Weiner v. McGraw-Hill, Inc.: Ten Years After

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I. *Introduction*

Almost ten years have passed since the New York Court of Appeals in *Weiner v. McGraw-Hill, Inc.*[1] rendered the first of its three landmark decisions in the 1980s on the employment-at-will rule.[2] Prior to *Weiner,* the New York courts had generally agreed that, absent mutuality of obligation, personnel policy manuals and other employment handbooks did not create enforceable contract rights to job security.[3] In *Weiner,* however, the New York Court of Appeals held that such rights may exist in employment relationships based on the "totality" of the parties' relationship, " 'including their writings' . . . and their antecedent negotiations."[4]

The parameters of *Weiner* were shortly thereafter limited by the New York Court of Appeals in *Murphy v. American Home Products Corp.*[5] to cases involving an "express limitation" on an employer's "unfettered right" to dismiss employees hired for an indefinite duration at any time with or without cause or notice. In 1987 the Court of Appeals in *Sabetay v. Sterling Drug, Inc.*[6] rejected an invitation "to relax the *Weiner* requirements, to expand the *Weiner* holding

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[1]57 N.Y.2d 458, 443 N.E.2d 441, 457 N.Y.S.2d 193 (1982). For further discussion of the *Weiner* case, see DeGiuseppe, "The Recognition of Public Policy Exceptions to the Employment-at-Will Rule: A Legislative Function?" 11 Fordham Urb. L.J. 721 (1983).

[2]The common law rule regarding employment relationships of an indefinite duration provides that individuals so employed may either quit or be discharged by their employers at any time with or without cause or notice. The so-called "employment-at-will" rule was incorporated into the American common law in *Martin v. New York Life Ins. Co.,* 148 N.Y. 117, 42 N.E. 416 (1895). *See* DeGiuseppe, "The Effect of the Employment-at-Will Rule on Employee Rights to Job Security and Fringe Benefits," 10 Fordham Urb. L.J. 1, 3-8 (1981).

[3]*See, e.g., Chin v. American Tel. & Tel. Co.,* 96 Misc. 2d 1070, 410 N.Y.S.2d 737 (Sup. Ct. N.Y. County 1978), *aff'd without opinion,* 70 A.D.2d 791, 416 N.Y.S.2d 160 (1st Dep't), *appeal denied,* 48 N.Y.2d 603, 396 N.E.2d 207, 421 N.Y.S.2d 1028 (1979).

[4]57 N.Y.2d at 466, 443 N.E.2d at 446, 457 N.Y.S.2d at 198.

[5]58 N.Y.2d 293, 305, 448 N.E.2d 86, 91, 461 N.Y.S.2d 232, 237 (1983).

[6]69 N.Y.2d 329, 506 N.E.2d 919, 514 N.Y.S.2d 209 (1987).

into the implied contract category, and to overrule the recently resolved *Murphy* rejection of implied covenants in employment relationships."[7]

The difficulties in analyzing the parameters of the *Weiner* exception to the employment-at-will rule have resulted from the inconsistent federal and state court decisions in wrongful dismissal cases. While *Weiner*-type claims have not fared well in state court cases, recent decisions by federal courts in the Second Circuit demonstrate a willingness on the part of these courts to recognize causes of action based on *Weiner*.[8] As a result, the ability of plaintiff-employees to commence an action in federal court against their former employers based on *Weiner* now appears to increase the likelihood of their success on wrongful dismissal claims.

This Article analyzes recent New York and Second Circuit cases regarding *Weiner* and examines whether the apparent conflict between federal and state courts on the viability of *Weiner* claims in wrongful employment termination lawsuits can be resolved based on the current status of New York law.

II. *The Weiner Decision*

In *Weiner v. McGraw-Hill, Inc.* the plaintiff-employee claimed that "he was discharged without the 'just and sufficient cause' or the rehabilitative efforts specified in the employer's personnel handbook and allegedly promised at the time he accepted the employment."[9] The operative facts of *Weiner* indicate that the plaintiff had allegedly been induced by the defendant in 1969 to leave his prior employer and forfeit all of his accrued fringe benefits as well as a proffered salary increase to remain in his previous employment based on the defendant's assurances that his new employment "would, among other things, bring him the advantage of job security."[10] These assurances were evidently confirmed by the defendant's printed application form which provided that the plaintiff's "employment would be subject to the provisions of [the defendant's]

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[7]*Id.* at 337, 506 N.E.2d at 923, 514 N.Y.S.2d at 213.

