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Handbook Disclaimers May Not be Enough

In Minnesota, we've known that employee handbooks can be contracts since the Pine River State Bank case in 1983. Since then, courts have continued to find that the policies and statements in employee handbooks to employees can, in fact, be the terms of an enforceable contract between employer and employee. Employees have been awarded significant damages for breach of contract when policies outlined in a handbook are not followed, or promises made in a handbook are not kept.

Minnesota courts have held that employers can protect themselves from contractual liability by including adequate disclaimers in their handbooks. A recent decision by the Pennsylvania Superior Court, however, indicates that in some states, a disclaimer might not be enough. The Pennsylvania court upheld an award of \$187.6 million to current and former Wal-Mart employees in a case where the employee handbook was found to create a contract despite the handbooks inclusion of a disclaimer.

In the Pennsylvania case, *Braun v. Wal-Mart Stores*, the class of approximately 187,000 hourly-employee plaintiffs alleged that Wal-Mart failed to compensate them for rest breaks and off-the-clock work as mandated in the policies found in its employee handbook. At the beginning of the employee-plaintiffs employment, Wal-Mart gave each of them an employee handbook that included the following disclaimer: [T]he policies and benefits presented in this handbook are for your information only and do not constitute terms or conditions of employment. This handbook is not a contract.

Wal-Mart claimed that it did not intend to contract for break times with its employees, and offered as evidence the company's specific disclaimer stating that [t]his handbook is not a contract. Despite the disclaimer, the court found that a unilateral contractual relationship existed. The court held that the contractual relationship was created by the handbook itself, as well as by the employees performance of duties in accordance with the handbook. Wal-Mart was ordered to honor the rest break and off-the-clock work policies through the payment of damages.

Employers around the nation can learn from Wal-Marts costly mistake. Its good business practice to thoroughly examine policies outlined in employee handbooks to ensure that they comply with the law and are accurately reflected and enforced in daily business practices regardless of whether the handbook contains a contract preclusion disclaimer.

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