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Employment Law - The Covenant of Good Faith an Fair Dealing - Does It Apply to Employment Contracts - Hatfield v. Rochelle Coal Co.

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CASENOTES

EMPLOYMENT LAW—The Covenant of Good Faith and Fair Dealing—Does it Apply to Employment Contracts? *Hatfield v. Rochelle Coal Co.*, 813 P.2d 1308 (Wyo. 1991).

In September 1983, petitioner James N. Hatfield was hired as a field maintenance technician by the North Antelope Coal Mine, an affiliate of respondent Rochelle Coal Company (Rochelle),[1] located near Gillette, Wyoming. In October 1985, Mr. Hatfield was transferred to Rochelle as a plant technician and was later promoted to a supervisory position.[2]

During this employment period, Rochelle provided Mr. Hatfield with an employee handbook which contained information regarding discipline of employees and set out a progressive discipline schedule.[3] Following a violation of the terms and conditions of employment, the company gave an employee three opportunities to improve his or her performance prior to dismissal. The handbook set forth the manner in which discipline was to be imposed, specifically requiring that discipline "be accomplished reasonably."[4] Mr. Hatfield argued that these handbook provisions created an implied employment contract, as opposed to an at-will contract, between himself and his employer.[5] Mr. Hatfield based his argument on the fact that the handbook specifically modified Rochelle's right to terminate at will by specifically setting forth that discharge procedures should be accomplished reasonably.

A disagreement developed between Mr. Hatfield and his supervi-

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1. Brief of Appellant at 3, Hatfield v. Rochelle Coal Co., 813 P.2d 1308 (No. 90-156) (Wyo. 1991) [hereinafter Brief of Appellant].

2. *Id.*

3. *Id.* Rochelle did not provide Mr. Hatfield with an express employment contract. Rochelle contended that an at-will employment relationship existed between it and Mr. Hatfield. Brief of Appellee at 3, Hatfield v. Rochelle Coal Co., 813 P.2d 1308 (No. 90-156) (Wyo. 1991) [hereinafter Brief of Appellee].

4. Brief of Appellant at 3, *supra* note 1.

5. Appellee Rochelle disputed the contention that the handbook created an employment contract that was more than at-will. Brief of Appellee at 3, *supra* note 3. Rochelle contended that since it did not provide an express contract regarding the length of employment, an at-will employment relationship existed. *Id.* However, the Wyoming Supreme Court has recognized that an employee handbook may create circumstances which negate an employer's unfettered right to discharge an employee at any time without cause. Mobil Coal Producing, Inc. v. Parks, 704 P.2d 702 (Wyo. 1985). This creates an exception to traditional terminable at-will employment by recognizing implied-in-fact contracts. The question in *Parks* was whether or not Appellant's handbook set forth rules and regulations having the force of a contract, and, if so, whether Appellee violated the terms thereof. *Id.* at 704. The court found that if an employee handbook modifies the employer's right to terminate at-will, then the provisions of the handbook contractually bind the employer. *Id.*

sor early in 1989. Mr. Hatfield was then placed on "Step One" of the progressive discipline schedule.[6] Although Mr. Hatfield believed his performance improved, he was later placed on "Step Two" of the discipline schedule. Rochelle allegedly took this action because Mr. Hatfield failed to follow instructions and was absent from work for a brief period.[7] Again, Mr. Hatfield felt that he redoubled efforts to improve his performance.[8] However, Rochelle ultimately placed Mr. Hatfield on "the third step" of the discipline schedule and put him on probation for one year.[9] Months later, in October 1989, Rochelle terminated Mr. Hatfield's employment.

Mr. Hatfield believed his duties as a supervisor had been performed with "proficiency and efficiency" and that he continually attempted to improve performance while Rochelle progressed him through the discipline schedule.[10] Rochelle maintained that each step of Mr. Hatfield's progress through the disciplinary procedure resulted from his own job-related performance.[11]

Mr. Hatfield filed a diversity action in the Federal District Court for the District of Wyoming.[12] His complaint alleged two separate claims for wrongful termination. Hatfield first alleged that Rochelle breached the implied employment contract as set forth in the employment handbook.[13] He also alleged that Rochelle violated the covenant of good faith and fair dealing.[14] Rochelle moved to dismiss the latter claim on the ground that Wyoming law does not recognize the covenant of good faith and fair dealing in any employment relationship.[15] The federal district judge declined to rule on Hatfield's claim for relief based on the covenant of good faith and fair dealing. The judge determined that no controlling precedent existed in Wyoming Supreme Court decisions regarding the application of this covenant to an express or implied employment contract.[16] Therefore, the federal court certified the following question to the Wyoming Supreme Court:[17] "Does Wyoming recognize a claim for breach of the covenant

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6. Brief of Appellant at 4, *supra* note 1.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* at 3.
11. Brief of Appellee at 3, *supra* note 3.
12. Brief of Appellant at 2, *supra* note 1.
13. *Id.* at 4.
14. *Id.* As a third claim, Hatfield alleged that Rochelle had committed a "constitutional tort" by depriving him of a property interest without due process of law in violation of Article 1, Section 6 of the Wyoming Constitution. *Id.*
15. *Id.* at 2.
16. *Id.* at 3. United States District Judge Clarence Brimmer also certified to the Wyoming Supreme Court the issue regarding the "constitutional tort." *Id.* at 2.
17. The Wyoming Supreme Court derives its authority to answer certified questions from the Wyoming Statutes:

> The supreme court may answer questions of law certified to it by a federal court when requested by the certifying court if there are involved in any proceeding before the federal court questions of law of this state which may be determinative

of good faith and fair dealing in the context of a wrongful termination action in which there is an employment contract?"[18]

The Wyoming Supreme Court held that Wyoming does not recognize an implied covenant of good faith and fair dealing in employment contracts.[19]

This casenote discusses the implied covenant of good faith and fair dealing in the context of employment contracts, both at-will and in general. It analyzes Wyoming case law to examine the precedent on the application of the covenant and compares Wyoming precedent to precedent in other jurisdictions. It further suggests the appropriate disposition of Wyoming law and notes how this precedent has been misapplied to date. Finally, this casenote sets forth rationale for imposing the covenant in employment relationships.

