THE EVOLUTION OF THE IMPLIED CONTRACT EXCEPTION TO THE EMPLOYMENT-AT-WILL DOCTRINE IN IOWA: FROM *YOUNG* TO *FRENCH* AND BEYOND

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I. INTRODUCTION

The Iowa Supreme Court first discussed an implied contract exception to the employment-at-will doctrine in 1987.[1] Since then, the Iowa appellate courts have decided a number of cases clarifying the extent to which an employee manual may constitute an implied contract of employment and form the basis for

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1. *See* Young v. Cedar County Work Activity Ctr., 418 N.W.2d 844, 847-48 (Iowa 1987).

a wrongful discharge lawsuit.[2] These decisions, while relatively few in number, have far-reaching implications for employees, business employers, and their counsel.

This Article assembles, summarizes, and analyzes the Iowa case law dealing with the implied contract exception to the employment-at-will doctrine.[3] This Article also provides the business employer and the employment law practitioner with pragmatic guidelines for avoiding wrongful discharge litigation.[4]

II. THE CASE LAW ON THE HANDBOOK EXCEPTION

Numerous commentators have thoughtfully analyzed the employment-at-will doctrine in Iowa and have recognized the doctrine's not so subtle erosion.[5] As originally contemplated, the employment-at-will doctrine allows the employer to terminate its at-will employees "'for good cause, for no cause, or even for cause morally wrong'" in the absence of "'legal wrong.'"[6] The doctrine is firmly established in Iowa.[7] Iowa law now recognizes, however, that an employee handbook, manual, or guide may constitute a unilateral contract of continuing employment in limited circumstances, thus constituting another judicially created exception to the employment-at-will doctrine.[8]

A. *Reasonable Expectations Analysis*

1. Young v. Cedar County Work Activity Center

The implied contract exception to the employment-at-will doctrine in Iowa has its genesis in a reasonable expectations analysis first suggested by the Iowa Supreme Court in *Young v. Cedar County Work Activity Center*.[9] Lillian Young based her lawsuit on a written contract providing that either party could terminate the employment with thirty days notice to the other party.[10] Young contended her employment could be terminated only in accordance with the provisions of an employee handbook, which established a five-step grievance procedure culminat-

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2. *See infra* part II.

3. *See infra* parts II-III.

4. *See infra* part IV.

5. *See* Brent Appel & Gayla Harrison, *Employment At Will in Iowa: A Journey Forward*, 39 DRAKE L. REV. 67, 86 (1989); Gregory A. Naylor, *Employment At Will: The Decay of An Anachronistic Shield for Employers?*, 33 DRAKE L. REV. 113, 130 (1983).

6. Naylor, *supra* note 5, at 114 (quoting Payne v. Western & A.R.R., 81 Tenn. 507, 514 (1884)).

7. *See* Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 455 (Iowa 1989) (citing Wolfe v. Graether, 389 N.W.2d 643, 652 (Iowa 1986); Northrup v. Farmland Indus., 372 N.W.2d 193, 195 (Iowa 1985); Abrisz v. Pulley Freight Lines, 270 N.W.2d 454, 455 (Iowa 1978); Harper v. Cedar Rapids Television Co., 244 N.W.2d 782, 791 (Iowa 1976)).

8. *See* McBride v. City of Sioux City, 444 N.W.2d 85, 90-91 (Iowa 1989) (citing Cannon v. National By-Products, Inc., 422 N.W.2d 638, 640-41 (Iowa 1988); Young v. Cedar County Work Activity Ctr., 418 N.W.2d 844, 848 (Iowa 1987); Pine River State Bank v. Mettille, 333 N.W.2d 622, 624-26 (Minn. 1983)).

9. Young v. Cedar County Work Activity Ctr., 418 N.W.2d 844 (Iowa 1987).

10. *Id.* at 845.

ing in termination of the employment relationship.[11] The governing board of the Cedar County Work Activity Center informed Young in writing that her employment was terminated before it executed the final step in the grievance procedure.[12] Young filed a breach of contract action, alleging the grievance procedure outlined in the employee manual formed a part of her employment contract.[13]

The issue was "whether . . . the written contract constituted an integrated employment agreement or, whether the provisions in the employee [handbook] were also part of the employment contract."[14] The district court found the discharge procedures contained in the handbook "had not been incorporated in the integrated employment agreement so as to require [Young's] discharge to be carried out in accordance with the handbook procedures."[15] Following Young's appeal, the Iowa Supreme Court affirmed, concluding because the employee manual "was in existence at the time the employment agreement was signed, this tends to support the district court's finding that its provisions were not intended to be contractual."[16] The court noted, however, that "the precise intentions of parties to an employment agreement are often left unexpressed and that contractual obligations may be enforced based on the reasonable expectations of the parties."[17]

