

Employment Alert: Massachusetts SJC Holds Employer Liable for Contractual Obligations Created by Policies in an Employee Handbook

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The Massachusetts Supreme Judicial Court (SJC) recently held that the terms of an employee handbook created a contract requiring the employer, the Massachusetts Turnpike Authority (MTA), to pay the benefits it promised as part of an incentive program.

In *LeMaitre v. Massachusetts Turnpike Authority*,¹ the plaintiff sued, seeking payment for sick time accrued but not used over the course of his 27 years of employment with the MTA. At issue was an incentive program described in the MTA's employee handbook and more specifically detailed and updated in its personnel policy and procedure bulletins. Designed to encourage employees to use their sick-leave credit only when absolutely necessary, and to reward employees who had unusually good attendance records, employees could earn cash and other benefits upon retirement, based on a percentage of accrued, unused sick leave. The payout percentages were revised from time to time and, in 1996, the benefits payable under the program were substantially reduced. The plaintiff retired in 2002 and received benefits calculated in accordance with the incentive program in effect at that time.

The plaintiff sued for breach of contract, claiming that he was entitled to payment at the rate in effect at the time the unused sick time accrued. The Superior Court granted the plaintiff summary judgment, awarding him the value of the program benefits applicable to each of the time periods during which he accrued the unused sick days. The Appeals Court affirmed summary judgment, finding that the MTA handbook was a contract for payment of accrued benefits. The Appeals Court further stated that if the MTA wanted to prevent the handbook from being construed as a contract, it should have included a clear statement that the handbook was not intended to bind it or to promise any specific benefit.

The SJC agreed with the Appeals Court, finding that the program was a contract promising the payment of certain benefits in exchange for continued employment and services rendered while the provisions of the program were in effect.

This holding is consistent with other recent case law in Massachusetts extending liability to employers for employment policies contained in handbooks. For instance, in *Ferguson v. Host International, Inc.*,² an employee was able to make out a breach of contract claim for the company's failure to follow a progressive discipline policy. The handbook in that case also did not contain a disclaimer of contract obligations.

The *LeMaitre* case serves as an important reminder that employee handbooks must be drafted with care. Well-drafted and conspicuous disclaimers can significantly mitigate an employer's exposure to contract claims arising from an employment policy or employee handbook. While the SJC was clear to note that disclaimers are not dispositive, they can go a long way toward demonstrating that an employee was not reasonable in relying on an employer's representation in a handbook or policy. As employers struggle to find a balance between preserving the at-will status of employees and describing employment policies with sufficient particularity, careful and thoughtful drafting can make all the difference.

Action Items

In light of the SJC's decision in *LeMaitre*, employers should consider taking certain actions, including:

- Review the handbook. Does it state clearly that it is not a contract and that policies may be terminated or changed at any time?
- Consult with counsel to determine if the handbook's current disclaimer should be modified or, if there is no disclaimer, if one should be added.
- Consider whether policies regarding economic benefits, such as leave and severance, should be modified.

Endnotes

¹ SJC-10162 (Dec. 10, 2008).

² 53 Mass. App. Ct. 96.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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