BACKGROUND

State courts have struggled to determine whether the implied covenant of good faith and fair dealing should be implied in employment relationships, both at-will and in general. The result of this struggle is a definite split of authority. Some courts have recognized that employers are liable in contract "where the employers discharged at-will employees in violation of good faith requirements which the courts imposed upon the employment contracts for reasons of public policy."[20] Other courts, however, have refused to recognize good faith requirements in at-will employment contracts to avoid upsetting the traditional rules governing at-will relationships.[21]

In most cases addressing this issue, an at-will employment relationship existed. Courts which recognize the covenant of good faith

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of the cause then pending in the federal court, and as to which it appears to the federal court there is no controlling precedent in the existing decisions of the supreme court.

WYO. STAT. § 1-13-106 (1977). *See also* W.R.A.P. 11.01. Once the supreme court answers the certified question, the case returns to the certifying court for a determination on the outcome of the case in accordance with the supreme court's written opinion. W.R.A.P. 11.07.

18. Hatfield v. Rochelle Coal Co., 813 P.2d 1308, 1309 (Wyo. 1991). The Wyoming Supreme Court assumed that an implied contract existed from the employee handbook for the purpose of addressing the certified question. Brief of Appellee at 3, *supra* note 3. However, this assumption was not an undisputed fact. *Id.*

19. *Hatfield*, 813 P.2d at 1310.

20. Michael A. DiSabatino, Annotation, *Modern Status of Rule That Employer May Discharge At-Will Employee for Any Reason*, 12 A.L.R. 4th 544, 560 (1982).

21. *Id.* at 562. The general rule regarding employment agreements terminable at will is that the agreement may be terminated for good cause, for no cause, or even for a cause morally wrong. JOHN D. CALAMARI & JOSEPH M. PERILLO, CONTRACTS § 2-9 (3rd ed. 1988). The traditional reason given for this harsh rule is that it would not be good policy to keep the parties locked in the close relationship of employer-employee when one of the parties wishes to terminate it. *Id.* This rule is obviously upset when the implied covenant of good faith is imposed on the parties. However, many jurisdictions are overturning the rule where the discharge is viewed as contrary to public policy or good faith. *See* Morriss v. Coleman Co., 738 P.2d 841, 849 (Kan. 1987).

and fair dealing in at-will employment contracts imply that the covenant exists in all employment contracts.[22] However, courts in Wyoming and in other states which do not recognize the covenant generally confine their holdings to at-will contracts and do not address the covenant in relation to other employment contracts.[23] Therefore, it is unclear exactly how courts would apply the covenant of good faith and fair dealing to general employment contracts.

At-Will Employment Contracts Versus General Employment Contracts

The distinction between at-will employment contracts and general employment contracts is an important factor when addressing an employee's discharge. At-will employment contracts do not typically set forth conditions for an employee's discharge because no definite period of duration exists. Generally, where parties to a contract express no period for its duration, and none can be implied from circumstances surrounding the creation of the contract, the only reasonable intention that can be imputed to the parties is that the contract may be terminated at the will of either party.[24] Hence, according to the traditional rule, at-will contracts may be terminated by either party at any time and for any reason without incurring liability.

By contrast, general employment contracts do typically set forth certain conditions for which an employee may be discharged. These conditions may be expressed in written form or implied from the conduct of the parties. A contractual provision for discharge upon certain conditions can be enforced only in strict compliance with the terms of the contract,[25] as parties to an employment contract may not terminate that contract arbitrarily. If a general employment contract is terminated in violation of its provisions, the injured party may maintain an action for breach of contract.

Because an at-will contract can be terminated at any time, the implied covenant is more often asserted in at-will employment contracts as opposed to general employment contracts which contain express or implied provisions governing termination. At-will employees are searching for exceptions to the at-will rule which will provide relief in wrongful discharge actions, whereas employees under general employment contracts may often find relief from breach of the contract terms. However, a situation may arise where an employer acts in compliance with the general contract terms but does not act in good faith. Therefore, the implied covenant of good faith and fair dealing may have application in both categories of employment relationships.

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22. *See, e.g.*, Cleary v. American Airlines, Inc., 168 Cal. Rptr. 722 (1980); Fortune v. National Cash Register Co., 364 N.E.2d 1251 (Mass. 1977).
23. *E.g.*, Mobil Coal Producing, Inc. v. Parks, 704 P.2d 702 (Wyo. 1985).
24. 17A AM. JUR. 2D *Contracts* § 546 (1991).
25. *Id.* § 559.

