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Justices Say Employers Can Be Liable for False Promises

Law: State Supreme Court rules that a man who was enticed to relocate for a job can sue his former company for fraud because it lied when it said he wouldn't be laid off.

By: Maura Dolan

The California Supreme Court, siding with a Los Angeles man who lost his job in a corporate consolidation, ruled Monday that employers can be liable for fraud if they make misrepresentations in enticing someone to relocate for a job.

At a time of widespread corporate layoffs, the ruling could make it more difficult for employers to calculate their potential liability from lawsuits brought by laid-off employees.

If a worker can prove that he or she accepted a job under false assurances of security, employers can be held liable for potentially whopping punitive and emotional distress damages that aren't normally available in termination cases.

"It makes it much more difficult for employers to handicap the cost of reductions in force. . . .," said Martin C. Washton, a lawyer for the employer in the case. "It is especially true in Southern California, where there have been so many restructurings and layoffs due to the downturn in the economy."

The case was brought by Andrew Lazar, 46, who left a company in New York and moved his family to California for a position that was eliminated about two years later in a corporate reshuffling.

Although Lazar's position was terminated, the ruling also would enable workers who quit their jobs to sue for fraud if the position had not lived up to what the employer had promised.

"You can say what you want to recruit people," said Joseph Posner, who argued in favor of Lazar on behalf of California's plaintiff employment lawyers, "but you damn well better tell the truth. Employers are going to have to be careful about what they promise to people in terms of financial security, especially when it involves moving people across the country."

Lazar lived in New York until 1990, when he was president of a family-owned restaurant equipment company and earned \$120,000 annually.

In 1989, a representative of Rykoff-Sexton Inc., a nationwide firm that makes food products for restaurants and institutions, tried to persuade Lazar to come to work in the firm's Los Angeles office.

Lazar alleged that he was concerned about uprooting his family and insisted that Rykoff assure him that the job would be secure and bring significant pay raises. Lazar contended that the company told him that he would receive regular pay hikes if his work met expectations and that he would be groomed for a promotion. In addition, according to Lazar, the firm assured him that the department where he would work was a growth division and would be expanded.

When Lazar tried to get the company to put the promises in writing, he said company officials told him a contract was unnecessary because "our word is our bond." Lazar said he subsequently learned that Rykoff was in a financial downturn at the time and was planning on a merger that eventually would eliminate Lazar's position.

Lazar moved his family to California, bought a house in Los Angeles and began his new job in May 1990. He performed in an "exemplary" manner, the court opinion said, but his job was terminated in July 1992 because of a management reorganization.

"Lazar's allegations, if true, would establish all the elements of promissory fraud," wrote Justice Kathryn Mickle Werdegar for the court.

Werdegar noted that employers in the case had asked the court to protect companies from lawsuits to optimize the state's business climate. But she said fraud law in California provided no exemption for employers.

"Lazar alleges that, in order to induce him to come to work in California, Rykoff intentionally represented to him he would be employed by the company so long as he performed his job, he would receive significant increases in salary and the company was financially strong," Werdegar wrote.

Washton, a Los Angeles lawyer who represented Rykoff, said the company disputes many of Lazar's allegations. He said the ruling will encourage distressed, laid-off workers to consider bringing fraud claims against employers. For companies, he said, the decision raises uncertainty about potential litigation costs.

But Gary Ross, one of Lazar's lawyers, said the ruling simply "levels the playing field." He called the case the "Super Bowl of employment law" and applauded the ruling for ensuring that employers follow the rules.

Michael Loeb, an employment lawyer and arbitrator, said it is not clear exactly how forthcoming companies must be when making new hires. Uncertain, he said, is whether employers now have to disclose to a potential employee "vague" corporate discussions about downsizing that a company may want to keep secret from its work force.

Neither Lazar nor a spokesman for Rykoff could be reached for comment. Lazar's case will either go to trial or be settled out of court.

The California Supreme Court in recent years has been considered pro-employer, reigning in the rights of workers to sue companies. But the Lazar decision was the court's second in the past few months to favor worker rights. The court held in November that workers could sue companies for improper demotions.