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Labor and Employment Alert: For Want Of A Nail: Without a Disclaimer, Employee Handbook May Create a Contract

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*"For want of a nail the shoe was lost, for want of a shoe the horse was lost,
For want of a horse the rider was lost, for want of a rider the battle was lost,
For want of a battle the kingdom was lost, and all for the want of a horseshoe nail."*

A recently decided case from an Ohio Court of Appeals breathes life into that proverb, teaching companies the importance of having a properly drafted employee handbook. In *John Staschiak v. Certified Logistics*, 2016-Ohio-897, the Court of Appeals for the 11th Appellate District (with jurisdiction over Ashtabula, Geauga, Lake, Portage and Trumbull Counties) found that an employee handbook may create a contract as to the terms of employment, including an employee's rate of pay and insurance coverage, absent a clear disclaimer to the contrary.

Staschiak worked as a commercial truck driver for Certified Logistics and Checkered Express. According to him, the employee handbook he was provided stated he would be paid 30% of the gross income received for loads he drove and \$15 per hour for detention and layover pay. In addition, under the handbook, he claims that he was entitled to have 70% of his health insurance costs covered. Staschiak claimed the companies breached their contract with him by failing to pay him and cover his insurance in accordance with these provisions.

The companies moved for summary judgment, arguing that there was no written contract, Staschiak was an at-will employee, and the handbook did not constitute an employment contract. Staschiak replied that the handbook's promissory language about what it "will" pay employees created a contract. The trial court found there was no "meeting of the minds" (an essential element of contract formation) and granted summary judgment. Staschiak appealed. The Court of Appeals reversed the trial court, finding material facts in dispute as to whether the handbook created an implied contract concerning pay and insurance coverage. This means that Staschiak will have his day in

court.

The Court explained that “employment manuals may constitute binding contracts between employees and employers provided all necessary elements of an implied contract are present.” Thus, an employee claiming the existence of an implied contract must prove offer, acceptance, consideration, and mutual assent. Here, the Court found questions existed concerning these contractual elements for several reasons. First, the handbook explicitly stated the compensation policy and Staschiak remained an employee after the handbook was given to him. The Court noted that continued employment is sufficient consideration to support an implied contract and continued work constitutes acceptance. Second, the handbook can be construed as an offer by the companies because “the language of the handbook is clear as to the payments at issue” and as to the insurance coverage. And third, the handbook “does not otherwise claim that the handbook cannot constitute a contract or counteract the clear language of offering these benefits.” “There is no language within the handbook either claiming that it could be changed at the employer’s discretion or that it did not form a contract.”

Indeed, this third reason is the key to the Court’s decision, and the outcome would likely have been different if the handbook included a clear disclaimer. To save their kingdoms, employers should review their own handbooks, and, in light of this decision, take particular note of any disclaimers. Contact your Vorys lawyer if you have questions about your employee handbook.