The Covenant's Application in Wyoming

In several cases, employees have asked the Wyoming Supreme Court to acknowledge a cause of action under the implied covenant of good faith and fair dealing in at-will employment contracts. However, the court has yet to recognize such a cause of action. The Wyoming Supreme Court first addressed this issue in *Rompf v. John Q. Hammons Hotels, Inc.*[26] where the plaintiff was employed under an at-will employment contract.[27] The court stated, "the rule in Wyoming has been that employment for an indefinite period may be terminated by either party at any time and for any reason without incurring liability."[28] However, the court noted that several jurisdictions[29] had recently recognized exceptions to this rule.[30] The court then concluded that plaintiff's evidence failed to suggest that his termination constituted a violation of the covenant as imposed upon at-will employment contracts in other jurisdictions.[31] The court neither rejected nor adopted the covenant but rather reserved a decision on its viability until a "proper case" is brought before it.[32]

In a similar case, *Nelson v. Crimson Enter., Inc.*,[33] the court again reserved whether to adopt the implied covenant of good faith and fair dealing in the at-will employment contract. The court acknowledged that it had recognized limited exceptions to the traditional at-will

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26. 685 P.2d 25 (Wyo. 1984). This case came before the supreme court upon petition for review of an order granting summary judgment. The district court judge found no evidence to support a change in the rule regarding at-will employment contracts. Therefore, the supreme court was left to decide whether to modify the at-will rule. It refused to decide whether it might, "in an appropriate situation," acknowledge an exception to the at-will rule. Instead, the supreme court concluded that the *instant case* failed to present any factual justification for the modifications urged by plaintiff. *Id.* at 28. This decision implies that there may be situations where a modification to the at-will rule will be warranted.

27. Plaintiff asserted that a "lifetime employment contract" had arisen as a result of the consideration he supplied his employer by giving up a prior long-term position with lucrative benefits. He also asserted that the employee manual created an employment contract which gave him protection from wrongful discharge. *Id.* at 26. The court rejected both of these claims on the ground that plaintiff's evidence was not sufficient to support the application of these doctrines. *Id.* at 29.

28. *Id.* at 27.

29. *See* Mitford v. de Lasala, 666 P.2d 1000 (Alaska 1983); Gates v. Life of Montana Ins. Co., 638 P.2d 1063 (Mont. 1982); Cleary v. American Airlines, Inc., 168 Cal. Rptr. 722 (1980).

30. *Rompf*, 685 P.2d at 27. The exceptions were based on public policy considerations of fairness or implied contractual rights, including the duty of good faith and fair dealing. *Id.* at 28.

31. *Id.*

32. *Id.*

33. 777 P.2d 73 (Wyo. 1989). The plaintiff, like Rompf, was seeking review of summary judgment granted in defendant's favor. *Id.* at 74. Plaintiff Nelson was also an at-will employee, petitioning for exceptions to the traditional at-will employment rule. The exceptions asserted were: (1) a public policy exception; (2) adoption of the doctrine of an implied duty of good faith and fair dealing; and (3) a cause of action created by 10 U.S.C. § 2409 (Supp. V 1987). *Id.* at 75.

rule.[34] However, the court held that these exceptions were not applicable to the case at bar because the plaintiff had not met the initial burden of showing that a genuine issue of material fact existed under the theory of good faith.[35]

Although the Wyoming Supreme Court reserved the decision of whether to adopt the covenant in *Rompf* and *Nelson*, it has held that either party may terminate an at-will employment contract at any time, and for any reason, without violating the covenant of good faith.[36] The most notable Wyoming case is *Mobil Coal Producing, Inc. v. Parks*[37] where an employee who was fired for violating safety requirements brought an action for wrongful discharge. The trial court found that the plaintiff's employment was at-will, but also that an employee handbook had created an implied covenant of good faith and fair dealing.[38] On appeal, the Wyoming Supreme Court noted that "[w]ithout more, [plaintiff] was an 'at will' employee, subject to discharge at any time without cause."[39] However, the court determined that the handbook provisions required the existence of cause for discharge, thereby creating more than an at-will employment relationship.[40] The question then became whether the employer breached the terms of the handbook, not whether he breached an implied covenant of good faith and fair dealing. Consequently, the court did not address the covenant of good faith and fair dealing as it applied to the implied contract provisions created by the handbook.[41]

In *Leonard v. Converse County School Dist. No. 2*,[42] a teacher instituted an action against her school district employer for wrongful discharge and breach of the implied covenant of good faith and fair dealing.[43] The suit arose from the school district's refusal to offer plaintiff Leonard a contract after she completed three years of employment as an initial contract teacher. The Wyoming Supreme Court

34. *Id.* Conduct of an employer, for example issuing an employee handbook, may give an at-will employee some implied contractual rights. *See, e.g.*, Mobil Coal Producing, Inc. v. Parks, 704 P.2d 702, 704 (Wyo. 1985).

35. *Nelson*, 777 P.2d at 76.

36. *See, e.g.*, Alexander v. Phillips Oil Co., 707 P.2d 1385 (Wyo. 1985); McDonald v. Mobil Coal Producing, Inc., 789 P.2d 866 (Wyo. 1990).

37. 704 P.2d 702 (Wyo. 1985).

38. *Id.* at 704.

39. *Id.*

40. *Id.* at 706.

41. In a special concurrence, Justice Rose expressed concern that the majority's rejection of the covenant of good faith in at-will employment relationships was not supported by the cited cases. He asserted that the court had not yet reached a decision on the adoption or rejection of the covenant, and that the court would be willing to consider certain exceptions to the at-will doctrine under proper circumstances. *Id.* at 709 (Rose, J., concurring).

42. 788 P.2d 1119 (Wyo. 1990).

