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Read My Lips: Oral Promises May Bind Employers

By ANN WOZENCRAFT

If an employer promises the moon but delivers only moondust, he may be headed for court on charges of fraud.

A California Supreme Court ruling may make it more difficult for employers who make promises they cannot keep. The court ruled in January in favor of a Los Angeles man who said he was enticed to leave a job in New York and to move his family across country for a stable position at a California company, only to be dismissed three years later in a corporate reorganization. The court, which said that employers could be held liable for fraud if they made misrepresentations to their workers, upheld an earlier appellate court ruling that allowed the employee to sue his employer.

The court sent the case back to the trial court. The trial is scheduled for Nov. 12 in Los Angeles Superior Court.

While each state sets its own employment laws, and the California ruling is not binding elsewhere, it is likely to have a broad effect.

"California decisions have had immense influence on the court decisions of other states," said Lance Liebman, professor of employment law at Columbia Law School. "This decision is part of a trend around the country to allow employees to enforce employer promises." According to the lawsuit, Andrew Lazar, 46, left his job in 1990 as president of a family-owned restaurant equipment company in New York, where he earned $120,000 a year, to accept a position in Los Angeles for Rykoff-Sexton Inc., a national wholesale food supplier to restaurants and institutions. In his new job as general manager of contract and design, Mr. Lazar earned $130,000 a year and said he was told that he would receive regular pay raises based on the quality of his work.

Mr. Lazar, who said he was uneasy about uprooting his family to the West Coast, said Rykoff had told him his new job would be secure and that his job was part of a fast-growing division of the company. He said that he asked Rykoff to put the oral promises in writing, but that he was rebuffed by company officials who told him, "Our word is our bond." Mr. Lazar lost his job in 1993 in a reorganization.

"Lazar's allegations, if true, would establish all the elements of promissory fraud," wrote Justice Kathryn Mickle Werdegar for the California Supreme Court.

"Employers better mean what they say," said Gary B. Ross, a partner of Ross & Morrison of Los Angeles, who represents Mr. Lazar. "If they overstate something and cause someone to change his life based on what they told the employee over lunch, then the employer can be held accountable."

Martin C. Washton, a California lawyer who represents Rykoff in the case, said the company did not agree with many of Mr. Lazar's allegations, but he acknowledged that the court ruling might lead employers to be more cautious about what they say.

"If employers don't already have a pre-employment procedure, which requires employees to sign a contract that says no previous oral representations have been made concerning the terms of

employment and acknowledges the employment is at will, they're risking exposure to this kind of claim by employees who are dismissed for legitimate reason or no reason," said Mr. Washton, a partner with Gibson, Dunn & Crutcher in Los Angeles.

"Employment at will," the standard in many states, means that employers can dismiss an employee for good cause or no cause, as long as there is no discrimination.

DAVID LEVINE, associate professor of economics at the Haas School of Business of the University of California at Berkeley, said: "Twenty-five years ago, the law was very clear. Employers could say anything they wanted. Employees didn't understand this, and they would foolishly think those promises meant something."

But the old strategy of making promises and then breaking them is getting riskier.

"More and more states have changed their laws to be more favorable to employees to whom promises were made in a form other than a legal contract," Professor Liebman said. Some courts have been enforcing oral promises; he said rulings in New Jersey and Connecticut, for example, had been more favorable to employee claims over fair treatment. New York courts have been less favorable.

Despite the California decision, employees should not assume that they can relax when employers make a promise.

"The main advice for employees today is to realize that employer promises aren't that credible and to realize that the law is unclear and changing," Mr. Levine said.

Once an offer has been made, employees should make sure the terms are in writing, whether about salary, bonus, moving costs, real estate costs, country club memberships, company cars, stock options or the payment of capital gains taxes on the sale of a home.

Employees should be especially wary of oral promises of promotions and lifetime employment. Oral agreements can be binding, but they are often difficult to prove.

"Nothing is really permanent anymore, and employers need to make sure they're very careful about what they say to employees," said John A. Challenger, executive vice president of Challenger, Gray & Christmas, a Chicago outplacement firm. "Employees should know that having some sort of prenuptial agreement, in writing, is a better bet than relying on an off-the-cuff comment made by the employer over lunch."

Employers shouldn't make promises they don't intend to keep, Mr. Levine said. "Even in states that have historically permitted employers to lie," he said, "there's no guarantee that's going to be true 10 years from now."