2. Cannon v. National By-Products, Inc.

The implied contract theory and reasonable expectations analysis resurfaced in *Cannon v. National By-Products, Inc.*[18] The plaintiff, James Cannon, was a long-time employee of National By-Products.[19] Initially, Cannon was an at-will employee because his employment was for an indefinite period of time and he did not have an employment contract.[20] National By-Products subsequently prepared and distributed a personnel policy handbook that contained a provision stating: "No employee will be suspended, demoted, or dismissed without just and sufficient cause."[21] The handbook defined "sufficient cause" as "dishonesty, negligence, incompetence, insubordination, intoxication while on duty, failure to report for work, or refusal to perform any reasonable work, service or labor."[22]

National By-Products discharged Cannon because "physical limitations following a back injury would not permit him to perform the requirements of his

11. *Id.*
12. *Id.* at 846.
13. *Id.*
14. *Id.* at 847.
15. *Id.* at 846.
16. *Id.* at 848.
17. *Id.* at 847.
18. Cannon v. National By-Products, Inc., 422 N.W.2d 638 (Iowa 1988).
19. *Id.* at 639.
20. *Id.*
21. *Id.*
22. *Id.*

job."[23] Cannon sued for breach of an employment contract, arguing his contract with National By-Products included the company's written personnel policies, which were put in force after he was hired, but before he was discharged.[24]

The handbook in *Cannon* also provided that if any controversy arose from the discharge of the employee, or if the employee had a grievance that could not be settled by the employee and the immediate supervisor, the employee could submit the grievance or controversy in writing or in person to the plant superintendent or territory supervisor.[25] The handbook further stated: "If no settlement is reached, the employee shall have the right to a hearing with the district manager and the employee's supervisor."[26]

The question before the trial court was whether the personnel policies in the handbook "had been integrated into [Cannon's] contract of employment."[27] According to the trial court's jury instructions, Cannon would be deemed an at-will employee and "subject to discharge for any reason or no reason at all" if the jury found the policies were not part of the contract.[28] Conversely, the trial court instructed the jury it could find Cannon's discharge improper if the discharge was not for cause and if the jury found the policies were part of the contract.[29] The jury found for Cannon.[30]

On appeal, National By-Products challenged the sufficiency of the evidence, arguing the evidence failed to show (1) the personnel policies were part of Cannon's employment contract; (2) sufficient consideration existed to support a modification of Cannon's existing contract; and (3) sufficient additional consideration existed to support a contract of permanent employment.[31] The Iowa Supreme Court disagreed in all respects.[32]

The court, fleshing out its *Young* analysis, focused on Cannon's reasonable expectations in determining whether there was sufficient evidence to show the personnel policies were part of Cannon's contract.[33] Although the court did not focus on the specifics of the record, it found the evidence was sufficient for the jury to conclude Cannon reasonably believed the policies were part of his contract, focusing on the principle that a person's reasonable expectations are normally an "issue to be determined by the trier-of-fact."[34] Significantly, the court noted unilaterally imposed written policies may confer contractual rights even when the employer does not intend to do so, as long as the employee

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23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.* The trial court limited the issue of just cause to whether Cannon's medical discharge was pretextual. *Id.*
30. *Id.* at 640.
31. *Id.*
32. *Id.* at 640-42.
33. *Id.* at 640.
34. *Id.*

understands these rights, and the employer has reason to believe the employee understands them.[35]

Although the net effect of this conclusion was to allow a subsequent modification of Cannon's employment contract to include the policies, the court did not require Cannon to establish additional consideration to support this modification.[36] The court found it

> particularly inappropriate to require an independent consideration for modification of an agreement which is conceded to have been a mere contract at-will by defendant. In some situations, we believe the preferable approach is to view the issue as if an entirely new contract is being formed at the time of the alleged modification.[37]

Finally, the court rejected National By-Products's argument that Cannon must establish the "additional consideration traditionally required to support employment contracts of a permanent nature" to rely on the "termination-for-cause" provisions of the personnel policies.[38] Although a provision limiting termination to reasons supported by cause in some sense guarantees permanent employment, the court found this interpretive rule[39] was not implicated here:

> The issue of interpretation . . . presented in the present case does not involve the duration of [Cannon's] employment contract. Rather, it focuses upon the legal effect of a specific written guarantee that discharge may only take place "for cause." In resolving this issue, we find no need to . . . require[] . . . additional consideration. Instead, the issue becomes: what does the contract provide and was it breached to plaintiff's detriment.[40]

Interestingly, the *Cannon* court, after concluding a contract of employment existed between the employer and the employee, rejected National By-Products's argument that because Cannon did not follow the review procedures to settle a grievance, he should be barred from maintaining an action for breach of contract.[41] If there was a valid and enforceable employment contract, certainly both parties to the contract are bound by its terms. The court concluded, however, the

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35. *Id.*
36. *Id.* at 641.
37. *Id.* (citing Moody v. Bogue, 310 N.W.2d 655, 660-61 (Iowa Ct. App. 1981)).
38. *Id.*; *see also* Hunter v. Board of Trustees, 481 N.W.2d 510, 514 (Iowa 1992).
39. The court noted:

> The requirement of so-called 'additional consideration' is not truly a rule of consideration in the traditional sense, but rather an adjunct rule of interpretation. That rule applies in the determination of questions involving the duration of employment where that subject has not been specifically fixed in the agreement. This is not to be confused with those principles of contract law applicable to the sufficiency of consideration required to enforce a promise.

