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A New Jersey appellate court held that an employer's authorization of extended maternity leave could be reasonably interpreted as a promise of reinstatement precluding termination, despite the employer's clear at-will policies.

At-Will Employment Takes Another Hit in New Jersey as Maternity Leave Policy Gives Birth to Implied Employment Contract

By Keith J. Rosenblatt and Lindsay Schrum

In *Lapidoth v. Telcordia Technologies, Inc.*, the Appellate Division of New Jersey's Superior Court concluded that, although an employee's year-long maternity leave was not covered by the federal Family and Medical Leave Act (FMLA) or the New Jersey Family Leave Act (NJFLA), she could have reasonably interpreted her employer's letters authorizing her tenth maternity leave as a promise of reinstatement precluding termination, notwithstanding the company's annually distributed employment-at-will disclaimer. This decision is the latest example of how an employee's "reasonable expectations" may overcome the at-will employment doctrine in New Jersey. It also is a cogent reminder that employers must draft all employee communications carefully, even where employment-at-will policies are clear.

Factual Background

Sara Lapidoth was a long-term employee of Telcordia Technologies, Inc. and its predecessor company. In 1991, she began working part-time at her request. In early 2005, she became a part-time release manager of a product called ARIS.

Throughout the plaintiff's employment, the company's Code of Business Ethics (Code) contained the following at-will employment policy:

> This Code of Business Ethics as well as each of the policies, practices, and procedures contained in it and every other Telcordia document, is not a contract of employment and does not create any contractual rights, either expressed or implied, between the company and its employees. The policies, practices, and procedures described in this Code may be changed, altered, modified, or deleted at any time, with or without prior notice from information in this code when making decisions related to employment with Telcordia.
>
> Telcordia employees are employees-at-will. This means that employees have the right to terminate employment at any time, with or without grounds, just cause or reason and without giving prior

> notice. Likewise, Telcordia has the right to terminate the employment of any of its employees at any time with or without grounds, just cause or reason and without giving prior notice.

The company posted the Code on its website and annually distributed it to all employees. Also, when the plaintiff originally applied for a position with the predecessor company, she signed an employment application acknowledging that "acceptance of an offer of employment does not create any contractual rights, either express or implied, between the company and me."

During the plaintiff's employment, she requested and took approved leaves of absence for the births of her nine children. On April 11, 2005, the plaintiff requested a six-month maternity leave because she was expecting her tenth child. Her request was approved, and her supervisor notified her that one of her co-workers, a release manager for two other products, would perform her job during her leave. Prior to the plaintiff's maternity leave on June 1, 2005, she trained this co-worker to act as release manager for ARIS.

Two weeks after the plaintiff gave birth, the company sent her a form letter notifying her that her six-month leave of absence was approved. The letter reiterated the company policy on maternity leave, stating that leave was granted "with a guarantee of reinstatement up to 12 months to the same or comparable job, including the number of hours and days worked during the week, salary, and benefits prior to the Leave starting. Reinstatement is not guaranteed if your job is declared surplus or the number of hours you request to work at the time of reinstatement is different than when the Leave commenced."

Under company policy, the "declared surplus" exception applied when the employee's position was no longer required, or when it was subject to a reduction-in-force or "force adjustment."

Weeks before her six-month leave was set to expire, the plaintiff requested another six-month leave to run from January 22 to July 21, 2006, one year from the start of her leave. That same day, the company approved the request and again notified the plaintiff in writing that so long as she did not request a change in hours and her position was not declared surplus, reinstatement of her position was guaranteed at the end of her leave.

In February 2006, as a result of a reorganization, one of the release manager positions in the plaintiff's department was eliminated, and the plaintiff's supervisor determined that the ARIS product required a full-time release manager. The co-worker who had been filling in for the plaintiff while she was on leave was temporarily given that position.

In June 2006, the plaintiff informed the company that she planned to return to work in a part-time capacity. In response, her supervisor asked if she was willing to return to work full-time because the ARIS release manager position required additional hours. The plaintiff agreed to do so.

Due to budgetary constraints, however, the company determined it could only maintain one full-time ARIS release manager. When the supervisor compared the plaintiff's yearly performance evaluations with those of the co-worker that had replaced her while on leave, he found that the co-worker had better ratings. As a result, he chose the co-worker for the position, and the plaintiff's employment was terminated. The company believed that it was free to discharge the plaintiff because she was an at-will employee whose position had been affected by the force reduction, and the FMLA and the NJFLA required reinstatement at the end of a leave only when the leave was 12 weeks or less.