[8]*See, e.g., Mycak v. Honeywell, Inc.*, 953 F.2d 798 (2d Cir. 1992). As this article went to press, the Second Circuit in *Stewart v. Jackson & Nash*, No. 92-7056 (2d Cir. Sept. 23, 1992), rendered another significant ruling in an at-will employment case by reinstating the fraudulent inducement claim of an attorney who alleged that her former employer induced her to leave a partnership-track position based on false claims of professional opportunities in an environmental law practice that did not in fact exist.

[9]57 N.Y.2d at 460, 443 N.E.2d at 442, 457 N.Y.S.2d at 194. The *Weiner* decision also confirms that the Statute of Frauds, N.Y. Gen. Oblig. Law §5-701 (McKinney's 1989), does not prohibit agreements of this nature.

[10]57 N.Y.2d at 460, 443 N.E.2d at 442, 457 N.Y.S.2d at 194.

'handbook or personnel policies and procedures' " containing the relevant job security representations.[11]

During his eight years of employment with defendant, the plaintiff claimed that he had "routinely rejected" other employment offers in light of the defendant's assurances of job security and had been specifically instructed to follow the "strict procedures" of the dismissal statements set forth in the defendant's handbook in order to avoid any legal liability for the company.[12] Despite his job promotions and periodic raises in compensation, the plaintiff was summarily dismissed by the defendant in 1977 for "lack of application."[13]

Based on these facts, the New York Court of Appeals found "sufficient evidence of a contract and a breach to sustain a cause of action."[14] The Court of Appeals reasoned that a contractual right to job security can exist in employment relationships of an indefinite duration, even in the absence of mutuality of obligation, based on the presence of "sufficient consideration." Regarding the adequacy of consideration, the court stated, "[f]ar from consideration needing to be coextensive or even proportionate, the value or measurability of the thing forborne or promised is not crucial so long as it is acceptable to the promisee."[15] In determining whether the presumption of an employment-at-will status is overcome, the Court of Appeals instructed the trier of fact "to consider the 'course of conduct' of the parties, 'including their writings' . . . and their antecedent negotiations."[16] The court made clear that it was not the defendant's "subjective intent, nor 'any single act, phrase or other expression', but 'the totality of all of these, given the attendant circumstances, the situation of the parties, and the objectives they were striving to attain', which will control."[17]

Two judges dissented from the majority decision in *Weiner* on the grounds that there was no evidence that the defendant had intended to be contractually bound by the contents of its personnel policies and employment application. The dissent also expressed its concern that the majority's decision could force businesses to move out of New York State resulting in further job losses.[18]

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[11] *Id.*

[12] *Id.* at 465-66, 443 N.E.2d at 445, 457 N.Y.S.2d at 197.

[13] *Id.* at 461, 443 N.E.2d at 443, 457 N.Y.S.2d at 195.

[14] *Id.* at 465, 443 N.E.2d at 445, 457 N.Y.S.2d at 197.

[15] *Id.* at 464, 443 N.E.2d at 445, 457 N.Y.S.2d at 197.

[16] *Id.* at 466, 443 N.E.2d at 446, 457 N.Y.S.2d at 198.

[17] *Id.* at 466-67, 443 N.E.2d at 446, 457 N.Y.S.2d at 198.

[18] *Id.* at 467-69, 443 N.E.2d at 446-47, 457 N.Y.S.2d at 198-99 (Wachtler, J., dissenting).

III. *Post-Weiner Decisions*

Approximately four months after the *Weiner* decision, the New York Court of Appeals in *Murphy v. American Home Products Corp.*[19] confirmed New York's adherence to the employment-at-will rule by declining to recognize public policy and implied covenant of good faith and fair dealing exceptions to the at-will rule. With respect to *Weiner,* the Court of Appeals in *Murphy* limited this exception to cases involving an "express limitation" on an employer's right to discharge employees at will. The plaintiff in *Murphy* claimed that he was wrongfully dismissed for reporting to the defendant's officers and directors, in accordance with internal company regulations contained in a manual, certain alleged accounting improprieties and for refusing to engage in these improprieties. In dismissing the plaintiff's breach of contract claim, the Court of Appeals held that the plaintiff's "general references" to his compliance with the requirements of the defendant's manual did not suffice under *Weiner* to state a cause of action in the absence of an "express limitation" on the defendant's right to terminate his employment at any time and for any reason.[20]

Subsequent cases have generally interpreted *Weiner* as a four-prong test requiring evidence that (1) the plaintiff was induced to leave his prior employment with the assurance of job security, (2) this assurance was incorporated into the defendant's employment application, (3) the plaintiff rejected other offers of employment in reliance on the assurance of job security, and (4) the plaintiff's employment was subject to the job security provisions in an employee handbook or other document which expressly stated that employees could be discharged only for "just cause."[21]

Based on criteria similar to the foregoing, most state courts in considering *Weiner*-type claims have held that handbook provisions which merely assure continuous employment based on an employee's satisfactory work performance or only list certain types of misconduct for which employees may be dismissed do not suffice as an "express limitation" within the meaning of *Weiner.*[22] With relatively

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[19]58 N.Y.2d 293, 448 N.E.2d 86, 461 N.Y.S.2d 232 (1983).