43. *Id.* at 1120. The plaintiff also raised additional arguments of contravention of public policy, breach of employment contract, breach of statutory duty under WYO. STAT. §§ 21-3-110(a)(xvii) and 21-3-111(a)(vi)(B) (1977), and violation of constitutional rights. *Id.*

found that Leonard did not have a contractual right of employment,[44] and therefore an at-will contract existed. In response to the good faith argument, the court again referred to its decision in *Mobil Coal Producing, Inc. v. Parks*[45] and held that "the implied covenant of good faith and fair dealing . . . exception to the employment-at-will doctrine [does] not apply to the termination of employment contracts between school districts and initial contract teachers."[46]

Likewise, in *Ware v. Converse County School Dist. No. 2*,[47] the Wyoming Supreme Court referred to its previous holdings that the covenant of good faith and fair dealing does not apply to the termination of at-will employment contracts. Although plaintiff Ware was a school custodian, the court analogized her position to that of an initial contract teacher. It held that no contractual right to employment exists after expiration of the contract. Therefore, the plaintiff had only an at-will employment contract, and relying on its decision in *Leonard*,[48] the court rejected the covenant.[49]

Justice Urbigkit, dissenting in *Ware*, asserted that the school district's violation of its own policies presented "a question whether [Ware] was treated in good faith and fair dealing during her contract term as a school district employee."[50] The justice indicated that the plaintiff's contract during her employment term was more than at-will, and that the issue should have been whether the covenant exists in general employment contracts as opposed to at-will contracts. He further proposed that "implied covenants of good faith and fair dealing accompany those public employment contracts which are not merely at-will. Public employment contracts should at least align with general contract law."[51]

In *Leithead v. American Colloid Co.*,[52] the Wyoming Supreme Court addressed whether an implied covenant of good faith and fair dealing exists in general employment contracts. *Leithead* involved the termination of an employee who had received an "Employee Informa-

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44. *Id.* at 1122.

45. 704 P.2d 702 (Wyo. 1985). *See supra* text accompanying note 37.

46. *Leonard*, 788 P.2d at 1122. The court also rejected the public policy exception to the at-will employment doctrine. *Id.* It further noted that the power to alter the tenure status of initial contract teachers "belongs to the legislature." *Id.*

47. 789 P.2d 872 (Wyo. 1990).

48. *See supra* text accompanying note 46.

49. *Ware*, 789 P.2d at 875. The dissenting opinions from Justices Urbigkit and Golden proposed that a breach occurred before the expiration of the employee's contract when there was more that an at-will employment relationship. *Id.* at 876 (Urbigkit, J., dissenting) and *id.* at 878 (Golden, J., dissenting).

50. *Id.* at 876 (Urbigkit, J., dissenting).

51. *Id.* Since this was a review of a summary judgment decision, Justice Urbigkit asserted that, under the covenant of good faith, a question of material fact existed which precluded summary judgment. *Id.*

52. 721 P.2d 1059 (Wyo. 1986). The plaintiff Leithead also raised causes of actions under breach of contract, slander, misrepresentation of employment, promissory estoppel, tortious interference with contract and intentional infliction of emotional distress. *Id.* at 1061.

tion Handbook" during his employment.[53] The court noted that, absent the handbook, the employment relationship was at-will and, therefore, subject to the rules regarding at-will employment.[54] The court stated that "[a] handbook may change the employer's unfettered right to discharge an employee even if the handbook is given to the employee after his employment has begun."[55] The court then found that the terms and "general tenor" of the handbook gave the employee a contractual right to be discharged only for cause.[56] Upon this determination, the court declined to address the covenant of good faith and fair dealing, as the parties did not have an at-will employment contract but instead had a contract based on the employee handbook.[57] Once again, the court avoided deciding whether the covenant exists in general employment contracts.

Wyoming has recognized the covenant of good faith and fair dealing in other contractual relationships. Section 205 of the Restatement (Second) of Contracts provides: "*Every* contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement."[58] The Wyoming Legislature adopted the corresponding provision of the Uniform Commercial Code which requires a showing of good faith in all U.C.C. contracts.[59] The Wyoming Supreme Court has indicated that the duty of good faith and fair dealing imposed by the legislature is applicable to other contractual transactions.[60] Specifically, Wyoming has recognized the covenant of good faith in insurance contracts, finding that an insurer owes a special obligation to its insured.[61]

While the Wyoming Supreme Court has recognized the covenant's applicability to the insurance setting, it has refused to recognize the covenant of good faith and fair dealing in strictly at-will employment contracts. However, the court has not addressed the covenant's application in general employment contracts which are more than at-will.

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53. The handbook contained provisions regarding probationary period, conduct, absences, termination and confidentiality. *Id.*

54. *Id.* at 1062.

55. *Id.* The trial court found that the handbook did not create an employment contract. *Id.*

56. *Id.* at 1063.

57. *Id.* at 1064.

58. RESTATEMENT (SECOND) OF CONTRACTS § 205 (1981) (emphasis added).

59. WYO. STAT. § 34.1-1-203 (1991).

60. In Wendling v. Cundall, 568 P.2d 888 (Wyo. 1977), the Wyoming Supreme Court applied the U.C.C. covenant of good faith to transactions involving the purchase of real estate. The court noted that the Wyoming Legislature's definition of "good faith" would apply "to most other commercial transactions conducted by persons owing no fiduciary or other special obligation to one another." *Id.* at 890.

61. McCullough v. Golden Rule Ins. Co., 789 P.2d 855 (Wyo. 1990). The court stated that the "superior view recognizes the existence of the independent tort for violation of a duty of good faith and fair dealing in insurance policy application by the carrier to its insured." *Id.* at 858.

