



Withdrawing a Job Offer Before Employment Begins

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A recent Texas Supreme Court case (*Hernandez v. UPS Supply Chain Solutions, Inc.*) ruled that an employer that changed its mind and withdrew a job offer to a candidate was responsible for paying damages to the individual—under a theory of liability known as “promissory estoppel”—because the applicant reasonably relied on the job offer to his detriment.

This ruling may come as a surprise to business owners since the individual was offered employment on an “at-will” basis (both parties were free to terminate the relationship at any time, with or without justification) and had the company simply employed the person for one day, it seems clear there could be no plausible basis for liability.

Normally, you have no financial obligation to a prospective employee because of a withdrawn offer of employment. The Hernandez case, however, recognizes the practical realities of a situation and attempts to minimize the damage caused to individuals who detrimentally rely on job offers (the ruling is in line with those from states other than Texas).

From the employer’s perspective, withdrawals should be given the same weight and considerations as job offers. Do you have a legitimate justification for withdrawing the offer such as receiving an application from a more qualified individual, a downturn in business conditions, or poor reference checks concerning the applicant?

Job offers don’t have to be withdrawn in writing, but it’s better to do so. Also, if the offer is conditional on passing a medical condition, drug test, background check, or receiving positive reference checks, make that clear in the offer letter.

Be aware that your right to withdraw an offer of employment may be limited if your job offer created an enforceable contract for a fixed period of time or promised that termination would occur only under certain circumstances. If an employment contract exists, you should terminate the relationship only according

to the terms and conditions of the contract.

If you find yourself in a situation where an offer needs to be withdrawn for reasons outside the individual’s control (i.e., a downturn in business), consider compensating the individual for his or her troubles in exchange for a release agreement.

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From the employee’s perspective, the best advice is to do your homework. Is the employer reputable? Is there any reason to question the financial viability of the company? Can you make it clear to the employer that you will be incurring sizeable (or even certain) expenses prior to starting employment? Another piece of advice: keep the future employer informed of when you are going to be resigning your current position. That way, the employer has one last chance to withdraw the offer before it’s too late.

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