Cannon v. National By-Products, Inc., 422 N.W.2d 638, 641 (Iowa 1988) (citing Wolfe v. Graether, 389 N.W.2d 643, 654-55 (Iowa 1986)); *see also* Albert v. Davenport Osteopathic Hosp., 385 N.W.2d 237, 238-39 (Iowa 1986) (further explaining the concept of "additional consideration").

40. Cannon v. National By-Products, Inc., 422 N.W.2d at 641-42.
41. *Id.*

personnel manual did not mandate that Cannon "follow the review procedures as a condition for receiving benefits which the agreement otherwise confer[red] upon [him]."[42]

B. *Unilateral Contract Analysis*

1. McBride v. City of Sioux City

As a result of the decisions in *Young* and *Cannon*, it appeared employee handbook cases would follow an implied contract theory that turned on loose reasonable expectation principles. It also appeared such cases would not be susceptible to defense motions for summary judgment or directed verdict because the reasonable expectations analysis set forth in *Young* and *Cannon* bent towards jury issues.[43] In *McBride v. City of Sioux City*,[44] however, the Iowa Supreme Court applied a tighter unilateral contract analysis and found the employment manual was, as a matter of law, insufficient to establish an implied contract.[45]

In *McBride*, a discharged employee sued the city of Sioux City on a variety of theories, including breach of contract.[46] McBride alleged two handbooks "created a belief on his part that he could only be discharged 'for cause,'" and therefore created a contract of employment because that gave him "a reasonable understanding of continued employment."[47]

McBride considered the issue to be one of "implied contract," while the City considered the issue to be one of "unilateral contract."[48] Although the court considered both theories, it clearly indicated a preference for the unilateral contract theory.[49] After briefly denying McBride recovery under the implied contract theory,[50] the court stated the unilateral contract approach is the "more common approach [for] litigants like McBride."[51] The court set forth three requirements an employment manual must meet to "rise to the level of a unilateral contract of employment."[52] "(1) [T]he handbook must be sufficiently definite in its terms to create an *offer*; (2) the handbook must be communicated to

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42. *Id.*
43. *See id.* at 640; Young v. Cedar County Work Ctr., 418 N.W.2d 844, 848 (Iowa 1987).
44. McBride v. City of Sioux City, 444 N.W.2d 85 (Iowa 1989).
45. *Id.* at 91.
46. *Id.* at 87.
47. *Id.* at 90.
48. *Id.*
49. *Id.*
50. *Id.* The court found no implied contract because "there was not sufficient mutual assent . . . to impose a 'discharge for cause' requirement sufficient to support an implied contract of employment." *Id.* (quoting Sulzberger Excavating, Inc. v. Glass, 351 N.W.2d 188, 194 (Iowa Ct. App. 1984)). The court explained one manual did not have any such provision, and the other stated only "that employees 'may' be discharged for cause," and further stated it did not apply to employees in McBride's position. *Id.* In these circumstances, the court found "McBride's alleged 'implied' contract [was] nothing more than his one-sided hope for continued employment." *Id.*
51. *Id.*
52. *Id.* at 91.

and accepted by the employee so as to create *acceptance*; and, (3) the employee must continue working, so as to provide *consideration*."[53]

The court applied this criteria and affirmed the trial court's summary judgment for the defendant, concluding the manuals made "no clear reference to grounds or procedures for termination" and therefore lacked sufficient definiteness to "constitute an 'offer' of continued employment."[54] Furthermore, the employer did not distribute one manual to employees such as McBride, so McBride could not establish acceptance for that manual.[55]

Interestingly, the court used the reasonable expectations analysis of *Young* and *Cannon* not to explain the implied contract approach urged by McBride, but to explain the unilateral contract approach.[56] The unilateral contract approach may logically be considered a natural outgrowth of the reasonable expectation analysis because the three criteria set forth in *McBride* are a good measure of the reasonableness of an employee's expectations. The approach, however, must also be viewed as a distinct, and preferable, approach because it encompasses traditional rules of contracts and sets forth more specific, useful guidelines.

2. Fogel v. Trustees of Iowa College

If any confusion existed in the court's method of analysis after *Young*, *Cannon*, and *McBride*, the Iowa Supreme Court's decision in *Fogel v. Trustees of Iowa College*[57] eliminated it once and for all. In *Fogel*, the court used a unilateral contract analysis to reject a breach of contract claim based on an employee handbook.[58] Warren Fogel, a food service employee at Grinnell College, was discharged from his employment for coming to work with head lice.[59] He sued Grinnell for breach of contract, contending the food service employee handbook "created a contract of employment under which he could be discharged only for

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53. *Id.* (citing Sabetay v. Sterling Drug, Inc., 506 N.E.2d 919, 921-23 (N.Y. 1987); Duldulao v. Saint Mary of Nazareth Hosp. Ctr., 505 N.E.2d 314, 318-19 (Ill. 1987); Johnston v. Panhandle Coop. Ass'n, 408 N.W.2d 261, 265-68 (Neb. 1987); Hunt v. IBM Mid Am. Employees Fed. Credit Union, 384 N.W.2d 853, 854-57 (Minn. 1986); Pine River State Bank v. Mettille, 333 N.W.2d 622, 626-27 (Minn. 1983)).