[20]*Id.* at 305, 448 N.E.2d at 91, 461 N.Y.S.2d at 237-38.

[21]*E.g., Sabetay v. Sterling Drug, Inc.,* 69 N.Y.2d 329, 506 N.E.2d 919, 514 N.Y.S.2d 209 (1987); *Utas v. Power Authority,* 96 A.D.2d 940, 466 N.Y.S.2d 390 (2d Dep't), *appeal denied,* 61 N.Y.2d 601 (1983); *but see Diskin v. Consolidated Edison Co.,* 135 A.D.2d 775, 522 N.Y.S.2d 888 (2d Dep't 1987), *appeal denied,* 72 N.Y.2d 802, 526 N.E.2d 45, 530 N.Y.S.2d 554 (1988) (three-prong *Weiner* test).

[22]*E.g., O'Connor v. Eastman Kodak Co.,* 65 N.Y.2d 724, 481 N.E.2d 549, 492 N.Y.S.2d 9 (1985); *D'Avino v. Trachtenburg,* 149 A.D.2d 399, 539 N.Y.S.2d 755 (2d Dep't), *appeal denied,* 74 N.Y.2d 611, 545 N.E.2d 870, 546 N.Y.S.2d 556 (1989).

few exceptions,[23] these courts have usually viewed such provisions as general policy statements and supervisory guidelines not giving rise to enforceable contractual rights to job security.[24] Moreover, the New York courts have not adopted the rule of law followed in Connecticut, New Jersey and certain other jurisdictions that knowledge of a job security policy set forth in a personnel manual or other document and continued employment in reliance thereon may create an enforceable contract right to job security.[25]

IV. *The Sabetay Decision*

The narrowness of the *Weiner* exception to the employment-at-will rule was confirmed by the New York Court of Appeals in the 1987 decision of *Sabetay v. Sterling Drug, Inc.*[26] The plaintiff in *Sabetay* claimed that "he was wrongfully discharged from employment because he refused to participate in certain improper, unethical and illegal activities, and because he 'blew the whistle' on these alleged activities.[27] As the basis for the first of his four contract claims, the plaintiff (an at-will employee) contended that the defendant's "personnel manual, which enumerate[d] seven grounds for termination, establishe[d] an implied promise that those [were] the only grounds for termination and that plaintiff's termination without cause amounted to a breach of that implied contractual agreement.[28]

With respect to the remaining three contract claims, plaintiff contended that the defendant's written policies to refrain from illegal or unethical activities and to report such activities to senior management officials, when "coupled with a statement on the employment application that all [of defendant's] employees [were] to comply with company rules and regulations, create[d] an implied

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[23]*E.g., Lapidus v. New York City Chapter of the N.Y.S. Ass'n for Retarded Children, Inc.*, 118 A.D.2d 122, 504 N.Y.S.2d 629 (1st Dep't 1986); *Tiranno v. Sears, Roebuck & Co.*, 99 A.D.2d 675, 472 N.Y.S.2d 49 (4th Dep't 1984).

[24]*E.g., Brumbach v. Rensselaer Polytechnic Inst.*, 126 A.D.2d 841, 510 N.Y.S.2d 762 (3d Dep't 1987); *Collins v. Hoselton Datsun, Inc.*, 120 A.D.2d 952, 503 N.Y.S.2d 203 (4th Dep't 1986); *Wexler v. Newsweek, Inc.*, 109 A.D.2d 714, 487 N.Y.S.2d 330 (1st Dep't 1985); *Patrowich v. Chemical Bank*, 98 A.D.2d 318, 470 N.Y.S.2d 599 (1st Dep't), *appeal dismissed in part*, 62 N.Y.2d 801, *aff'd on other grounds*, 63 N.Y.2d 541, 473 N.E.2d 11, 483 N.Y.S.2d 659 (1984).

[25]*See, e.g., Finley v. Aetna Life & Casualty Co.*, 202 Conn. 190, 520 A.2d 208 (1987); *Pine River State Bank v. Mettille*, 333 N.W.2d 622 (Minn. 1983); *Woolley v. Hoffman - LaRoche, Inc.*, 99 N.J. 284, 491 A.2d 1257, *modified*, 101 N.J. 10, 499 A.2d 515 (1985).