A Guarantee Means a Guarantee, Even When it May Not Be

The plaintiff filed suit, claiming that the company had: (1) discharged her for taking maternity leave in violation of the FMLA and the NJFLA; and (2) breached a contract to reinstate her employment at the conclusion of her leave. The trial court dismissed her case on summary judgment, and she appealed.

On appeal, the Appellate Division agreed that the plaintiff's leave was not covered by either the FMLA or the NJFLA because it exceeded the 12 weeks to which she was entitled under those laws, and dismissed the statutory claims. The court also rejected the plaintiff's argument that an employer may violate the FMLA and NJFLA by authorizing family leave, pursuant to its company policy, in excess of the statutorily required 12 weeks, and then failing to reinstate an employee upon completion of that extended leave. The court concluded that such a claim was barred by the United States Supreme Court's decision in *Ragsdale v. Wolverine World Wide, Inc*., 535 U.S. 81 (2002), which generally limited the FMLA's reinstatement protections to the 12-week leave period under the statute.

The court reached a different conclusion, however, with respect to the breach of contract claim, holding that a jury could find that the company had made an enforceable promise to reinstate the plaintiff through its letters granting her maternity leave.

The court reiterated that absent a contract providing otherwise (and subject to some statutory exceptions), employment in New Jersey is at-will. The court also reviewed the established law in New Jersey that a contract changing an employee's at-will status may be implied from widely disseminated company policies or practices, such as those in an employee handbook, or from an oral or written "promise" made by the employer directly to the employee. Although such a contract may be prevented by clear and prominent disclaimers affirming that employment is at-will, the court warned that in all instances, "the reasonable expectations of the employee" is paramount in determining whether an employment policy created contractual rights.

Applying these principles to the plaintiff's situation, the court observed that even though the company's "Code and employment application provided that employment was at-will and that nothing in the Code or any of [the employer's] other policies, practices, and procedures created any contractual rights, [its] letters relating its policy on maternity leave seemed to contradict those general provisions." Indeed, since leave had been granted "with the guarantee of reinstatement," the court reasoned, a reasonable employee could interpret the company-wide policy on maternity leave as promising reinstatement. Moreover, the company's history of granting the plaintiff nine previous maternity leaves, and reinstating her employment at the conclusion of all of them, further supported the conclusion that "a reasonable employee could reasonably interpret the policy as promising reinstatement."

The court rejected the company's contention that the maternity leave policy's "surplus" or "force reduction" exceptions to reinstatement applied to the plaintiff, because although other jobs in her department had been eliminated, her particular position had not, and had instead been upgraded to a full-time position. The court also rejected the company's argument that it was entitled to fill the plaintiff's position with her more qualified co-worker, explaining that "superior qualifications are not relevant to whether [the company] promised [the plaintiff] reinstatement and then breached that promise."

Lessons Learned

This decision provides a cautionary lesson to employers: periodic dissemination of at-will employment statements alone will not necessarily preserve an employee's at-will status in New Jersey. Rather, once an employer announces a company policy or makes a promise to a particular employee that can be reasonably interpreted as providing job security, such a policy or promise may trump the employee's at-will employment status. *Lapidoth* is a reminder for employers to:

- Establish clear employment policies. If the policies apply to individuals who are employed at-will, they should be drafted carefully so they cannot be reasonably interpreted as guaranteeing job security. Review company policies with experienced legal counsel to help ensure they do not contain any undesired commitments.
- Communicate clearly and be careful not to make any statements that could be reasonably (mis)construed as promising unintended terms or conditions of employment. It is what an employee may reasonably interpret management's statements to mean, rather than what management may actually have meant (or want to change), that will decide the issue.
- Remember that a court may also look to a company's practice or history of reinstating employees at the conclusion of a leave, whether the leave is statutorily protected or not, in determining whether an employee may contractually enforce a policy or communication promising reinstatement upon their return to work after leave. If there is no statutory right to reinstatement, extra caution should be used in wording the communications regarding such leave, so that the employer's reinstatement options remain open.

By working with experienced employment counsel on these issues, employers can help to ensure that their true employment policies and decisions will achieve their desired results.

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