54. *Id.* (citing Hunt v. IBM Mid Am. Employees Fed. Credit Union, 384 N.W.2d at 857).

55. *Id.* (citing Sabetay v. Sterling Drug, Inc., 506 N.E.2d at 923).

56. *Id.* at 90.

> Basically, a unilateral contract of employment may be created when an employer provides a handbook containing disciplinary procedures to a worker, the expressions contained in the handbook (in light of surrounding circumstances) give the worker a reasonable understanding of continued employment, and the employer has reason to know of the workers' understanding.

Id. (citing Cannon v. National By-Products, Inc., 422 N.W.2d 638, 640-41 (Iowa 1988); Young v. Cedar County Work Activity Ctr., 418 N.W.2d 844, 848 (Iowa 1987); Pine River State Bank v. Mettille, 333 N.W.2d at 624-26).

57. Fogel v. Trustees of Iowa College, 446 N.W.2d 451 (Iowa 1989).

58. *Id.* at 455-56.

59. *Id.* at 452-53.

'misconduct.'"[60] Fogel appealed from a grant of partial summary judgment and a jury verdict in favor of Grinnell.[61]

The food service employee handbook provided:

> DISMISSAL. If termination is necessary for reasons not prejudicial to the employee (reasons unrelated to job performance), he/she may expect to receive notice of not less than one month prior to the termination date. Upon receiving such notice, the employee is free both to seek and to accept other work immediately and to receive any accrued vacation pay. When dismissal is necessary because of unsatisfactory work, as much notice as possible will be given, ordinarily not less than two weeks. However, dismissals occurring during the probationary period require no notice. Dismissals necessitated by dishonesty or misconduct become effective immediately upon determination of facts concerning the offense.[62]

The *Fogel* court affirmed summary judgment in favor of Grinnell.[63] Following principles set forth in *McBride*,[64] the court expressly held the handbook was too indefinite to amount to a unilateral contract:

> On its face, Grinnell's handbook falls short of the definiteness required to constitute an offer of continued employment. The first sentence of the "dismissal" section unambiguously states that an employee may be terminated "for reasons not prejudicial to the employee." Although the handbook goes on to state the notice which [Grinnell] would strive to provide depending on the circumstances necessitating dismissal, no guarantee of permanent employment is made or even suggested. No restrictions to dismissal "for cause" can be found. The handbook is silent on the meaning of "misconduct" giving rise to [Grinnell's] prerogative of immediate dismissal. Contrary to Fogel's suggestion that this silence creates an ambiguity in the writing entitling him to offer evidence regarding the intent of the parties, we agree with another court that recently found that an employer's unspecific

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60. *Id.* at 455.
61. *Id.* at 453.
62. *Id.* at 452.
63. *Id.* at 456.
64. The court noted:

> The starting point of the unilateral contract inquiry is whether the terms of the handbook are sufficiently definite to constitute an offer of continued employment. As we noted in *McBride*, claims premised on unilateral contract theory frequently failed because the handbook's dismissal or disciplinary provisions are too indefinite to meet this standard of definiteness. . . . The reason for requiring such a high threshold of definiteness is two-fold. First, courts are generally reluctant to dismantle an employer's long-standing common-law right to terminate at-will in the absence of an express offer by the employer to do so. . . . Second, the handbook language must be sufficiently definite in its offer of continued employment that a fact finder is not left adjudicating the alleged breach of a "contract" for which the fact finder has supplied its own terms.

Id. (citations omitted).

guidelines "merely reflect[ ] the terminable-at-will status of its employees."[65]

The *Fogel* decision is significant in a number of respects. First, the court emphasized the handbook exception to the employment-at-will doctrine was a "narrow" one.[66] Second, the court recognized that, under certain circumstances, an employer retains the discretion to terminate an at-will employee for reasons that otherwise may be considered nonspecific.[67] Third, the court reaffirmed that the proper focus under the handbook exception is traditional principles of contract formation rather than the more ephemeral principles of reasonable expectation analysis.[68] Noting Fogel believed that under *Cannon* the "contractual status of the employee handbook is strictly a fact question determinable by *his* reasonable expectations,"[69] the court stated, "Fogel's reliance on *Cannon* is misplaced. This court has recently recognized that an employee manual may constitute a unilateral contract only if the traditional requirements of contract formation have been met."[70]

3. Hunter v. Board of Trustees

In 1992, the Iowa Supreme Court received another opportunity to review a trial court's interpretation of an employee manual. In *Hunter v. Board of Trustees*,[71] Quentin Hunter, a thirteen-year employee, was terminated one month after Broadlawns Medical Center hired a new executive director.[72] Broadlawns hired Hunter in 1977.[73] In 1984, Broadlawns adopted a manual of personnel policies that contained a list of seven "types of separations" of employment.[74] Hunter's termination in 1987 was purportedly based on staff reduction, one of the seven enumerated reasons for termination of employment.[75] Hunter contended,

