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New York

Jurisprudence 2d **>**

Employment Relations **>**

PART ONE. Employer and Employee **>**

III. Contract of Employment **>**

A. In General

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§ 60 Contractual terms of employment

Freedom of contract gives workers and employers the right to fix, by individual or collective bargaining, the terms of employment acceptable to both. Unless the workers, by agreement freely made, have given up such right, they may, without breach of contract, leave employment at any time, separately or in combination, and may demand new terms of employment that must be fixed by bargain. [1]

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[1] West's Key Number Digest, Labor and Employment [westkey]34, 35

Effectiveness of employer's disclaimer of representations in personnel manual or employee handbook altering at-will employment relationship, 17 A.L.R.5th 1

Am. Jur. Legal Forms 2d § 99:5 (Employment agreement -- Short form)

Am. Jur. Legal Forms 2d § 99:6 (Employment agreement -- General form)

Am. Jur. Legal Forms 2d §§ 99:9 to 99:62.44 (Contract of employment -- Particular employment and service agreements)

Interborough Rapid Transit Co. v. Lavin, 247 N.Y. 65, 159 N.E. 863, 63 A.L.R. 188 (1928).

Observation: A collective bargaining agreement can modify the terms of a contract of hiring. [2]

An agreement by the employee to arbitrate claims against the employer rather than to litigate them may properly be included, as a condition of employment, in the contract of employment. [3]

Routinely issued employee manuals, handbooks, and policy statements should not lightly be converted into binding employment agreements, as doing so would subject employers who have developed written policies to liability for breach of employment contracts upon the mere allegation of reliance on a particular provision, which clearly cannot be, especially in light of conspicuous disclaiming language. [4]An employer does not contractually bind itself to follow its own internal administrative rules and procedures when it hires an employee where the employer does not make the employee aware of its express written policy and the employee does not detrimentally rely on that policy in accepting employment. [5]An employee handbook does not amount to an express agreement limiting an employer's right to terminate employees if the handbook specifically provides that it is not intended to, and does not, constitute a contract between the employer and the employees, thereby rendering unreasonable any reliance the employees may place upon it. [6]However, a

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[2] Parker v. Borock, 5 N.Y.2d 156, 182 N.Y.S.2d 577, 156 N.E.2d 297 (1959).

As to collective bargaining, generally, see §§ 600 to 606.

[3] Sablosky v. Edward S. Gordon Co., Inc., 73 N.Y.2d 133, 538 N.Y.S.2d 513, 535 N.E.2d 643 (1989) (holding that an arbitration clause in a real estate salesman's contract with a brokerage firm was not unreasonable as a matter of law, even though it permitted the firm to choose whether to arbitrate or litigate the dispute, while the salesman was compelled to submit all disputes to arbitration; the real estate brokerage business, by its nature, is bound to generate a substantial number of disputes, and an employer should be able to protect itself from the delays and costs of litigation by including, as a condition of employment, an agreement by an employee to arbitrate claims rather than litigate them).

As to the effect of an arbitration clause in a proceeding against an employer, see § 333.

[4] Martin v. Southern Container Corp., 92 A.D.3d 647, 938 N.Y.S.2d 335 (2d Dep't 2012).

[5] Maas v. Cornell University, 94 N.Y.2d 87, 699 N.Y.S.2d 716, 721 N.E.2d 966, 140 Ed. Law Rep. 711 (1999) (involving a policy for investigating a sexual harassment complaint lodged by a student against a professor); De Petris v. Union Settlement Ass'n, Inc., 86 N.Y.2d 406, 633 N.Y.S.2d 274, 657 N.E.2d 269 (1995).

[6] Ashe v. Mohawk Valley Nursing Home, Inc., 262 A.D.2d 960, 701 N.Y.S.2d 536 (4th Dep't 1999).

