

Does Your Management Guide Create An Implied Employment Contract For All of Your Employees?

By Karen Sutherland

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Legal Background

Washington law contains some surprises for employers that have a management guide. In *Burnside v. Simpson Paper Company*, the Washington State Supreme Court decided that Simpson's Management Guide could apply to all employees and not just to managers if the guide contained specific promises and employees reasonably relied on it. The Simpson Management Guide stated in its text that it constituted orders of the president to be observed *throughout the company*. It also listed specific types of terminations, which included "releases, if initiated by the Company for cause." Under "Release," the Guide listed "instances such as misconduct, failure to return without notice on schedule from an absence... or incompetence or otherwise unsatisfactory work performance, if previous warnings have been given and employee has had the opportunity to resign."

The court held that this language in the Guide changed the relationship between the company from one where employees could be terminated at will to one where the company could only terminate employees for cause if previous warnings had been given. The court's reasoning was that the Guide created an implied contract, even though that may not have been management's intent. The former employee, who also had an age discrimination claim, was awarded a total of \$1,752,781.00.

Practical Guidelines

The *Burnside* case highlights the need to have an employment law attorney periodically review every manual, guide or other materials that are distributed to employees or managers to be sure that the written materials fit the most recent legal decisions.

In the meantime, here are some tips you should keep in mind when reviewing your employment guides or when adopting new policies:

- Be sure that any workplace policies or guidelines, regardless of whether they are for all of your employees or just a limited group of employees, contain appropriate language that reserves your right as an employer to modify the policies.

- If you have collective a bargaining agreement ("CBA") with your employees, make sure that any modifications that you may adopt follow the collective bargaining agreement process set forth in the CBA or applicable law.
- If you do not want to be bound by your manual, policies or employee guide, expressly say so throughout the manual, policies or guide. A blanket disclaimer statement at the beginning of the document may not be enough.
- Put the effective date on any policies or modifications that you adopt in a footer that runs on the bottom of each page and remove the outdated policies from each employee's possession.
- Do keep at least one copy of each superceded policy on file with your HR manager and possibly your attorney, though, in case there is a dispute about what the superceded policy said, but clearly mark it as superceded and include the date the policy was superceded.
- Have employees sign an acknowledgement of receipt for all new policies and all revised policies. If the employees are at-will, the acknowledgment should include a statement acknowledging the employee's at-will status, too.
- Do not allow managers to issue "informal" policies, as these often conflict with formally adopted policies, and they may not contain the appropriate disclaimer language.
- If the policies only apply to some, but not all, of your employees, be sure to specifically say so in the policy itself.

These materials are not intended and should not be used as legal advice or other recommendation. If you need a legal opinion on a specific issue or factual situation, please contact an attorney. Anyone using these materials should not rely on them as a substitute for legal advice.