

# The Employee's Right to Sue Employer for Breach of Contract Where the Wrongful Conduct is Discrimination

By Kathryn Miller

The Tenth Circuit has upheld the right of an employee to sue her employer under breach of contract even where the conduct alleged by the employee to be wrongful may have also constituted illegal sex discrimination. *Stahl v. Sun Microsystems, Inc.*, 1994 WL 86409, 64 FEP Cases 468 (10th Cir. March 18, 1994).

Ms. Stahl began her employment as a Sun Microsystems sales representative in June 1987, selling Sun computers, computer components and software. Several of her major customers were government contractors, which requested that she obtain a security clearance so that she could have access to classified information and provide better service to the account. Ms. Stahl obtained the security clearance.

Ms. Stahl's first year with Sun was very successful. She exceeded her sales goals by nearly 50 percent, and was asked to join the Sunrise Club, an honor given to top sales people. In July 1988, Ms. Stahl had a meeting with her Regional Manager, who asked her for information about her clients that would have required her to reveal classified information. When Ms. Stahl refused to give him the information, the regional manager became angry and accused her of being "a prima donna."

Ms. Stahl's relationship with Sun began to deteriorate after this incident. Notwithstanding her top sales performance, her manager put her on a performance improvement program which imposed very high sales goals as a disciplinary measure. When Ms. Stahl continued to exceed those goals, the company removed from Ms. Stahl all but one of the accounts upon which her yearly sales goal was based, but her goal was not reduced. She nonetheless met the goal in 1989 and was again made a member of the Sunrise Club. In August 1989, the single remaining account on which her sales goal was based was taken away from her. In addition to the loss of her accounts, she presented other evidence of harassment and intimidation by her managers.

Although she had not been terminated from the company at the time of trial, Ms. Stahl received a verdict from the jury on her breach of contract claim for \$500,000.

Stahl's contract claim was grounded on her assertion that Sun created a contractual obligation to her by promulgating and distributing to her its Equal Employment Opportunity policy and a document called "Sun Values." The EEO policy stated that all personnel actions "shall be based upon individual ability, interests, and performance." The Sun Value document set out five value statements that "describe what we believe to be the most important and fundamental principals of the way we do business at Sun," including "we are clear about expectations and provide rewards and recognition on the basis of contributions. We treat people equitably and consistently." Ms. Stahl asserted to the jury that by reassigning her accounts to others without legitimate justification, Sun violated its contractual duty to treat her equitably and based on her performance.

On appeal, Sun argued that the contract claim was nothing more than a restatement of Ms. Stahl's Title VII claim since it was based in large part on the Sun anti-discrimination policy.

In upholding the verdict, the Tenth Circuit held that "[w]hether the conduct that the jury found to have violated this obligation may have also constituted illegal sex discrimination is irrelevant to the contract claim. Conduct can clearly constitute both a contractual breach and illegal sex discrimination. Indeed, Colorado law expressly recognizes that a contractual obligation to treat employees equitably can arise from an employer's representations that it will not discriminate on the basis of sex.<sup>1</sup>

The Tenth Circuit also rejected Sun's argument that the representations underlying the contract claim, that is to treat employees equitably and consistently, were too vague and indefinite to form an enforceable contract. Quoting from *Tuttle*, the Tenth Circuit stated that "[W]hether an

employer and employee have entered into a contract based upon an employee handbook, is generally a question of fact for the jury." Likewise, "[w]hether the language of a promise is sufficiently clear to constitute an offer is a matter for the jury to decide."<sup>2</sup>

The Tenth Circuit found that the "Sun Values" statements and the EEO policies, and the emphasis that Sun placed on them, were sufficient to support a finding that Sun made an enforceable promise to treat its employees equitably with respect to compensation.

Regarding Ms. Stahl's separate claim for breach of express covenant of good faith and fair dealing, the Tenth Circuit found it unnecessary to specifically address the claim since the damages recovered under the contract claim were the same as would be recovered under an express covenant of good faith and fair dealing. The Tenth Circuit stated however, that it was difficult to distinguish the breach of contract claim and breach of express covenant of good faith and fair dealing claim, essentially indicating that such a claim should be brought as a breach of contract claim.

## FOOTNOTES

<sup>1</sup> See *Tuttle v. ANR Freight Sys., Inc.*, 797 P2d 825, 827-28 (Colo. App. 1990)."

<sup>2</sup> *Tuttle* 797 P2d at 828.

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