

**MINNESOTA COURT UNDERScores IMPORTANCE OF A WELL-WRITTEN  
EMPLOYMENT MANUAL<sup>1</sup>**

Having a well-written Employment Manual is crucial for employers. Failure to use the appropriate disclaimer language, including that the employment is at-will, and that the handbook provisions are guidelines that do not constitute contract terms, can, depending on the circumstances, result in what is termed a “unilateral contract” and invite a breach of contract claim by an employee. The recent case of *Darwin Roberts v. Brunswick Corp.*, \_\_ N.W.2d \_\_, 2010 WL 2363541 Minn. Ct. App. 2010, file June 15, 2010, underscores the importance of having the correct language to prevent such a claim.

In *Darwin Roberts*, the Brunswick Corporation purchased Lund Boat Company from Genmar Holdings, Inc. in April of 2004. At the time of the acquisition, Genmar’s employee handbook was in effect. It included a vacation-policy provision, which provided that vacation was earned on July 1 of each model year, which began on July 1 and ran through the following June 30. The amount of vacation was based on the time and service provided in the preceding model year. Vacation earned on July 1, but not used in that model year, would result in a cash payout at the end of the model year. Beginning model year July 1, 2004, the Genmar handbook was still in place.

Brunswick’s employee handbook contained a different vacation policy referred to as an “earn and burn” policy, meaning that an employee uses what he or she earns during the given period and loses it if it is not used. Brunswick held an open-enrollment meeting in October 2004, during which Brunswick’s vacation policy was announced. Brunswick announced that as of July 1, 2005, its vacation policy would be implemented through the end of the year in order to get to the 2006 calendar year. Depending on an employee’s seniority on July 1, he or she would receive half of the credited vacation time to cover the six months until January 2006. Because employees were unhappy with this decision, Brunswick decided that the period of July 1, 2005 through December 31, 2005, would be combined with January 1, 2006, to December 31, 2006, to make a year and one-half worth of vacation available to the employees to use during the 18-month transition period.

In June 2007, employees filed a class-action complaint, alleging that Brunswick and Lund Boat Company had entered into a contract with the employees whereby they would earn vacation pay on July 1 of each year in consideration for work performed during the previous 365-day period. The employees further claimed that the employers breached the contract by refusing to honor their promise to credit appellants with earned vacation pay. In one of its orders, the district court determined that Genmar’s handbook created a unilateral employment contract because it refers to vacation pay in the context of a general benefit.

At trial, the issue was whether the employment contract was breached, and, if so, what damages resulted. After trial, the court issued an order for judgment in which it determined that, while

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Genmar’s employee handbook created a unilateral employment contract, it was effectively modified by Brunswick and Lund Boat Company in October 2004, in part because Genmar’s handbook includes a reservation of the right to make changes to the handbook as necessary. The court further held that the employees knew or should have known that the new vacation policy was different from the old policy. The court concluded that the new policy modified the prior vacation policy and the employees’ continued employment established their acceptance of the modification. Finally, the court determined that the employees suffered no loss because the employees received the same amount, if not more, vacation under the new vacation policy. Unsatisfied with the outcome, the employees appealed to the Minnesota Court of Appeals.

The Minnesota Court of Appeals in *Darwin Roberts* began its analysis by acknowledging that a unilateral contract of employment may be based on provisions in an employee handbook, citing the seminal case of *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 627 (Minn. 1983). “[A]n employee handbook may constitute terms of an employment contract if (1) the terms are definite in form; (2) the terms are communicated to the employee; (3) the offer is accepted by the employee; and (4) consideration is given.” *Feges v. Perkins Rests., Inc.*, 483 N.W.2d 701, 707 (Minn. 1992). “Whether a proposal is meant to be an offer for a unilateral contract is determined by the outward manifestations of the parties, not by their subjective intentions.” *Pine River*, 333 N.W.2d at 626.

However, the *Darwin Roberts* court added that, “even if an employee handbook constitutes an employment contract because it meets the conditions set out in *Pine River*, other language in the handbook can demonstrate that an employer does not intend to create an enforceable contract. A disclaimer in an employment handbook that clearly expresses an employer’s intent will prevent the formation of a contractual right.” \_\_\_ N.W.2d at \_\_\_, 2010 WL 2363541. Here, both the Genmar and Brunswick employee handbooks contained the following disclaimer:

Nothing in this employee handbook should be construed as a contract. [employer] has the right to change these policies, procedures, and benefits as it deems appropriate without notice. Responsibility for final interpretation of any specific issues as they relate to policies, procedures, and benefits lies with the senior management of [employer].

The court of appeals in *Darwin Roberts* ruled that the above language confirmed that Brunswick Corporation and Lund Boat Company did not intend to create an enforceable contract with the employees. As a result, the ruling of the district court was overturned and the employers completely prevailed.

The lesson to be learned from the *Darwin Roberts* case is for employers to have legal counsel review and update employee handbooks to ensure that they contain the appropriate protective language in order to avoid the much greater expense of litigation and the spectre of an unfavorable outcome.