

Revoking a Job Offer Can Still Give Rise to a Claim Under Texas Law



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Texas employers typically think that they can revoke or withdraw any job offer prior to the prospective employee starting work, without any consequences. Whether caused by new information received about an applicant, a bad reference or an economic downturn, such revocations happen more than most employers wish to admit.

The good news for employers is that the “at-will” employment doctrine generally prevents any breach of contract claim based on the revoked job offer. The bad news is that there may still be other claims. An often-overlooked claim called *promissory estoppel* may arise under Texas law when an applicant relies on the job offer to his detriment. This could occur, for instance, when an applicant quits his present job in reliance on the job offer, uproots his family or otherwise commits out-of-pocket resources in order to take the job that has been offered. This applicant would certainly have been damaged by relying on the offer, although he could not bring a breach of contract claim.

Texas courts have split on whether an offer of “at-will” employment can support a *promissory estoppel* claim. While the majority of courts have found that reliance on an “at will” job offer is unreasonable, other courts have recently found that such reliance could be reasonable, and specifically suggested that the split of authority in the Texas courts could still support *promissory estoppel* claims based on revoked job offers.

Employment At-Will

The general rule under Texas law 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.¹ In other words, the “at-will” employment doctrine

allows any employment for an indefinite term at be terminated at will and without cause.²

There is a presumption that every employment relationship in Texas is “at-will.” To overcome this presumption, an employer must “unequivocally” indicate a definite intent alter the relationship, and to otherwise agree that the employment can only be terminated “under clearly specified circumstances.”³

Termination Before the Job Starts

If the employment relationship is “at-will,” it can be terminated at any time, including before the applicant shows up for work. Texas courts have clearly held that there “is no distinction between termination of employment before starting work and termination after employment has commenced.”⁴

As a practical matter, therefore, employers can terminate potential employees before they start work without triggering a breach of contract claim.⁵ But this is not the only claim that could be asserted by an applicant that has moved, sold his house, or otherwise committed resources based on a job offer.

Promissory Estoppel

The equitable doctrine of *promissory sstopel* is slightly different from breach of contract. It does not seek to enforce a promise and give a claimant what they bargained for. Rather, it seeks to put the claimant back in the position he would have been in if he had not relied on the promise at all.

A *promissory estoppel* claim allows a person who has relied – to his or her detriment – on a promise made by another to recover for the reliance, if it was foreseeable that the person would rely on the promise.⁶ This seems to be exactly the problem that

could arise for a prospective employee that has his or her job offer revoked.

Assuming a promise was made, the critical issue of a *promissory estoppel* claim often will be whether the claimant's reliance on the promise is "both reasonable and justified."⁷ Most Texas courts have held that an "at-will" employment relationship cannot support a claim for *promissory estoppel* based on this element.⁸

The rationale usually expressed in these opinions is that it reliance on an "at-will" job offer could never be reasonable, because a promise to provide employment which is subject to termination at any time or for any reason does not provide any assurances about the employer's future conduct. The job offer could be terminated without cause at any time, even before the applicant starts work, and there is no limit on the employer's freedom of action.⁹ The case usually cited for this proposition is *Collins v. Allied Pharmacy Mgmt*, out of the 14th District Court of Appeals in Houston.¹⁰ Not all Texas courts have agreed, however.

In *Roberts v. Geosource Drilling Servs.*, the 1st District Court of Appeals in Houston allowed the recovery of out-of-pocket expenses based on an applicant's reliance on a promise of future employment.¹¹ The *Roberts* decision was rejected by the *Collins* court, but has not been withdrawn or overruled.¹² Because a sister appellate court does not have authority to overrule a decision made by a court of equal authority, the *Roberts* opinion is still an authority cited by applicants.¹³ And, although it is frequently criticized, *Roberts* has been relied upon by other courts when allowing *promissory estoppel* claims, even recently.

Example: *Hernandez v. UPS Supply Chain Solutions*

In the summer of 2007 the U.S. District Court for the Western District of Texas breathed new life into the *Roberts* opinion. In *Hernandez v. UPS Supply Chain Solutions*, the Western District granted summary judgment in favor of a prospective employee on a *promissory estoppel* claim against his prospective employer, UPS.¹⁴ In doing so, the

Western District expressly declined to adopt the *Collins* approach, although it noted that there was a split in authority in Texas between the *Collins* and *Roberts* holdings.