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65. *Id.* (citations omitted).
66. *Id.* at 455.
67. *Id.* at 455-56. The court focused on the fact that Grinnell's handbook did not define "misconduct," thus allowing Grinnell the prerogative for immediate dismissal of an employee. *Id.* at 456. Notably, the court suggested vagueness in the terms favored the employer rather than the employee. *Id.* Interestingly, vagueness will not favor the employer when the employer is seeking to rely on the handbook language disclaiming the existence of an employment contract. *See infra* text accompanying notes 77-82.
68. Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 456 (Iowa 1989).
69. *Id.* at 455.
70. *Id.* at 455-56. The *Fogel* decision is also significant because the court strongly intimated that the covenant of good faith and fair dealing would not be recognized in employment litigation. *Id.* at 456-57. The Iowa Supreme Court later confirmed this explicitly. French v. Foods, Inc., 495 N.W.2d 768, 771 (Iowa 1993) (citing Fogel v. Trustees of Iowa College, 446 N.W.2d at 456-57); Porter v. Pioneer Hi-Bred Int'l, Inc., 497 N.W.2d 870, 871 (Iowa 1993) (citing French v. Foods, Inc., 495 N.W.2d at 771; Fogel v. Board of Trustees of Iowa College, 446 N.W.2d at 456-57).
71. Hunter v. Board of Trustees, 481 N.W.2d 510 (Iowa 1992).
72. *Id.* at 511-12.
73. *Id.* at 511.
74. *Id.* at 511-12.
75. *Id.* at 512.

however, this reason was pretextual and offered evidence that Broadlawns's new executive director filled Hunter's position with a former co-worker of the new executive director.[76] Hunter sued Broadlawns, contending Broadlawns breached an employment contract arising from the personnel manual issued to Broadlawns's employees.[77]

The jury rendered a verdict in favor of Hunter;[78] the Iowa Supreme Court affirmed the jury verdict.[79] As in *Fogel*, the court focused on the language in the handbook.[80] This time, however, the court, by comparing the language of Broadlawns's manual with the language of the manuals in *Fogel* and *Cannon*, found the terms sufficiently definite to constitute an employment contract.[81] The court stated:

> In *Fogel*, we concluded that the policy manual at issue fell short of the definiteness required to constitute an employment contract because the manual explicitly acknowledged the possibility that the employment might be terminated in the absence of cause. . . . The manual in *Fogel* stated: "If termination is necessary for reasons not prejudicial to the employee (reasons unrelated to job performance), he/she may expect to receive notice of not less than one month prior to the termination date.". . . This clear reservation of the right to terminate at will stands in marked contrast to the precise terminology found in . . . [Broadlawns's manual of personnel policies]: "The types of separation are: [then proceeding to enumerate seven events that would give rise to discharge]." This language, which is more restrictive and definite than the language in the *Fogel* handbook, is much more like that found in the employee manual at issue in *Cannon*, in which we concluded that a jury could find the manual created a reasonable expectation of contractual employment rights. . . . The relevant language there read: "No employee will be . . . dismissed without just and sufficient cause. Sufficient cause shall include, among other reasons, dishonesty, negligence, incompetence, [etc.]"[82]

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76. *Id.*

77. *Id.*

78. *Id.* Both parties submitted motions for summary judgment. *Id.* The trial court found as a matter of law the manual of personnel policies constituted a binding employment contract and concluded the contract "limited [Broadlawns's] right to terminate an employee to one of the seven events described in the [manual of personnel policies]." *Id.* The only issues tried to the jury were whether Broadlawns breached the contract and whether the new director tortiously interfered with the contract. *Id.*

79. *Id.* at 520.

80. *Id.* at 515.

81. *Id.*

82. *Id.* at 515-16 (citations omitted). The language of the manual of personnel policies referenced in the text provided:

> XIII. SEPARATION OF EMPLOYMENT
>
> A. POLICY: Broadlawns Medical Center strives to provide an orderly exit process for employees who are separated from employment through resignation, retirement or who are discharged for cause. . . . The types of separations are:
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> . . .

Thus, Hunter sets the manuals of *Fogel* and *Cannon* as benchmarks against which the language of future employee manuals will be judged.

C. *Disclaimers*

1. Palmer v. Women's Christian Association

Significantly, the Iowa appellate courts, for a surprising period of time, had no opportunity to decide whether language in an employee handbook disclaiming the existence of an implied or express contract of employment precluded a claim for wrongful termination based on breach of contract. One is left to speculate on the reasons for the absence of such cases in the system. One plausible explanation may be that counsel for terminated employees, facing clear and concise disclaimer language in employee manuals and handbooks, concluded judicial review of trial court decisions resulting in dismissal of the employee's breach of contract claim would be futile. The most plausible explanation, however, is that Iowa business employers and their counsel were slow to include disclaimer language in existing or newly formulated employee manuals or handbooks.