The Covenant's Application in Other Jurisdictions

A split of authority exists among other state courts in applying the covenant of good faith and fair dealing to either at-will or general employment contracts. Some jurisdictions have held that at-will employment contracts include the implied covenant.[62] Each jurisdiction applies this covenant in various ways. Some approach the covenant's application to at-will contracts as an exception to the traditional at-will rule.[63] Other states view an at-will contract as any other contract that contains an implied covenant of good faith and fair dealing.[64] California views an at-will employment contract as any other contract, finding that an implied covenant of good faith exists. In *Cleary v. American Airlines, Inc.*,[65] a California court of appeals stated that "[t]here is an implied covenant of good faith and fair dealing in *every* contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement."[66]

The Alaska Supreme Court likewise has held that the covenant is implied in at-will employment contracts.[67] Furthermore, in *Arco Alaska, Inc. v. Akers*,[68] the Alaska court applied the covenant to a situation where a general employment contract was created from an employee handbook. Thus, Alaska recognizes the covenant of good faith and fair dealing in both at-will and general employment contracts.

Other state courts have refused to imply this covenant in at-will employment contracts.[69] A Kansas court concluded that the covenant of good faith and fair dealing, as stated in Restatement (Second) of Contracts Section 205, "is overly broad and should not be applicable to employment-at-will contracts."[70] However, the courts refusing to adopt the covenant generally limit their holdings to at-will employment contracts.

Few cases have addressed the issue of applying the covenant to

62. *See, e.g.*, Fortune v. National Cash Register Co., 364 N.E.2d 1251 (Mass. 1977); Cleary v. American Airlines, Inc., 168 Cal. Rptr. 722 (1980).

63. *See, e.g.*, Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 1046 (Utah 1989); Wagenseller v. Scottsdale Memorial Hosp., 710 P.2d 1025, 1040 (Ariz. 1985).

64. *See, e.g., Fortune*, 364 N.E.2d at 1256.

65. 168 Cal. Rptr. 722 (1980).

66. *Id.* at 728 (quoting Comunale v. Traders & General Ins. Co., 328 P.2d 198 (Cal. 1958)) (emphasis added by *Cleary* court).

67. *See* Arco Alaska, Inc. v. Akers, 753 P.2d 1150 (Alaska 1988); Mitford v. de Lasala, 666 P.2d 1000 (Alaska 1983).

68. 753 P.2d 1150 (Alaska 1988). This case also raised the issue of punitive damages for breach of the implied covenant of good faith and fair dealing. *Id.* at 1153. The court held that breach of this covenant did not constitute a tort, and therefore, punitive damages were not recoverable. *Id.* at 1154. *See also* Metcalf v. Intermountain Gas Co., 778 P.2d 744 (Idaho 1989) (potential recovery for breach of covenant results in contract damages, not tort damages).

69. *See, e.g.*, Morriss v. Coleman Co., 738 P.2d 841 (Kan. 1987).

70. *Id.* at 851.

general employment contracts which are more than at-will. Consequently, the application of the covenant to general employment contracts is an unsettled and often confused issue. Though the Wyoming Supreme Court purported to use its decision in *Leithead v. American Colloid Co.*[71] as precedent for deciding the principal case, this, in actuality, is a question of first impression in Wyoming.

PRINCIPAL CASE

In *Hatfield*, the Wyoming Supreme Court addressed "whether Wyoming law imposes [the] implied covenant of good faith and fair dealing upon an employer by virtue of his being a party to an employment contract."[72] Mr. Hatfield asserted that the employee handbook that Rochelle provided him created an implied employment contract.[73] To answer the federal district court's certified question[74] in *Hatfield*, the Wyoming Supreme Court assumed that an employment contract which was more than at-will existed between the parties. The court stated in *Reliance Ins. Co. v. Chevron U.S.A. Inc.*[75] that its role in certified question cases does not include fact finding. When addressing a certified question, the court analyzes the law according to the facts presented in the certification order. Therefore, the court accepted from the federal court the assumption of a general employment contract.

The court first looked for precedent that involved the covenant's applicability to general employment contracts. It noted the statement in *Leithead*[76] that "the covenant has *no application here* . . . because the parties' contract was *not at will*."[77] Based on that sentence, the court stated, "We have held that the covenant does not apply to employment which is not 'at-will.' "[78] The court then looked for other precedent regarding the covenant in the employment context.

In particular, the court referred to those cases involving the covenant's applicability to employment contracts which are strictly at-will. The court cited several cases where it previously refused to recognize the covenant in the at-will context.[79] However, the supreme court suggested that language in those cases indicates a possible applicability of

71. 721 P.2d 1059 (Wyo. 1986). *See supra* text accompanying notes 52-57.

72. *Hatfield*, 813 P.2d at 1309. The Wyoming Supreme Court also addressed whether the Wyoming Constitution requires due process where private action is taken that deprives a citizen of an interest in property. *Id.* at 1310.

73. *See supra* note 5 and accompanying text.

74. *See supra* note 18 and accompanying text.

75. 713 P.2d 766 (Wyo. 1986).

76. Leithead v. American Colloid Co., 721 P.2d 1059 (Wyo. 1986).

77. *Hatfield*, 813 P.2d at 1309 (quoting Leithead v. American Colloid Co., 721 P.2d 1059, 1064 (Wyo. 1986)) (emphasis added by *Hatfield* court).

78. *Hatfield*, 813 P.2d at 1309.

