

EMPLOYMENT LAW ALERT



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E-MAIL CAN MODIFY EMPLOYMENT CONTRACT

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The business litigation session of the Massachusetts Superior Court has issued a decision of which Massachusetts employers should be wary. On January 17, 2005, Judge Van Gestel ruled that an e-mail exchange between an employee and an employer constituted a binding modification of the employee's written contract. Most commentators have viewed this decision as a victory for employers. However, it stands for the proposition that e-mails may create contractual obligations, a ruling that could come back to haunt employers.

The Case

The employer, Hollister Associates, Inc., is a placement firm. The employee had been employed by the company since 1992. In December 2000, the employer and employee entered into a written agreement promoting the employee to Vice President and providing that he would be entitled to an annual salary of \$400,000, a 10% ownership interest in the company and other benefits. The agreement provided that its terms only could be modified by a writing signed by both the employee and the company. The agreement further confirmed that the employee was employed "at-will."

In early 2001, there was a downturn in the economy, and the company's revenues plummeted. In June 2001, the President of the company engaged in an e-mail exchange with the employee wherein they both agreed that for the good of the company, they would voluntarily reduce their salaries. The employee's salary subsequently was reduced twice.

In March 2004, the employee resigned and in April 2005, he sued the company arguing that because he and the company had never entered into a written agreement modifying the terms of the December, 2000 contract, he was due back pay based upon his December 2000 contract. Judge Van Gestel rejected the employee's claim and awarded summary judgment to the employer. The Court reasoned that where the employee was fully aware of the reductions in salary, had explicitly agreed to one of them in an e-mail exchange, and continued working at the company for several years thereafter, he had agreed to modifications of his contract.

Significance of the Decision

This decision stands for several important propositions. First, the Court ruled that an e-mail exchange between an employee and employer may constitute a modification of a written contract. The Court stated that "[i]n this modern age, this Court considers e-mail communications, in which the sender and recipient are clearly identified, to constitute writings." Second, the Court considered a string of e-mails to be writings signed by both parties. Third, the Court confirmed that an employer may unilaterally reduce the salary of an at-will employee who accepts these terms by continuing to work.

However, the most significant, and overlooked, aspect of this opinion is that it means that employers must pay careful attention to e-mails. E-mails may create unintended contractual obligations for employers just as they may result in remunerative reductions for employees.

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