
Employment at Will

CASE STUDY

The Case

When Lee Marks applied for a professional position at a financial firm, he filled out and signed a detailed job application that included the phrase, “I understand that nothing in this application is to be construed as constituting a guarantee of employment. Individuals are free to resign at any time, and the company is free to terminate employment at any time.”

Marks was hired, and introduced to other employees at a meeting hosted by his new boss. “Welcome to the team,” said Steve Gray. Marks, who had been through a few shake-ups with prior employers, said he was glad to be part of an organization that had avoided the shake-ups and cutbacks so prevalent in the industry.

“This is a stable organization, and you can feel secure about your job here as long as you do the fine work we know you can do,” Gray assured him.

Marks did do fine work. In fact, his work was so good that within a year, he was transferred to another group and another manager. Marks told Gray he was a bit reluctant to move to a group with such high turnover. “You have no reason to worry,” Gray responded. “You’re a valued member of our organization’s team, and that group needs your skills.”

Marks worried a lot when he saw the disarray in his new job: missing documentation, backlogged applications, and possibly illegal corner-cutting on procedures. As he tried to straighten things out, he alerted his new manager, John Brown, about the potential problems he found.

“That’s not your concern. Just do your job,” Brown told Marks. Soon after, he gave Marks a very negative quarterly review. When Marks protested, Brown fired him.

Marks sued for breach of an implied contract. The company responded that Marks was an “at will” employee and had signed an application acknowledging that.

The Outcome

The court ruled that Marks did have an implied contract. The language in the disclaimer he signed could be interpreted to mean that employment could be terminated “at any time” but only for cause. In addition, Gray repeatedly assured Marks that his job was secure, even making such statements in public settings with witnesses.

Whether Marks was treated fairly or unfairly is not the issue. To maintain employment at will, employers and their representatives must be extremely careful to make sure not to make any employment promises that could be viewed as job contracts. Written statements like the one on the application have to be detailed and clear. Verbal statements must not include anything that could be interpreted as promising job security—much less making statements as clear as Gray’s.