79. *See* cases cited *supra* notes 26, 33, 37, 47. *See also* McDonald v. Mobil Coal Producing, Inc., 789 P.2d 866 (Wyo. 1990); and Reese v. Dow Chemical Co., 728 P.2d 1118 (Wyo. 1986).

"this covenant in the context of wrongful termination under an employment contract, given the right case."[80] Hatfield argued that the unequal bargaining power between employer and employee demands that the duty of good faith and fair dealing be implied in the general employment contract.[81] Unpersuaded by this argument, the court determined that Hatfield failed to provide evidence to convince the court that his was "the right case" for adoption of the covenant.[82]

In dissent, Chief Justice Urbigkit asserted that the majority's response regarding the covenant of good faith was incorrect.[83] Specifically, he insisted that the majority misread Wyoming case law and blurred the distinction between at-will and general employment contracts.[84] Justice Urbigkit maintained that the court had not yet decided whether the covenant should apply to "an implied employment contract which is not at-will," and that this was a question of first impression before the court.[85]

Justice Urbigkit first analyzed *Leithead*,[86] as used by the majority in support of its holding, asserting that the majority misunderstood the *Leithead* decision. The chief justice contended that the court in *Leithead* did not decide that the covenant of good faith and fair dealing does not apply to an employment contract. Rather, he asserted that "because of the [*Leithead*] court's disposition of other issues, there was no need to resolve the question of applicability of the covenant."[87] Therefore, absent the statement relied on from *Leithead*, according to Urbigkit, the court has never decided the applicability of the covenant in employment contracts which are more than at-will.[88]

The dissent further proposed that the covenant of good faith and fair dealing is applicable to general employment contracts.[89] Justice Urbigkit set forth several reasons for recognition of the covenant in this context, including the rationale used by the Wyoming Supreme

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80. *Hatfield*, 813 P.2d at 1310.
81. Brief of Appellant at 9, *supra* note 1.
82. *Hatfield*, 813 P.2d at 1310.
83. *Id.* at 1311 (Urbigkit, C.J., dissenting).
84. *Id.* (Urbigkit, C.J., dissenting). Chief Justice Urbigkit also asserted that the majority misapplied statutory and procedural rules for answering a certified question. *Id.* He noted that the supreme court's role in such cases does not include fact finding but merely involves answering questions of law. *Id.* at 1313. He determined that the majority made a finding of fact, not a determination of law, when concluding that this case was not "the right case" for application of the covenant in an employment contract. *Id.*
85. *Id.* at 1311.
86. Leithead v. American Colloid Co., 721 P.2d 1059 (Wyo. 1986).
87. *Hatfield*, 813 P.2d at 1313 (Urbigkit, C.J., dissenting).
88. *Id.*
89. *Id.* at 1315. Chief Justice Urbigkit maintained that the covenant of good faith and fair dealing should be applied to all employment contracts - including those terminable at-will. *Id.* In the footnotes to his dissent, he cites several cases from other jurisdictions which have adopted such a position: Arco Alaska, Inc. v. Akers, 753 P.2d 1150 (Alaska 1988); Wagenseller v. Scottsdale Memorial Hosp., 710 P.2d 1025 (Ariz. 1985); Foley v. Interactive Data Corp., 765 P.2d 373 (Cal. 1988). *Id.* at 1312 n.2.

Court when applying the covenant to insurance contracts where an unequal bargaining relationship exists.[90] Based on the determination that employment conditions directly affect the livelihood of all people, Justice Urbigkit noted that "[e]mployment contracts are the most sensitive of all contracts."[91] The chief justice argued, "It is time that we enter the Twentieth Century and recognize basic and universal contractual rights for employees."[92]

ANALYSIS

Does the covenant of good faith and fair dealing apply to general employment contracts? This is a question of first impression in Wyoming. Although the Wyoming Supreme Court has declined to imply the covenant in at-will employment contracts, the court has not created clear precedent on the covenant's application to general employment contracts. Wyoming courts should reevaluate this doctrine and recognize a cause of action under the covenant in both general and at-will employment contracts.

Misapplication of Leithead v. American Colloid Co.

The Wyoming Supreme Court first addressed whether an implied covenant of good faith and fair dealing exists in general employment contracts in *Leithead*.[93] Since then, many courts and attorneys erroneously have relied upon the following language from *Leithead*: "The covenant has no application here, however, because the parties' contract was not at will."[94] Focusing on the preceding statement, other courts have concluded that Wyoming law does not recognize the covenant in employment contracts which are more than at-will.[95] However, this erroneous application is the result of that statement being taken out of context. A thorough review of the procedural history of *Leithead* provides the appropriate explanation of that court's decision.[96]

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90. *See* McCullough v. Golden Rule Ins. Co., 789 P.2d 855 (Wyo. 1990).

91. *Hatfield*, 813 P.2d at 1315 (Urbigkit, C.J., dissenting) (quoting concurrence in Morriss v. Coleman Co., 738 P.2d 841, 851-52 (Kan. 1987)).

92. *Hatfield*, 813 P.2d at 1315 (Urbigkit, C.J., dissenting).

93. Leithead v. American Colloid Co., 721 P.2d 1059 (Wyo. 1986). *See supra* text accompanying note 52.

94. *Id.* at 1064.

95. *See, e.g.*, Jiminez v. Colorado Interstate Gas Co., 690 F. Supp. 977, 982 (D. Wyo. 1988).

