



Louisiana EMPLOYMENT

A monthly newsletter designed exclusively for Louisiana employers

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Law Letter

April 2003

Vol. 12, No. 1

EMPLOYMENT CONTRACT

Pianist gets bad reviews for performance

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Employees who sign contracts granting employment for a specified period of time may have greater job protection than at-will employees, but that protection isn't without boundaries. For example, if an employee abandons or quits his job, he may very well be in breach of the agreement and not entitled to the compensation anticipated through the remainder of the contract's term.

Employers can include or negotiate in those contracts the terms under which an employee will be considered in breach and, thus, relinquish any future compensation or rights provided by the contract. You may specifically define conduct that will terminate the agreement and that may justify liquidated damages or trigger other employee obligations to you.

Whatever the terms and conditions of the agreement, an employee who makes it clear he just doesn't intend to live up to his end of the bargain shouldn't be entitled to hold you to yours (i.e., payment of compensation through the term of the contract). One court recently addressed just such a dispute involving circumstances we think you'll find "entertaining," to say the least.

Carnival show isn't exactly a parade

A local pianist/piano tuner entered into a one-year employment contract with a production company to perform in a show at a casino. The contract required the employee to play the keyboard on a float in a daily mini-parade, which also included a marching band, dancers, and stilt walkers — a casino carnival of sorts. The pianist also helped create a music track for the show and put together instrumentals and rehearsals for the musicians.

At some point, the pianist felt that he was being edged out of his position when a new singer was hired to perform

in the show. He didn't take kindly to the new star (sort of like "American Idol" meets Carnival), and his relationship with his supervisor quickly deteriorated. The pianist claimed his recommendations concerning the choice of band members were ignored, specifically the fact that he didn't approve of the new singer and the saxophone player. He also complained that his supervisor began reprimanding him for not attending staff meetings or riding on the float, job duties the pianist felt were "minor."

The tension ultimately erupted in a heated exchange between the supervisor and the pianist, who felt he wasn't being treated with respect. He confronted his supervisor and reportedly asked him if he even needed a piano player. According to the pianist, the supervisor stormed off, so he contacted a female supervisor with whom he had a "personal relationship" to enlist her help. Unfortunately, she was unavailable to come to his aid.

The pianist eventually came face to face with his supervisor, and a confrontation ensued. He claimed he told the supervisor they couldn't work together anymore because they weren't communicating and that the supervisor requested his badge and placed him on a three-day administrative leave.

The supervisor, on the other hand, recounted the confrontation somewhat differently. According to him, the pianist hurled some choice expletives his way, along with

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the badge. In fact, he claimed the employee called him a “goaded” SOB and said “I’m going to juice you” while patting a bag he was carrying. The wardrobe manager corroborated the supervisor’s version of the confrontation. The manager testified that the pianist told the supervisor, who tried to inform him he was being placed on temporary administrative leave, that he wouldn’t work for him anymore.

The pianist’s track record with the company indicated that he had issues with others as well. For example, the day before the confrontation, he received a written warning for making a curt remark to a co-worker, who perceived the remark as racially offensive. The co-worker, who is blind in one eye and has difficulty making spatial judgments, accidentally hung his costume on the pianist’s hanger. The pianist reportedly said “you don’t have to go ghetto on me.” He agreed to a counseling session and to apologize to the co-worker.

The pianist had also been counseled about removing personal stereo equipment from dressing rooms, using private headsets, displaying offensive photos and love notes on mirrors, having conversations of a sexual nature, and refusing to participate in the show.

After the final confrontation with the pianist, the supervisor notified the casino’s security department that the employee had been placed on administrative leave and that his badge had been confiscated. He requested extra security and let the casino know of the pianist’s status because of what he perceived to be a threat (*i.e.*, the prospect of “being juiced”). Although the pianist alleged that the supervisor’s actions effectively “blacklisted” him from the casino, he acknowledged that the production company

didn’t tell him he couldn’t return to the casino. He also acknowledged that he worked in the casino’s jazz court on subsequent occasions.

Pianist not jazzed with superior

Not surprisingly, the pianist decided to take his dispute to court. He alleged in his suit that the company breached his employment contract by “terminating” his employment before the one-year term expired. The employer argued the pianist breached the employment contract by provoking an altercation with his supervisor and declaring that he would no longer work for him. The trial court found in favor of the pianist, concluding that the employer violated the employment contract by discharging him before the one-year term expired. The employer appealed.

Court tells pianist to get a new routine

The appellate court analyzed the events surrounding the altercation to determine whether the pianist unilaterally terminated his employment contract. Based on the testimony, the court concluded that the supervisor offered the employee a three-day administrative leave to cool off and regroup before returning to work in accordance with its standard practice. The court relied on the witnesses who testified that the pianist rejected the offer and threw his badge across the room before walking out. Moreover, the wardrobe manager testified that she heard the pianist say he wouldn’t work for the supervisor anymore.

Although the pianist claimed that the employer blacklisted him from the casino, the evidence showed that he actually worked for the casino for short periods after his alleged discharge. In short, the court credited the testimony of the witnesses who indicated that the pianist quit his job before the term of the contract expired. *Elsensohn v. Farrington Productions, Inc.*, 2003 La. App. LEXIS 373 (La.App. 4th Cir. 2003).

Tune up your employment contracts now

If you decide to enter into an employment contract, you should carefully consider the terms, conditions, rights, and obligations you desire from the contractual relationship. Clearly spelling out those things in the contract can help you avoid misunderstandings and disputes that end up in court.

If you or the employee contemplate circumstances in which a breach will occur or in which either of you may terminate the contract early, those circumstances should be included in the contract to reflect your intent. Keep in mind, however, that certain conduct may be so egregious that it could be considered a violation of the contract, relinquishing any rights the contract may otherwise have provided the employee. In any case, always take the time to have your employment contracts reviewed by legal counsel to ensure that they’re valid and enforceable under applicable law. ❖

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- **“Profanity, not age bias, led to former president’s termination”** — A company president claims he was fired because of his age. His proof: one comment by his boss two years earlier.
- **Agency Action** — A quick look at the latest news from federal agencies.
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