The *Palmer v. Women's Christian Association*[83] decision gave the Iowa Court of Appeals its first opportunity to discuss the implied contract theory in light of a handbook disclaimer. Susan Palmer, a registered nurse, was discharged for failing to provide proper emergency care to a "sixteen-week fetus born in the hospital's outpatient rest room."[84] The fetus eventually died, and Palmer's employer, Jennie Edmundson Memorial Hospital, terminated her employment.[85]

Palmer sued the hospital and two of its executives, alleging wrongful discharge and a multitude of other claims.[86] The trial court entered a directed verdict in favor of both individual defendants on all counts and in favor of the hospital on all but the wrongful discharge claim.[87] The case proceeded to a jury verdict in favor of the plaintiff in the amount of $150,000.[88] The trial court subsequently granted the hospital a new trial on damages, but denied the hospital's motion for judgment notwithstanding the verdict.[89] The hospital appealed.[90]

The gravamen of Palmer's wrongful discharge claim was that she was not an at-will employee because the hospital's handbook created a contract of employment.[91] The handbook provided:

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6. DISCHARGED: Broadlawns Medical Center initiates separation for cause.

Id. at 511-12.

83. Palmer v. Women's Christian Ass'n, 485 N.W.2d 93 (Iowa Ct. App. 1993).
84. *Id.* at 94.
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.*

> It is also important to understand that this Personnel Handbook *does not constitute a contract between the Hospital management and the Hospital employees*. Rather, the information contained in this handbook reflects a general description of the policies, services, and benefits of the Hospital currently in effect. The Hospital management retains the right to modify or abolish these policies, services, and benefits and reserves the right to adopt new policies, services and benefits.[92]

Before considering the effect of this disclaimer, the court, citing *Fogel* extensively, noted "an employee manual may constitute a unilateral contract only if the traditional requirements of contract formation have been met."[93] The court framed the issue as follows:

> The criteria set out by our supreme court imposes a narrow set of guidelines for employee handbook contracts. *The critical question before us is not whether hospital policy mandated just cause for dismissal. The real question is whether the handbook created a contract between the parties which provided only for just cause dismissal.*[94]

In answering this question, the court focused on the language of the disclaimer, noting Palmer testified the hospital's handbook contained the terms of her employment.[95] The court emphasized the handbook clearly stated it did not constitute a contract and the hospital reserved the right to terminate the employees.[96] The court concluded the handbook did not, as a matter of law, create a contract providing for only just cause dismissal.[97] The court reversed the trial court's refusal to grant judgment notwithstanding the verdict in favor of the hospital.[98]

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92. *Id.* at 95 (emphasis added by the court).
93. *Id.* at 95-96 (citing McBride v. City of Sioux City, 444 N.W.2d 85, 91 (Iowa 1989)).
94. *Id.* at 96 (emphasis added).
95. *Id.*
96. *Id.* The importance of the prominence of such statements is not clear from the court's opinion. Although the language appeared prominently on the first page of the handbook, the court noted the portion stating the handbook was not a contract "would have been one of the very first items read by anyone *conscientiously* reviewing the terms of the handbook." *Id.* (emphasis added). In any event, logic dictates a more prominently displayed disclaimer strengthens the employer's case. *Cf. infra* text accompanying note 136.
97. *Id.* at 97. The court discounted a hospital executive's testimony that the hospital could terminate employees only for cause, stating:

> The hospital executive's testimony does not prove the handbook was an employment contract. At most, it shows the hospital's *policy* was only to terminate for just cause. This is not synonymous with a contract. The hospital is free to set policy as it deems appropriate, within the bounds of the law. It is only bound by policy if it so contracts with another party.

Id. at 96.
98. *Id.* at 97.

> *Just as you retain the right to terminate your employment at any time, for any reason, Dahl's retains a similar right. No policy or practice of the Company should be construed to change this relationship. Only corporate officers have the right to modify or change this practice, and such action must be in writing.*[118]

The handbook also contained the following language with respect to employee termination:

> We hope that your association with Dahl's will be a long and happy one. *You do have the right, however, to terminate your employment at any time for any or no reason. Dahl's retains a similar right.*
>
> . . . .
>
> It is the policy of Dahl's that any conduct which, in its view, interferes with or adversely affects employment or the Company is sufficient grounds for discipline, including dismissal. Examples of conduct for which employment may be terminated include, but are not limited to, unsatisfactory performance, unacceptable tardiness or absenteeism, violation of the "Code of Conduct," dishonesty, insubordination, or any reason not prohibited by law. Dahl's reserves the right to terminate employment immediately, if it believes circumstances warrant.[119]

French also signed a receipt for a copy of the Dahl's handbook, which stated:

> I certify that I have received a copy of the Dahl's food employee handbook dated July, 1990.
>
> I have read it and understand it. I recognize that Dahl's reserves the right to modify or terminate the matters covered in the Handbook at any time. I agree to comply with store policies. *I recognize that either Dahl's or I may terminate the employment relationship at any time for any reason.*[120]

