http://legaltimes.typepad.com/files/edva-ssm-opinion.pdf (last accessed Feb. 20, 2014).

Employment: Employer's Vague Verbal Statements About Future Job Security Do Not Convert At-Will Employment or Create Promissory Estoppel

Gill-Mulson v. Eagle River Fire Protection District, NO. 11-CV-01896 (D. Colo. Feb. 4, 2014).

A recent Colorado Federal District Court decision rebuffed the efforts by two senior at-will firefighters to challenge their terminations based on promissory estoppel. The case depicts the mischief which can result from an employer's imprecise or un-vetted verbal statements about employment.

Carol Gill-Mulson and John Willson (Plaintiffs) each began employment with Eagle River Fire Protection District (Eagle River) in the 1980's, rising through the ranks to senior positions. Neither Plaintiff was hired pursuant to any written contract and each was an at-will employee. Each signed an "Acknowledgment of Receipt" of Eagle River's employee handbook, affirming that he or she understood the following provisions:

> [N]either the employer nor myself is committed to an employment relationship for a fixed period of time. Employment with the Eagle River Fire Protection District is at-will. Both Management and I have right to terminate this employment at any time for any reason. The language used in this handbook and any verbal statement of Management are not intended to constitute a contract of employment, either express or implied, nor are they a guarantee of employment for any specific duration... [N]o representative of the Eagle River Fire Protection District, other than the Chief of the District, has the authority to enter into an agreement of employment for any specific period and such agreement must be in writing, signed by the Board of Directors and myself. We have not entered into such an agreement.

On January 21, 2010, Plaintiffs attended an all-employee meeting where the tenuous financial condition of the region, including Eagle River was discussed. At that meeting the Chairman of Eagle River's Board of Directors allegedly told all employees words to the effect that "all jobs were secured until the 2012 period."

Plaintiffs were subsequently terminated during 2010. They sued Eagle River, alleging promissory estoppel and deprivation of property interests without due process. More specifically, Plaintiffs alleged that the Eagle River was estopped to deny a promise which converted their at-will employment to a more secure status, and that the secure status gave rise to a property interest which supports a claim under 42 U.S.C. § 1983.

HELD: The Federal District Court for the District of Colorado dismissed the employees' promissory estoppel claim, reserving the Section 1983 action for later deliberation.

DISCUSSION: Under Colorado law, an employee hired for an indefinite period of time is an at-will employee, whose employment may be terminated by either party without cause and without notice, and whose termination would not generally give rise to any cause of action. However, as the court noted, "even where no actual contract for a more permanent employment status exists, an employee may demonstrate that conditions have been imposed upon the at-will relationship based on a theory of promissory estoppel."

The court's challenge was to evaluate the facts to determine if the relevant elements of promissory estoppel were present. Among these elements were:

- did the employer make a promise to the employee?
- should the employer have reasonably expected that the employee would rely on the purported promise?
- did the employees reasonably rely on the purported promise?
- if so, did the employees rely to their detriment?
- must the promise be enforced to prevent injustice?

The court evaluated the veracity of each of Plaintiffs' allegations. Mr. Willson claimed that he had interpreted the "all jobs secured until 2012" statement as a promise of continued employment until that time. Moreover, Mr. Willson testified that he understood the words as meaning that all employees were converted from at-will employees to for-cause employees who could only be terminated for cause until the end of 2011. Similarly, Ms. Gill-Mulson testified that following the meeting in question, she believed that she could only be terminated for cause. Both employees also asserted that they had detrimentally relied on the statement—Mr. Willson claimed to have stopped looking for other employment even though he was aware of the region's dire financial condition, and Ms. Gill-Mulson alleged that she had spent savings to purchase a car, which she would not otherwise have done.

Here, the facts did not support Plaintiffs' claims. The court noted that the minutes of the Board meeting reflected no action by the Board with respect to the promise Plaintiffs allege was made, no mention of any assurance of employment for the future, no discussion of conversion of the status of employment for Eagle River's employees from at-will to for-cause, or any other action which could be construed as such. Even if the statements had been made, there was no basis for a reasonable listener to conclude that they had binding legal effect. Furthermore, even if the Plaintiffs (unreasonably) believed the statement to constitute a promise, their purported actions in detrimental reliance were not actionable.

http://www.leagle.com/decision?q=In FDCO 20140205A04.xml/GILL-MULSON v. EAGLE RIVER FIRE PROTECTION DISTRICT (last accessed Feb. 20, 2014)