96. Several cases regarding the applicability of this covenant to general employment contracts have been brought in the United States District Court for the District of Wyoming. Many of the parties' briefs asserted the noted language from *Leithead* in their defense to a claim for breach of the good faith covenant and were granted judgment on that issue. Finally, in Brown v. Black Butte Coal Co., No. C88-0382-B (D. Wyo. 1989) on Motion for Reconsideration of Order for Summary Judgment, the district judge presented a thorough review of *Leithead* and reached the following conclusions: "a) in *Leithead* the Wyoming Supreme Court was presented only with the question of whether an implied covenant of good faith exists in *at will* employment

In *Leithead*, the plaintiff brought suit against his employer for breach of contract.[97] The plaintiff asserted that an employee handbook created an implied contract between the plaintiff and his employer. The trial court granted defendant's motion for partial summary judgment on plaintiff's breach of contract claim, finding that plaintiff's employment contract was merely at-will. The plaintiff then amended his complaint to include a claim for breach of the covenant of good faith and fair dealing. Subsequently, the plaintiff argued that the at-will contract contained the implied covenant. Then the trial judge granted a second motion for summary judgment in favor of defendant. The plaintiff appealed the rulings on both motions for summary judgment.

The Wyoming Supreme Court reversed the trial court's decision on the breach of contract claim (the first motion for summary judgment), finding that the handbook had created a contract.[98] The court then held that since the plaintiff had more than an at-will employment contract, it need not decide the covenant of good faith issue (the second motion for summary judgment).[99] This is the appropriate interpretation of: "[t]he covenant has no application here, however, because the parties' contract was not at will."[100] The court did not hold that a covenant of good faith and fair dealing is not implied in employment contracts. Rather, the court held that under the circumstances of *Leithead* it need not decide whether the covenant exists in at-will employment relationships. The holding in *Leithead* clearly has been misapplied.

If the quoted statement from *Leithead* is read out of context, without regard for the procedural history of the case, it suggests that where an employment relationship is more than at-will, there can be *no* covenant of good faith and fair dealing. Such a reading contradicts not only the actual issue presented to the supreme court in *Leithead*, but it also contradicts established Wyoming case law. *Mobil Coal Producing, Inc. v. Parks*[101] established the rule that at-will employment contracts may be terminated with or without cause at any time, without violating the implied covenant of good faith. However, the converse of *Leithead's* erroneous application necessarily would imply that where an employment contract is strictly at-will, there *can* be a covenant of good faith. This implication conflicts with the rule established in *Parks*.

The proposed explanation of *Leithead* is consistent with Wyo-

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arrangements, not whether the covenant exists in handbook contracts; and, b) the good faith question presented in *Leithead* was not decided." *Brown*, Order on Motion for Reconsideration at 2.

97. *Leithead*, 721 P.2d at 1062.

98. *Id.* at 1063.

99. *Id.* at 1064.

100. *Id.*

101. 704 P.2d 702, 704 (Wyo. 1985). *See supra* text accompanying note 37.

ming case law and the procedural history of the case. The supreme court never addressed whether the covenant of good faith and fair dealing applied to at-will employment contracts and was not faced with whether to apply the covenant to general employment contracts. The Wyoming Supreme Court "has never actually decided whether or not the covenant of good faith and fair dealing applies to an implied employment contract which is not at-will."[102] Therefore, the court erroneously relied on *Leithead* to answer negatively the question posed in *Hatfield*.

The Covenant's Application to General Employment Contracts

The covenant of good faith and fair dealing should be implied in general employment contracts, as in all other contracts. The Wyoming Legislature has adopted the covenant into its statutes from the Uniform Commercial Code.[103] However, by answering negatively to the certified question posed in *Hatfield*, the Wyoming Supreme Court has precluded general employment contracts from obtaining the good faith protection that applies to U.C.C. contracts. The court provided no rationale for excluding general employment contracts in either *Leithead* or *Hatfield*. However, there are many reasons for recognizing the covenant of good faith and fair dealing in general employment contracts. Although not intended as all-inclusive, the following offers persuasive arguments for recognition of the covenant in this context.

As previously noted, Wyoming has recognized a claim for breach of this covenant in insurance contracts. In *McCullough v. Golden Rule Ins. Co.*,[104] the Wyoming Supreme Court recognized that "insurance contracts involve unequal bargaining power by adoption of the rate of construction favoring the insured."[105] The court placed insurance contracts in a special class of contracts where the implied duty of good faith and fair dealing arises from the contractual relationship.[106] The importance of dealing fairly in such contracts is analogous to the importance of dealing fairly in employment contracts. Some commentators have argued that employees can also be victimized by the unequal bargaining status of their employers. Specifically, "the relative bargaining power of the parties is so unequal that traditional contract assumptions are invalid."[107] The covenant of good faith and fair dealing should be imposed by law so that the unequal bargaining power of the parties is recognized in a way that would arguably deter bad faith practices by employers.

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102. *Hatfield*, 813 P.2d at 1313 (Urbigkit, C.J., dissenting).
103. WYO. STAT. § 34.1-1-203 (1990).
104. 789 P.2d 855 (Wyo. 1990).
105. *Id.* at 858.
106. *Id.*
107. Note, *Protecting At Will Employees Against Wrongful Discharge: The Duty to Terminate Only in Good Faith*, 93 HARV. L. REV. 1816, 1828 (1980).

