

Texas Supreme Court Establishes That an At-Will Employee Does Not Have a Viable Fraud Claim Based on Continued Employment

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The Texas Supreme Court recently issued a much-anticipated opinion regarding fraud claims in the employment at will context. In *Sawyer v. E.I. du Pont de Nemours & Co.*, 430 S.W.3d 396 (Tex. 2014), the Fifth Circuit Court of Appeals had certified two questions to the Texas Supreme Court concerning fraud....

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The events leading up to this case started in February 2002. At that time, a large employer announced to its employees that it plans to spin off a part of its operations into a wholly-owned subsidiary. The employer hoped that the employees would join the spin-off—as opposed to transferring to another job within the company—so that it could avoid the significant expenses involved in training employees who transferred within the company for their new jobs and for training new employees to replace the ones that forgo transferring to the new subsidiary in favor of transferring within the company. The company also sought to avoid the expense associated with laying off employees.

The employees feared that if the employer sold the spin-off, the employees would lose significant benefits. The employees alleged that to encourage them to terminate their employment and transfer to the subsidiary, the original employer assured them that if they voluntarily moved to the spin-off, the employer would keep the company under its control. Unbeknownst to the employees, the original employer had already discussed potentially selling the subsidiary to a third party as the time the offer was made.

In February 2003, almost all of the employees at issue transferred from the original employer to the spin-off. A few weeks later, the employer sold the spin-off to a third party. The third party subsequently reduced the employees' compensation and retirement benefits.

In November 2006, over 60 of the former employees sued the original employer in federal court for fraudulently inducing them to terminate their employment and accept employment with the spin-off by misrepresenting that the spin-off would not be sold. The case eventually progressed to the Fifth Circuit, which determined that the question of whether, under Texas law, at-will employees can bring fraud claims against employers for loss of their employment needed to be answered by the Texas Supreme Court before the Fifth Circuit would be able to proceed to a final analysis.

The Texas Supreme Court, in reviewing the main question presented, analyzed Texas's at-will employment doctrine. The court held that the longstanding rule in Texas is that "absent a specific agreement to the contrary, employment may be terminated by the employer or the employee at will, for good cause, bad cause, or no cause at all." The court stated that it has repeatedly refused to recognize several common-law claims or exceptions to the at-will doctrine, including: whistleblower liability; a duty to exercise ordinary care in investigating employee misconduct; and a duty of good faith and fair dealing for employers. The court noted that such common-law claims would fundamentally alter Texas's at-will employment doctrine.

The court also noted that a claim for fraud requires justifiable reliance on a material misrepresentation. Based on the Texas at-will employment doctrine and the requirements on fraud claims, the court ruled that a representation dependent on "continued at-will employment cannot be material because employment can terminate at any time." An employee cannot materially rely on an illusory promise of continued employment, which can end at any time, to justify a fraud claim. The Texas Supreme Court definitively stated, in answer to the Fifth Circuit's question, that "an at-will employee cannot bring an action for fraud that is dependent on continued employment." The state supreme court did not definitively decide the outcome of the underlying case, but answered the certified question presented by the Fifth Circuit.

The Texas Supreme Court's ruling provides clarification to employers across the state regarding fraud claims. Indeed, this ruling confirms that employers cannot be held liable for fraud claims by current or former employees when the underlying purported fraudulent promise concerns a claim of continued employment.

Of note, however, the court stated that regardless of its determination, its ruling does not mean that at-will employees can never sue for fraud. For example, an employee suit for recovery of "expenses incurred in reliance on a fraudulent promise of *prospective* employment has been allowed because neither the injury nor the recovery depended on continued employment."

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