

Employee Handbooks: Court Willing To See Creation Of Employment Contract For Full Disciplinary Processes.

When she was hired the hospital gave the nurse a copy of the hospital's elaborate employee handbook.

According to the Court of Appeals of New Mexico, there was no individual employment contract or other document defining the relationship between the nurse and her employer.

The nurse was fired for allegedly calling in prescriptions to the pharmacy for patients without physicians' orders.

The nurse sued for wrongful discharge. She claimed she had rights under the employee handbook. That is, the employer's stated policies for full progressive discipline were not just a statement of the employer's policies, they were her rights as an employee.

Progressive Discipline

The nurse claimed she could not be fired without a verbal warning, written warning, suspension and probation before termination. Whether or not her conduct was wrong, she claimed, her firing was null and void because the procedures in the employee handbook were not followed.

Employer's Policies versus

Employees' Rights

The court said the trend in the US is away from the traditional common-law rule that employers can fire at will when there is no union contract or individual employment contract.

The key is whether the employer, by promulgating and following an employee handbook, has created expectations among employees that the employer will follow its own policies, and whether employees have continued to work for the employer based upon such expectations. If so, there is more likely than not an implicit employment contract in which the employer's policies have become the employee's rights, for which they can sue. **Mealand v. ENMMC**, 33 P. 3d 285 (N.M. App., 2001).

Courts are beginning to see employee handbooks issued by employers as the basis for implied employment contracts in situations where there is no collective bargaining agreement with a union or written employment contract with a particular employee.

Employees are succeeding with wrongful discharge lawsuits against their former employers when fired without getting all the disciplinary processes set out in the employer's employee handbook.

The courts are taking language out of employee handbooks and giving employees substantial rights.

The traditional common-law rule is not faring well that employees can be discharged at any time for any reason with no legal recourse for wrongful discharge.

Employers customarily put disclaimers in their employee handbooks that the handbooks are not employment contracts, but those disclaimers often are not honored by the courts.

COURT OF APPEALS OF NEW MEXICO,
2001.

Sickle-Cell Screening: Result Should Have Been Verified.

The Supreme Court of Virginia had to rule on a summary judgment motion filed by the attorneys for a pediatric clinic. The court did not rule definitively that the clinic was negligent.

The court only ruled that if the parents' allegations were true there were legal grounds for a civil lawsuit. The truth or falsity of the allegations would have to be decided by a civil jury.

The mother said she asked a clinic employee for the results of the sickle-cell test for her second child.

The mother said she was told she would have been notified if the test was positive so it must have been negative.

The parents conceived a third child who was born with sickle cell beta O thalassemia.

They would not have conceived again if they had known their second child actually was positive.

SUPREME COURT OF VIRGINIA, 2001.

The court said a physician, nurse or other healthcare provider is negligent to report the results of medical tests on the basis of assumptions without actually checking. Given the parents' genetic profile, the child would not have been screened for sickle cell in the first place without a significant mathematical chance of being positive. **Didato v. Strehler**, 554 S. E. 2d 42 (Va., 2001).