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When Is A Disclaimer Not A Disclaimer?

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An employer's whistleblower policy and its grievance policy are implied contractual promises that employees may enforce, notwithstanding the valid disclaimer that employment policies are not contracts contained in the company's employee handbook. So says the U.S. District Court for the District of Columbia in a recent case involving a non-profit organization's employee who included multiple implied contract and promissory estoppel claims in her post-termination lawsuit. *Leyden v. American Accreditation Healthcare Commission, No. 1:14-cv-01118, March 18, 2015.* The court ruled that a whistleblower policy and a grievance policy were "rationally at odds" with the all-encompassing disclaimer, rejecting the employer's motion to dismiss the contractual claims. Building on that conclusion, the court also ruled that the employee could assert breaches of the contractual duty of good faith and fair dealing in connection with those policies as well as claims founded on promissory estoppel. Christine Leyton was employed as a chief accreditation officer by URAC, a non-profit engaged in accrediting healthcare plans and providers to participate in insurance exchanges established under the Affordable Care Act. After a change in management, she complained of gender discrimination and retaliation for reporting alleged conflicts of interest and improper actions by certain members of the URAC Board of Directors. When her employment was terminated, she sued not only for gender discrimination and retaliation under Title VII and the District of Columbia Human Rights Act, but also for wrongful discharge for her reporting of the alleged conduct of the directors under breach of contract, promissory estoppel and the "public policy" exception to the employment at will doctrine. The URAC sought dismissal of her contractual and public policy claims, citing its express contractual disclaimer in its handbook and District of Columbia public policy claims limitations. The district court agreed to dismiss her public policy claims, but upheld her contractual claims. However, the court did not find that the express disclaimer of contractual promises in the handbook was invalid. To the contrary, the court acknowledged that under District of Columbia law, an employer "may disclaim that it is bound by the terms of" its employment policies. The court noted that there is a presumption of at-will employment in D.C., and that the plaintiff did not have a written employment contract. The court applied a little-recognized exception: the disclaimer would remove or retract the employer's commitment to "protect" employees under the whistleblower and grievance policies, rendering them "meaningless" unless the employer is "bound to honor" the employee's rights under those policies. The lesson to be learned here is that even a valid disclaimer of contractual promises based on employment policies, and the at-will employment doctrine, may have exceptions in the eyes of the courts where the purposes of the disclaimer and the purposes of the policies invoked by employees conflict. Only time will tell whether such an exception becomes more widely recognized or begins to seriously erode the validity of disclaimers.

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