

The Legal Brief

Beware Of Spoken Promises During Hiring Sessions

by Steven Mitchell Sack

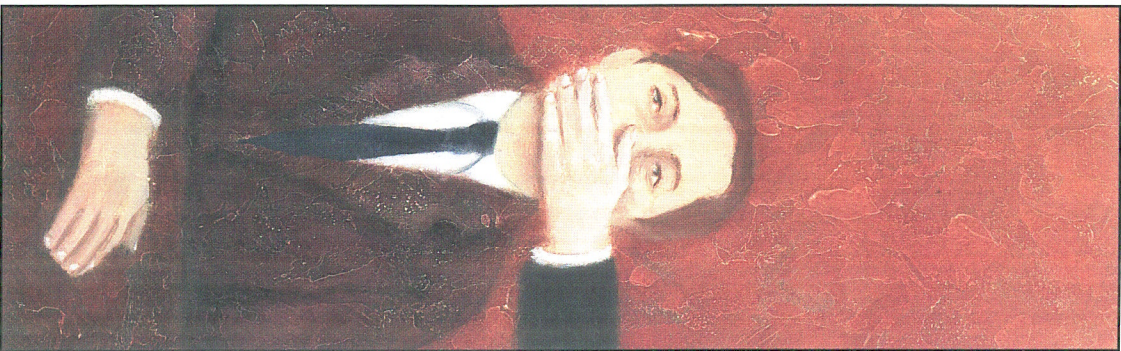


ILLUSTRATION BY ALLISON KOCH

More courts throughout the United States are ruling that employees have the right to rely on representations made before hiring and during the working relationship. As a result, discharged employees are suing, and winning lawsuits against, employers for breach of oral agreements promising secure employment and even jobs for life. But employers can avoid these situations.

While courts have generally recognized that employers may be bound by written assurances and statements made in employee manuals, handbooks and work rules, they are now increasingly willing to consider oral contracts extended by management and company officials having the apparent authority to make such promises.

However, these are not the only kinds of promises that are getting companies in trouble. When personnel at the hiring interview paint an overly rosy picture of a company, exaggerate the attractions of a specific position, or promise the kinds of duties and job functions the employee will have if a job is accepted, the employer could end up with a disgruntled employee who someday might slap a "truth-in-hiring" lawsuit.

Speak No Evil

In light of recent court rulings, it's imperative to understand the dangers regarding oral promises and to minimize problems in this confusing area.

Know the law. It's important to recognize that informal, off-the-cuff oral assurance can bind your company to devastating results. For example, a Michigan jury recently awarded \$1.1 million to a worker, based on a claim of an oral promise of lifetime employment. In this case, the jury found the existence of a valid, oral contract and ruled that the company unjustifiably breached that contract when the worker was terminated.

In another case, a lawyer was lured to join a rival law firm with promises that she would head its environmental law practice. After accepting the offer and leaving a secure, stable position, the lawyer learned that the law firm had few environmental clients, and there was practically no work for her to perform. A federal court judge ruled that she had the right to proceed to a trial with a lawsuit based in part on the theory of fraud in the inducement.

In addition, a Connecticut executive was awarded \$10.1 million in compensatory and punitive damages after he left a company to join a competitor with promises of a large bonus and profit-sharing plan that never materialized.

Countless other decisions indicate the vulnerability of companies in this area. They include claims of negligent misrepresentation and violations of *The Federal Trade Commission Act* when false or misleading claims regarding a person's potential earnings or job functions are made.

Act accordingly. To avoid similar problems, all your company's hiring policies should be clearly spelled out, so they cannot be misunderstood or misinterpreted by prospective job candidates and present employees. Interviewers, recruiters, and other intake personnel must be careful not to say anything at the hiring interview that can be construed as a promise of job security.

Avoid using words at the hiring interview that imply anything other than an at-will relationship. For example, try not to use such phrases as "permanent employment," "job for life," or linking the phrase "just cause only" with termination, as well as broad statements concerning job longevity, assurances of continued employment—"Don't worry. No one around here ever gets fired except for a good cause"—or specific statements regarding career opportunities. Only use these phrases if they are being stated as deliberate

reflections of commitments.

Utilize employment applications for protection. As a first line of defense, your company should include language such as the following in employment applications: "I understand that no promises of continued employment have been given to me about this job. If I am offered this position, I have the right to be terminated at will, with or without cause, or notice, and may resign at any time. The foregoing is not to be construed as a guarantee of employment for a specific time, and no promises about the permanency of my job functions or duties have been given."

Requiring applicants to sign properly drafted employment applications can reduce potential problems. Indeed, it's not unusual for job interviewers to be over-exuberant in their job descriptions, leading to unrealistic expectations by the applicant and possible suits for damages.

Train staff to avoid making promises. The best way to avoid problems is to notify your interviewers not to say anything at the hiring interview that can be construed as a promise. It may be a good idea for the person offering the position to have a colleague present when the offer is made, to serve as a witness that no additional promises were stated.

Prepare follow-up memos where justified. Some companies furnish just-hired workers with memos which specifically deny that promises of job security and other material promises have been made. Other companies include such a statement in a written employment contract which the worker must sign.

Finally, pay special attention to welcoming letters sent out by company executives, particularly those in marketing and sales, which may talk in inflated terms and sometimes make statements or promises that the employer never intended to keep. In this area, you can never be too careful. ■

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