Regarding the role of employee manuals or handbooks in the dismissal of at-will employees, see § 93.

handbook of rules detailing tenure and discipline procedures is binding on an employer where the employer advises its employees that their employment is subject to the terms of the handbook. [7]

Illustrations: An employee handbook and benefit booklet created no implied contractual obligation upon an employer or its parent corporation to pay a terminated employee for his unused vacation time, particularly given the conspicuous inclusion of language disclaiming any intent for the handbook to create a binding contract. [8] An assistant professor of Russian could not recover for breach of contract for her tenure denial, considering that the faculty handbook, which formed an employment contract, stated that every decision on tenure would be made "with an eye to shifts in enrollments and students' interests."The handbook included no limitation of the college's discretion in decisions on tenure. Further, the department chair advised the professor during the two years prior to the tenure decision that low enrollments and the future need for a Russian program were serious concerns. [9] An employment agreement providing that the employee agreed to the terms and conditions outlined in a separate employee handbook was not ambiguous, and thus the agreement's incorporation of the employee handbook's tuition reimbursement provision providing that an employee would be required to reimburse the employer for expenses the employer incurred in sending the employee to a professional development training program if the employee left his position within one-year of obtaining the training was enforceable, even though the handbook provided that its policies were not intended to create a contract. The employment agreement provided that the employee agreed to the terms and conditions of the handbook, a handbook provision stating that its "policies" were not intended to create a contract was merely a disclaimer, and the

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[7] Klinge v. Ithaca College, 167 Misc. 2d 458, 634 N.Y.S.2d 1000 (Sup 1995), order aff'd as modified on other grounds, 235 A.D.2d 724, 652 N.Y.S.2d 377, 115 Ed. Law Rep. 415 (3d Dep't 1997) (involving tenure and annual reappointment of college professors).

[8] Martin v. Southern Container Corp., 92 A.D.3d 647, 938 N.Y.S.2d 335 (2d Dep't 2012).

[9] Roklina v. Skidmore College, 268 A.D.2d 765, 702 N.Y.S.2d 161, 141 Ed. Law Rep. 1158 (3d Dep't 2000).

agreement, not the handbook, created the employee's contractual obligation to repay training expenses. [10]

Reference

West's Key Number Digest, Labor and Employment [westkey]34, 35, 47

A.L.R. Index, Labor and Employment

West's A.L.R. Digest, Labor and Employment [westkey]34, 35, 47

Supplement

Statutes

GOL § 5-302 was added effective January 1, 2025, providing that any provision in an agreement between an individual and any other person or entity for the performance of personal or professional services is contrary to public policy and is void and unenforceable as it relates to a new performance by digital replication if the provision meets all of the following conditions: (a) the provision allows for the creation and use of a digital replica of the individual's voice or likeness in place of work the individual would otherwise have performed in person; (b) the provision does not include a reasonably specific description of the intended use of the digital replica. Failure to include a reasonably specific description of the intended uses of a digital replica will not render the provision unenforceable when the uses are consistent with the terms of the contract for the performance of personal or professional services and consistent with the fundamental character of the photography or sound track as recorded or performed; (c) the individual was not: (i) represented by legal counsel who negotiated on behalf of the individual licensing the individual's digital replica rights and the licensing terms are not stated clearly and conspicuously in an employment contract that is separately signed or initialed by the individual

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[10] Currier, McCabe & Associates, Inc. v. Maher, 75 A.D.3d 889, 906 N.Y.S.2d 129 (3d Dep't 2010).

or in a separate writing that is signed by the individual; or (ii) represented by a labor organization representing workers who do the proposed work and the terms of their collective bargaining agreement expressly address uses of digital replicas. It does not affect provisions of a contract other than those that falls under this provision. Finally, it provides that as used in this provision, "digital replica" means a digital simulation of the voice or likeness of an individual that so closely resembles the individual's voice or likeness that a layperson would not be able to readily distinguish the digital simulation from the individual's authentic voice or likeness.