In *Hernandez*, the plaintiff lived in Chicago and was employed as an industrial engineer. He responded to a UPS job opening, and thereafter took part in telephone interviews with various UPS representatives.

Like many applicants, Hernandez received a written job offer from UPS for a Management Trainee position in Texas. He accepted the UPS offer and, in turn, quit his other job. Relying on the job offer, he went on to break an apartment lease, to discard furniture, and to relocate his family members. Understandably, he incurred significant moving costs and expenses.

Upon arrival at UPS, Hernandez was told that his starting date would be delayed, but that he would still be employed by UPS. Hernandez ultimately attended UPS orientation for approximately two days and worked at home one day. After the second day, a supervisor told Hernandez to go home because he was not an "official employee." A Human Resources representative then told him that UPS would not honor his job offer.

The Western District held that Hernandez's reliance upon UPS's promise of a job offer was "reasonable, substantial, and detrimental," as required to satisfy the element of a *promissory estoppel* claim. Furthermore, the court rejected UPS's reliance on the *Collins* decision, stating that it declined "to opine on [the] conflict" between the *Collins* and *Roberts* decisions.¹⁵

Many Federal courts in Texas have adopted the *Collins* approach, finding that no reliance on an at-will promise of future employment would be reasonable.¹⁶ As seen in *Hernandez*, however, not all courts agree, and strong *promissory estoppel* claims may well survive summary judgment if a particular court does not adopt the *Collins* reasoning.

¹ *Midland Judicial Dist. Cmty. Sup. & Corrections Dep't v. Jones*, 92 S.W.3d 486, 487 (Tex. 2002); *Montgomery Cty. Hosp. Dist. v. Brown*, 965 S.W.2d 501, 502 (Tex. 1998).

² *Schroeder v. Tex. Iron Works, Inc.*, 813 S.W.2d 483, 489 (Tex. 1991).

³ *Brown*, 965 S.W.2d at 502; *Jones*, 92 S.W.3d at 487.

⁴ *Talford v. Columbia Medical Center at Lancaster Subsidiary, LP*, 198 S.W.3d 462, 465 (Tex.App.—Dallas 2006, no pet.).

⁵ *See Id.*

⁶ *English v. Fischer*, 660 S.W.2d 521, 524 (Tex. 1983).

⁷ *See Frost Crushed Stone Co. v. Odell Geer Constr. Co.*, 110 S.W.3d 41, 45 (Tex.App.—Waco 2002, no pet.).

⁸ *See Collins v. Allied Pharmacy Mgmt.*, 871 S.W.2d 929, 937 (Tex.App.—Houston [14th Dist.] 1994, no writ); see also *Allied Vista v. Holt*, 987 S.W.2d 138 (Tex.App.—Houston [14th Dist.] 1999, pet. denied).

⁹ *See Id.*

¹⁰ *Id.*

¹¹ *Roberts v. Geosource Drilling Servs.*, 757 S.W.2d 48, 50 (Tex.App.—Houston [1st Dist.] 1988, no writ).

¹² *Collins*, 871 S.W.2d at 937.

¹³ *See Helms v. Sw. Bell Tel. Co.*, 794 F.2d 188, 193 (5th Cir. 1986); see also *Zenor v. El Paso Healthcare Sys. Ltd.*, 176 F.3d 847, 864-65 (5th Cir. 1999).

¹⁴ *Hernandez v. UPS Supply Chain Solutions, Inc.*, 496 F.Supp.2d 778 (W.D.Tex. 2007) (Memo. Op.).

¹⁵ *Id.* at 785.

¹⁶ *See, e.g., Tilford v. The McGraw Hill Cos.*, 2004 WL 2168369 (N.D.Tex. 2004) (Memo. Order) (stating that “State and federal courts in Texas have concluded that, as a matter of law, an employee cannot justifiably rely on a promise of at-will employment”); *Raggio v. Parkland Mem. Hosp.*, 1997 WL 135662 (N.D.Tex. 1997) (Memo. Op.) (stating that “Under Texas law, a promise to provide employment which is subject to termination at any time or for any reason ‘does not provide any assurances about the employer’s future conduct...’”); *Hinds v. Orix Cap. Mkts., LLC*, 2003 WL 22132791 (N.D.Tex. 2003) (Order) (stating that “The promise of at-will employment provides no guarantees as to the employer’s future conduct and, as such, does not provide a reasonable basis for reliance”).