

A bakery offered a chef a permanent full-time job as a pastry chef at a salary of \$3,000 per month. The chef agreed to take the position and to begin work in two weeks. In her employment application, the chef had indicated that she was seeking a permanent job.

One week after the chef was hired by the bakery, a hotel offered the chef a position as a restaurant manager at a salary of \$3,500 a month. The chef accepted and promptly notified the bakery that she would not report for work at the bakery.

Is the bakery likely to prevail in a lawsuit against the chef for breach of contract?

- A. No, because a contract for permanent employment would be interpreted to mean that the chef could leave at any time.
- B. No, because the position the chef took with the hotel was not substantially comparable to the one she had agreed to take with the bakery.
- C. Yes, because the chef's acceptance of a permanent position meant that she agreed to leave the bakery only after a reasonable time.
- D. Yes, because the chef's failure to give the bakery a chance to match the salary offered by the hotel breached the implied right of first refusal.

## Explanation:

### Employment contracts

<b>Definite duration</b>	Termination allowed only for cause or by mutual agreement
<b>Indefinite duration</b>	At-will employment can be terminated by either party at any time & for any reason
<b>Permanent duration</b>	Exception: termination violates public policy

A **contract to employ** someone for an **indefinite or permanent** duration typically **creates** an **at-will employment** relationship. An at-will employment relationship allows **either party** to **terminate** the employment contract at **any time** and for **any reason** unless the termination violates public policy—eg, when an employee is discharged for filing a discrimination claim.

Here, the contract for *permanent* employment formed an at-will employment relationship that allowed the chef to leave the bakery at any time **(Choice C)**. The chef's termination of the employment contract did not violate public policy because society wants at-will employees to be free to take on new opportunities. Therefore, the chef did not breach the contract by accepting the job with the hotel, and the bakery is unlikely to prevail.

**(Choice B)** Whether the position the chef took with the hotel is substantially comparable to the position at the bakery would be relevant had the *bakery* breached the contract. In this scenario, the chef would have then had a duty to mitigate damages by making reasonable efforts to secure comparable employment.

**(Choice D)** A right of first refusal is an *express* contractual right that gives the holder of the right the option to contract with a party before anyone else. This right cannot be created by implication.

### Educational objective:

A contract for permanent employment creates an at-will employment relationship that entitles either party to terminate the contract at any time and for any reason, without the termination being considered a breach.

### References

27 Am. Jur. 2d Employment Relationship § 30 (2020) (explaining that a permanent employment agreement is an at-will employment contract).

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