Based on this language, the Iowa Supreme Court distinguished *French* from its decision in *Hunter v. Board of Trustees*,[121] where the handbook contained language that was "amenable to an interpretation that discharge would be permitted only on one of the seven grounds set out in the handbook," including "discharge for cause."[122] The court noted:

> Unlike *Hunter*, there is no provision in the handbook in this case that limits the grounds for termination. Nor does the handbook suggest, as in *Hunter*, that a discharge may *only* be for cause. We agree with the district court

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118. *Id.* (emphasis added by the court).
119. *Id.* (emphasis added by the court) (omission in original).
120. *Id.* (emphasis added by the court).
121. *See supra* text accompanying notes 71-82.
122. French v. Foods, Inc., 495 N.W.2d 768, 770-71 (Iowa 1993).

> that, as a matter of law, the handbook did not establish a unilateral contract for continued employment.[123]

French tried to get around the disclaimer language by arguing certain oral statements, practices, and customs of the Dahl's store created an implied-in-fact contractual obligation not to terminate French without just cause.[124] French argued the handbook itself "anticipate[d] that the actual practices and customs at the Dahl's store [might] imply terms supplementing, or even contradicting, those contained in the handbook."[125] French pointed specifically to a paragraph stating, "[T]his handbook does not contain all of the information you will need during the course of your employment. You may receive additional information through various written notices as well as orally . . . ."[126] French, however, overlooked language in the handbook stating, "No policy or practice of the Company should be construed to change [the] [at-will] relationship. Only corporate officers have the right to modify or change this practice, and such action must be in writing."[127]

Although the Iowa Supreme Court recognized a "contractual obligation may be found even if it was not the employer's intention that its handbook confer contractual rights,"[128] the court seized on this language and summarily rejected French's implied-in-fact argument: "The 'mutual manifestation of assent' necessary to establish an implied-in-fact contract is missing. It is clear that the employer did not 'assent' to implied modification of its handbook and in fact strongly resisted it."[129] In doing so, the Iowa Supreme Court sent a strong message that the myriad factual disputes arising from a typical employment relationship will not defeat carefully and clearly crafted disclaimer language.[130]

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123. *Id.* at 771 (emphasis added).

124. *Id.*

125. *Id.*

126. *Id.* (omission in original).

127. *Id.* (second alteration in original).

128. *Id.* (citing Cannon v. National By-Products, Inc., 422 N.W.2d 638, 640 (Iowa 1988)).

129. *Id.* (quoting Duhme v. Duhme, 260 N.W.2d 415, 419 (Iowa 1977)). The court also noted the statements on which French relied were not made in writing or by officers of the corporation and "appear[ed] to have been merely offhand comments by supervising personnel with virtually no probative value." *Id.*

A plaintiff tried to get around disclaimer language by asserting the implied-in-fact theory in *Porter v. Pioneer Hi-Bred Int'l, Inc.*, a case involving an agency relationship rather than an employment relationship. Porter v. Pioneer Hi-Bred Int'l, Inc., 497 N.W.2d 870, 871 (Iowa 1993). The terminated agent argued that Pioneer's course of conduct established by implication a requirement that the relationship could be terminated for good cause only. *Id.* at 871. The agent could not point to any conduct by Pioneer to support such a belief, however, offering only his own testimony that he had such a belief and two memos that he did not read until after he filed his lawsuit. *Id.* The Iowa Supreme Court refused to set aside the disclaimer language in Pioneer's original letter confirming the agency relationship, noting the requirement of mutual assent, which is necessary "[t]o establish an implied agreement of continued employment in the analogous area of *employment* contracts . . . is lacking here." *Id.* (citing French v. Foods, Inc., 495 N.W.2d 768, 771 (Iowa 1993)).

130. Whether the court would have accepted French's argument had the anti-modification language of the handbook been omitted is not clear. The court implied, however, that the "additional information" language was not enough to overcome the other disclaimer language: "We do

III. THE FUTURE OF THE IMPLIED CONTRACT EXCEPTION TO THE EMPLOYMENT-AT-WILL DOCTRINE

Predicting the evolution of the implied contract exception in the Iowa courts is inherently risky at best and impossible at worst. What reasonably may be extrapolated from the Iowa Supreme Court's decision in *French*,[131] however, is that clear and unambiguous disclaimer language in employee handbooks and personnel policy manuals likely will preclude, as a matter of law, wrongful discharge claims based on the implied contract theory.

Perhaps the more difficult issue awaiting the Iowa Supreme Court is whether disclaimer language is sufficient to defeat an implied contract claim when "cause" or "just cause" dismissal language appears elsewhere in the handbook or personnel policy manual. Counsel representing terminated employees will argue such "ambiguities" generate a jury question as to whether the handbook creates an employment contract.

