract that restricts an employer's right to fire employees whom it considered to be at-will. Accordingly, Oklahoma employers must draft employee manuals, and the disclaimers of contractual intent that accompany them, with extreme caution. If employers pay close attention to the limited means left open to them by the courts to effectively disclaim unintended implied contractual liability, they can avoid such liability successfully. If they do not, they are likely to find that they have become entangled in their own guidelines.

*Michael Rhodes Wallace*

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116. For a more detailed discussion of the effect of an employer's established pattern of adherence to procedures set forth in an employee manual, *see supra* notes 82-91 and accompanying text. *See also* PERRITT, *supra* note 48, § 8.5, at 312-13.