

CLIENT ALERT: Employer Liable for Failure to Follow Progressive Discipline Policy in Employee Handbook

A recent decision of the Appellate Division of the state District Court in Massachusetts upheld a jury verdict finding an employer liable in a breach of contract action brought by a former employee who alleged he was terminated in violation of the progressive discipline policy contained in the company's employee handbook.

In *Buttrick v. Intercity Alarms, LLC*, the employee, Jeffrey Buttrick ("Buttrick") alleged that he was terminated without any prior warning, despite the employer's "Disciplinary Policy" in the employee handbook, which provided for disciplinary action depending upon the severity of the action by way of verbal counseling, written counseling, and suspension. Buttrick argued that the employer's failure to follow its disciplinary policy constituted a breach of an implied contract based on terms in the employee handbook. A jury found for Buttrick, and awarded him \$41,888.00. The employer moved for a judgment notwithstanding the verdict (asking the court to reverse the jury's decision) arguing that there was no evidence to support the jury's verdict. The court denied this motion, and the employer appealed the court's decision in this regard.

The Appellate Division of the District Court upheld the jury's decision, finding that in light of the evidence, it would not have been unreasonable for the employee to regard the handbook as a binding commitment. Despite the existence of disclaimers in the employee handbook that stated the employer could unilaterally modify the handbook's terms, and that the handbook should serve as a guide and was not an employment contract, the court focused on evidence highlighting the "special attention" called to the handbook by the employer. Specifically, the court cited testimony that one of Buttrick's managers had provided a copy of one version of the employee handbook to Buttrick and asked him to sign it at least three times. Buttrick also testified that he was told by the company's operations manual that it was "very important" for him to sign an earlier version of the employee handbook because of a noncompetition clause in the manual, and that Buttrick

understood himself to be bound by the handbook's terms, and in particular the noncompetition clause (which he testified that he honored for two years following his termination). The court also rejected other arguments raised by the employer on the grounds that the employer had failed to raise them in its motion below.

As set forth in a previously published MBJ Client Alert on this topic, see "[Employee Handbooks May Create Basis For Liability](#)," court decisions such as these demonstrate that employers cannot assume that the disclaimers in their employee handbooks will automatically protect them from liability in lawsuits brought based on the terms of these handbooks. Employers are reminded that they should not have policies in their handbooks that they are not prepared to follow, and that in some cases failing to follow policies could result in handbooks being viewed by courts as contracts. Although the *Buttrick* decision is not binding outside the state District Courts in Massachusetts, it and other recent decisions illustrate the risks associated with employee handbooks. Employers should review their handbooks regularly and closely, and take affirmative steps to ensure that the policies set forth in their handbooks are consistently enforced by the company and all managers.

Amy Carlin, Esq. is an attorney with Morgan, Brown & Joy, LLP, and may be reached at 617-523-6666 or acarlin@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

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