Bad faith actions are protected by the covenant of good faith and fair dealing in virtually all other contractual relationships.[108] Some courts extend the covenant's application to employment contracts for public policy reasons. In *Monge v. Beebe Rubber Co.*,[109] the New Hampshire Supreme Court held that a "termination by the employer of a contract of employment at will which is motivated by bad faith . . . is not [in] the best interest of the economic system or the public good and constitutes a breach of the employment contract."[110] The Massachusettes Supreme Court in *Fortune v. National Cash Register Co.*[111] asserted that the *Monge* holding extends to employment contracts the rule that in every contract an implied covenant exists that neither party shall do anything which will adversely affect the right of the other party to receive the benefits of the contract.[112] Thus, according to the Massachusettes court, an implied covenant of good faith and fair dealing can exist in employment contracts.[113]

Furthermore, employment is the livelihood of our nation. In *Morriss v. Coleman Co.*,[114] a concurring justice asserted that "[employment contracts] determine the standard of living and the quality of education for children, and affect the general welfare of all the people in this country."[115] The justice further stated, "[i]t is ludicrous that the covenant of good faith and fair dealing has been adopted pertaining to commercial transactions but has not been adopted for transactions involving human working conditions."[116] Imposition of the covenant ensures that employees can rely on fair treatment in their employment relationships, or at least be compensated for unfair treatment.

The Covenant's Application to At-Will Employment Contracts

The covenant of good faith and fair dealing should also be implied in at-will employment contracts. Although these relationships do not normally create contractual rights regarding employment termination, the parties to such contracts need the covenant's protection from unfair dealings. The covenant is especially needed in at-will relationships where there is little or no protection from bad faith actions between the parties.

A continuing trend has emerged among courts and legislatures to

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108. RESTATEMENT (SECOND) OF CONTRACTS § 205 (1981) states that "*[e]very* contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement" (emphasis added).
109. 316 A.2d 549 (N.H. 1974).
110. *Id.* at 551.
111. 364 N.E.2d 1251 (Mass. 1977).
112. *Id.* at 1257.
113. *Id.*
114. 738 P.2d 841 (Kan. 1987).
115. *Id.* at 852 (Herd, J., concurring).
116. *Id.* (citation omitted).

recognize certain implied contractual rights to job security that are necessary to ensure social stability.[117] Expanded job security created by imposition of the covenant may promote employee productivity and a more cooperative work environment.[118] Therefore, both the employee and the employer can benefit from a mutual promise to act in good faith. The court in *Fortune*[119] held that precluding bad faith termination by employers "affords the employee a certain stability of employment and does not interfere with the employer's normal exercise of his right to discharge . . . ."[120]

Opposition to Implying Covenant

Those opposing the covenant's application to employment relationships assert that the covenant impedes an employer's control over its work force.[121] This argument is not persuasive. The court in *Fortune* recognized the employer's need to control its workforce, but nevertheless held that the employer's decision to terminate its at-will employee should be made in good faith.[122] That court further noted that "[the employer's] right to make decisions in its own interest is not . . . unduly hampered by a requirement of adherence to this standard."[123] Likewise, the requirement of "good faith" does not operate to forbid no-cause terminations[124] and does not unduly restrict an employer engaged in his course of business.

Opponents also assert that if the covenant is recognized in employment relationships there will be an influx of actions in the courts. "Admittedly, the concept of good faith and fair dealing is not susceptible to bright-line definitions and tests. It should therefore be used sparingly and with caution."[125] Where a true injustice has occurred, the courts should be in a position to grant relief without concern for their workload. In addition, the courts can maintain control over any abuse of the covenant by applying strict standards when determining whether the covenant has been breached. The advantages of the covenant's application to employment contracts outweigh the disadvantages asserted by opponents.

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117. Michael A. DiSabatino, Annotation, *Modern Status of Rule That Employer May Discharge At-Will Employee for Any Reason*, 12 A.L.R.4th 544, 560 (1982) (citing Cleary v. American Airlines, Inc., 168 Cal. Rptr. 722 (1980)).

118. Note, *Protecting At Will Employees Against Wrongful Discharge: The Duty to Terminate Only in Good Faith*, 93 HARV. L. REV. 1816, 1836 (1980).

119. Fortune v. National Cash Register Co., 364 N.E.2d 1251 (Mass. 1977).

120. *Id.* at 1257.

121. *See, e.g.*, Daniel v. Magma Copper Co., 620 P.2d 699, 703 (Ariz. 1980).

122. *Fortune*, 364 N.E.2d at 1256.

123. *Id.*

124. Michelle Blake Johnson, Comment, *Burk v. K-Mart Corporation: The Oklahoma Supreme Court Adopts a Narrow Exception to the Employment-At-Will Rule?*, 14 OKLA. CITY U. L. REV. 645, 653 (1989).

125. Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 1047 (Utah 1989).

CONCLUSION

Wyoming law should recognize a cause of action under the covenant of good faith and fair dealing in both general employment contracts and at-will employment contracts. Our society requires that parties to contracts act in good faith toward one another. "Good faith and fair dealing between parties are pervasive requirements in our law; it can be said fairly, that parties to contracts . . . are bound by this standard."[126]

Wyoming courts must reevaluate the plausibility of this doctrine and the precedent being used to deny its application in employment contracts. Under the current status of Wyoming law, employers are not required to adhere to good faith and fair dealing requirements with their employees and thus can potentially be excused from treating them unfairly. Although general employment contracts often contain provisions giving an employee some job protection, there may be cases where an employer is guilty of a "bad faith" discharge that is not in violation of the contract terms. Furthermore, under Wyoming law, at-will employees have no protection from "bad faith" termination by the employer. A reevaluation by Wyoming courts is necessary to determine the future application of this covenant and provide parties to employment contracts with the same good faith protection that is provided in virtually all other contracts.

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126. *Fortune*, 364 N.E.2d at 1256.