From the employer's perspective, however, basic principles of contract construction[132] suggest such arguments are flawed. When the handbook contains explicit disclaimer language, such language, in itself, should be sufficient to negate the existence of an employment contract. If no contract exists in the first instance by virtue of the handbook's disclaimer, any "ambiguities" contained in the handbook are irrelevant to the analysis. Indeed, the Iowa Court of Appeals recognized this proposition in *Palmer*.[133] The court in *Palmer* concluded "*[t]he critical question before us is not whether hospital policy mandated just cause for dismissal*," but rather "*whether the handbook created a contract between the parties [that] provided only for just cause dismissal.*"[134]

The court's logic in *Palmer* is both legally and factually sound. That is, if the employer has taken pains to include a clear disclaimer in its employee handbook or personnel policy manual, and the employee, through his or her acknowledgment of receipt of the handbook, understands the intent of the disclaimer as not constituting a contract of employment, an implied contract of employment simply cannot exist. This is true even if the handbook provides for termination only for cause, or if the handbook contains a so-called "progressive discipline" policy.[135]

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not agree with French's interpretation of this paragraph, *especially* in view of the [anti-modification] language." French v. Foods, Inc., 495 N.W.2d at 771 (emphasis added).

131. *See supra* text accompanying note 122-30.

132. *See* McBride v. City of Sioux City, 444 N.W.2d 85, 91 (Iowa 1989) (holding that to be a unilateral contract, a handbook must be sufficiently definite to create an offer, it must be communicated to and accepted by the employee to create acceptance, and the employee must continue working to provide consideration).

133. *See supra* text accompanying notes 83-97.

134. Palmer v. Women's Christian Ass'n, 485 N.W.2d 93, 96 (Iowa Ct. App. 1992) (emphasis added).

135. The most common form of progressive discipline is oral warning, written warning, suspension, and then termination.

IV. SUGGESTIONS FOR DRAFTING THE EMPLOYEE HANDBOOK/PERSONNEL POLICY MANUAL TO MINIMIZE THE RISK OF WRONGFUL DISCHARGE CLAIMS

Obviously, Iowa business employers and their counsel should closely scrutinize all employee handbooks and personnel policy manuals to reduce potential liability for wrongful discharge claims. Clearly, the teachings of *French* and *Palmer* dictate that all employee handbooks and personnel policy manuals should contain language disclaiming the existence of an employment contract or a permanent employment relationship. As in *French*, the disclaimer language should be concise and clear. Further, the disclaimer should be conspicuously positioned in the handbook to avoid employees' claims that the disclaimer was located in such a remote corner of the handbook that no reasonable employee would be aware of its existence.[136]

Additionally, the disclaimer must define the employment relationship as "at-will," and care should be taken to avoid language expressly or impliedly guaranteeing an employee may be terminated only "for cause." If the employer's circumstances dictate "for cause" language is necessary, the handbook or personnel policy manual should also inform the employee that management reserves the right to determine, in its discretion, what constitutes "cause." Further, if the employer incorporates a "progressive discipline" procedure in the handbook, the employer is well-advised to reserve in writing the right to forego any step in the progressive discipline procedure should, in the employer's discretion, circumstances dictate. The employer should also reserve the right to revise or modify the employee handbook or personnel policy manual in writing.

In the event the employer revises or modifies the handbook or personnel policy manual, the employer should follow the guidelines for drafting the original handbook as set out above. Specifically, any revision or modification to the existing handbook or personnel policy manual should also reiterate the at-will status of the employment relationship and should further require every employee to sign a form acknowledging the modifications and an agreement to abide by its terms and conditions.

Finally, the handbook should be accompanied by an acknowledgment of receipt form containing an agreement in which the employee agrees to comply with all of the terms and conditions contained in the handbook or that the handbook governs the employment relationship. The receipt should be signed by every employee.

V. CONCLUSION

The evolving standard followed by Iowa's appellate courts seems to be that employers may avoid liability to their employees under the breach of a unilateral contract theory if their manuals and handbooks include sufficiently clear dis-

136. *See* Swanson v. Liquid Air Corp., 826 P.2d 664, 680 (Wash. 1992) (holding disclaimer on sixth page of a 200-page handbook was not conspicuous).

claimers.[137] Employers and their counsel would be well served by drafting manuals and handbooks to include such conspicuous disclaimers.

137. *See, e.g.*, Nelson v. West Des Moines Library Bd., No. 3-658/93-0618 (Iowa Ct. App. Feb. 25, 1994). In *Nelson*, Mark Nelson contended that a handbook adopted by the Board after he was employed by the Board as an employee-at-will constituted an employment contract. *Id.*, slip op. at 2. The Iowa Court of Appeals disagreed, noting the handbook "specifically says it is not an offer of continuing employment and . . . reserves to the library the right to change policies whenever it chooses." *Id.*, slip op. at 4. The court also noted "Nelson signed a receipt acknowledging no employment contract existed." *Id.* It therefore concluded "The trial court was correct in finding as a matter of law no employment contract existed." *Id.* (citing Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 455-56 (Iowa 1989); Palmer v. Women's Christian Ass'n, 485 N.W.2d 93, 97 (Iowa Ct. App. 1992).