

Employee Handbooks (and Policies): Make Sure that the Policies and Disclaimer Accomplish their Purpose

by Melissa Raphan

On February 3, 2021, in *Hall v. City of Plainview*, A19-0606, the Minnesota Supreme Court gave something to employees and employers alike when it addressed the issue of whether a handbook policy can create a unilateral contract (as to that provision), and what impact, if any, a general disclaimer has in negating the existence of a contract based on a specific policy. To reach its holding, the Court travelled back in time to revisit its seminal case, *Pine River State Bank vs. Mettille*, and its progeny to outline the circumstances under which a handbook policy may rise to the level of a contract. In a nod to employees, and as a matter of first impression, the Court held that general disclaimer provisions in an employee handbook may not necessarily immunize employers from contractual liability based on specific policy language, particularly relating to compensation. In a nod to employers, the Court affirmed that Minn. Stat. §181.13(a) (for non-payment of wages) does not create an independent substantive right to payment of accrued paid time off (PTO) absent a contract between an employer and an employee.

In light of the decision, Minnesota employers (and those with employees in Minnesota) would be well-served to review their employee handbooks to ensure both that vacation and/or PTO policies are up-to-date with their current practices and that any handbook disclaimer language specifically states that the disclaimer applies to all compensation and other policies.

Key Takeaways

As the Minnesota Supreme Court noted, “Employers are not rendered helpless by our decision. As we have discussed, well-drafted, specific, disclaimers can prevent the formation of contractual rights stemming from employee handbook provisions, including provisions concerning PTO.” With that in mind, consider the following:

1. Review (and have an attorney review), your Employee Handbook and make sure that the disclaimer accomplishes three objectives; (1) confirms the employment is at-will and the handbook does not create a contract of employment; (2) specifically disclaims

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- that any PTO, vacation or compensation policy creates a contract; and (3) specifically disclaims that any policy contained in the Employee Handbook creates a contract.
2. Put the disclaimer on its own page, in bold, and make it specific.
 3. Each page of the Employee Handbook should state that it does not create a contract.
 4. Review any standalone employment policies to ensure that they contain disclaimer language stating that they do not create an employment contract.
 5. Review your vacation, sick and paid time off policies to ensure that they specifically address whether the employee will/will not be “cashed out” upon termination, and what conditions will apply.
 6. Review compensation policies to ensure that they do not create a contract.
 7. Include the “not a contract” language in the Employee Handbook acknowledgement that employees sign.

Background

The City of Plainview terminated 30-year employee Donald Hall after first offering him the opportunity to resign. The City notified him that if he resigned “with sufficient notice,” he would be paid up to 500 hours of his accrued but unused PTO, in accordance with its PTO policy outlined in the Employee Handbook (“the Handbook.”). Hall declined to resign, and upon termination, demanded payment of his accumulated 1,778.72 hours of unused PTO. The City refused to pay, stating that Hall had failed to follow the PTO policy in the Handbook, by failing to provide “sufficient notice” prior to departure.

The Handbook stated, in relevant part, that 100% of accrued but unused PTO (up to a maximum of 500 hours) would be paid out “when an employee ends their employment with the City, for any reason... unless the employee did not give sufficient notice as required by the policy.” *Id.* at 3. Sufficient notice was defined as providing written notice of resignation “at least 14 days” before departure. *Id.* Notably, the Handbook contained a standard disclaimer stating that its policies “should not be construed as contract terms,” and that it “is not intended to create an express or implied contract of employment between the City of Plainview and an employee.” *Id.* at 4.

Hall subsequently filed a complaint alleging, in relevant part: (1) breach of contract, based on the Handbook policy; and (2) violation of Minn. Stat. § 181.13, arguing that the failure to pay the PTO constituted a breach of the statute. Both the District Court and the Court of Appeals dismissed his claims. The Supreme Court reversed, in part, and remanded.

Breach of Contract – Did the City Have a Contractual Obligation to Pay the PTO?

In assessing Hall’s breach of contract claim, the Court addressed two issues: (1) whether the handbook met the requirements for formation of a unilateral contract; and (2) whether the handbook’s general disclaimer language meant the City was not obligated to pay Hall in accordance with the PTO policy.

On the first issue, relying upon the test set forth in *Pine River State Bank v. Mettille*¹, the Court found “that the Handbook contains sufficiently definite terms” to create a binding unilateral contract. Specifically, the Court noted that “the Handbook provides a little over

one page of details on the City's PTO program," including: "1) an overview of the objectives of the program; 2) a detailed PTO accrual schedule based on employee seniority and hours worked per year; 3) instructions as to how and when employees may use PTO; and 4) procedures for rolling over PTO year over year." The Handbook also contained a procedure for departing employees to cash out their PTO. Thus, the Court found that "these details amount to more than general statements of policy; rather, they provide specific information and procedures by which employees may comprehend and take advantage of the City's PTO program," thereby forming sufficiently definite terms to constitute a unilateral contract and for a court to determine whether there was a breach.

Next, in an issue of first impression, the Court examined whether the Handbook's general disclaimer stating that the Handbook did not create a contract necessarily defeated the formation of a contract concerning any and all policies contained therein. As an initial matter, the Court noted that the Court of Appeals had "on several occasions upheld the effectiveness of express disclaimers in employee handbooks as a means of preventing the formation of an employment contract." *Id.* at 13. However, the Court distinguished those cases involving PTO and/or vacation, noting that "PTO is a form of compensation and compensation is treated differently than other employee handbook provisions because the employee earns it when they complete the work required by the employer." *Id.* at 17. The Court rejected the City's argument that a general disclaimer undercut the employee's ability to create a contract based on the compensation policy stating, the "broad and general disclaimer language in the Handbook's introduction, in the context of the entire Handbook and the relationship between the City and its employees, is ambiguous as to its applicability to the PTO policy," and that "if the City truly wanted to preserve the right to withhold accrued PTO compensation from an employee after the employee had performed work for the City while the provision governing payment for accrued PTO was in place, it should have been more precise and clear about that intent." *Id.* at 19-20. Thus, the Court concluded that the Handbook's general disclaimer did not unambiguously mean that Hall had no contractual entitlement to his accrued and unused PTO as per the handbook's PTO policy, and that the impact of the disclaimer on Hall's claim for his accrued but unused PTO was for a fact-finder to determine. However, the majority opinion noted that, "We express no opinion today about the impact of a general disclaimer on non-compensation conditions of employment." *Id.* at 23.

Does Minn. Stat. § 181.13 Create and Independent Substantive Right for an Employee to Demand and Receive Payment of Accrued PTO upon termination?

Relying upon its holding in *Lee v. Fresenius Med. Care, Inc.* – in which the Court held that vacation pay is solely a matter of contract between employer and employee and that Minn. Stat. § 181.13 is a "timing statute" – the Court concluded that the "statute's revised language comports with our core holdings in *Lee*...that section 181.13(a) is a timing statute that does not create a substantive right to recover compensation independent of a contract...." *Id.* at 28.

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¹ “[A]n employee handbook may constitute terms of an employment contract if (1) the terms are definite in form; (2) the terms are communicated to the employee; (3) the offer is accepted by the employee; and (4) consideration is given.” 333 N.W.2d 622,626 (Minn. 1983).