[26]69 N.Y.2d 329, 506 N.E.2d 919, 514 N.Y.S.2d 209 (1987).

[27]*Id.* at 331, 506 N.E.2d at 919-20, 514 N.Y.S.2d at 210.

[28]*Id.* at 332, 506 N.E.2d at 920, 514 N.Y.S.2d at 210-11.

agreement not to dismiss an employee for activity in accordance with these very policies."[29]

In dismissing the plaintiff's four contract claims, the Court of Appeals found that the plaintiff, as required by the *Weiner* and *Murphy* decisions, had "failed to demonstrate a limitation by express agreement on his employer's unfettered right to terminate" his employment at will.[30] In reaching its decision, the court found the following factors to be dispositive of the plaintiff's claims:

> [T]he language in [defendant's] personnel handbook, "Accounting Code" and employment application refutes any possible claim of an express limitation. The personnel manual was circulated to an extremely limited number of [defendant's] managerial employees solely for the purpose of determining post-termination benefits, and plaintiff was not one of those few employees authorized to receive a copy. Similarly, the "Accounting Code" and statement on the employment application requiring [defendant's] employees to abide by company rules do not, taken together, rise to an express agreement that [defendant] would not dismiss an employee for following its policies of full disclosure of business improprieties. Rather, these two documents merely suggest standards set by [defendant] for its employees' performances of their duties that, without more, cannot be actionable.[31]

The New York Court of Appeals therefore rejected the plaintiff's invitation to either relax or expand the *Weiner* holding into the implied contract category. The court also declined to overrule *Murphy* by recognizing an implied covenant of good faith and fair dealing in at-will employment relations. As in *Murphy,* the Court of Appeals "noted that significant alteration of employment relationships, such as the plaintiff urges, is best left to the Legislature . . . , because stability and predictability in contractual affairs is a highly jurisprudential value."[32]

Since the *Sabetay* decision, the overwhelming majority of New York State court cases have rejected causes of action based on *Weiner.* In the Second Department, for example, *Weiner*-type claims have been dismissed on the grounds that neither oral assurances nor general provisions in an employee manual were sufficient to limit an

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[29]*Id.* at 332-33, 506 N.E.2d at 920, 514 N.Y.S.2d at 211.
[30]*Id.* at 336, 506 N.E.2d at 923, 514 N.Y.S.2d at 213.
[31]*Id.*
[32]*Id.*

employer's right to discharge an at-will employee at any time for any reason;[33] that several grounds for dismissal enumerated in a personnel policy guide did not limit an employer's right to dismiss employees to just and sufficient cause only;[34] and that contractual rights to job security would not be inferred from the mere existence of personnel manuals and grievance procedures.[35]

One recent Second Department decision illustrates the extremely limited nature of the *Weiner* exception to the employment-at-will rule as interpreted by the New York State courts. In *Scordo v. Scaturro Supermarkets*[36] the plaintiff, who worked for twenty-eight years with the defendant-employer, sought to recover damages for breach of employment contract under *Weiner* based on the following factors: (1) that he was "affirmatively promise[d]" by the defendants "that the terms and conditions of his employment would be comparable to those specified in [a] collective bargaining agreement" which contained a provision that employees could not be dismissed "except for just cause"; (2) that certain provisions of an " 'Employee Handbook' " rose " 'to the level of an employment contract' "; and (3) that the defendant-employer's conduct over a twenty-eight year period created a contractual relationship between the parties.

Based on the foregoing facts, the Second Department cited the lack of any evidence "from which an allegation may be fairly inferred, that the plaintiff was 'induced' to leave other employment or that there existed an employment application."[37] The Second Department also noted that the plaintiff as a non-union employee was not subject to the collective bargaining agreement, and that "there was no allegation that the 'Employee Handbook' restricted the employer's right to discharge at will."[38] The Second Department therefore reversed the denial of the defendant's motion to dismiss the plaintiff's breach of contract claims.

The other three Departments of the Appellate Division have been equally restrictive in their interpretation of *Weiner*. In *Feeney*

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[33]*Paolucci v. Adult Retardates Center,* ——— A.D.2d ———, 582 N.Y.S.2d 452 (2d Dep't 1992).

[34]*Baker v. Citibank, N.A.,* 178 A.D.2d 627, 577 N.Y.S.2d 875 (2d Dep't 1991).

[35]*Fiammetta v. St. Francis Hosp.,* 168 A.D.2d 556, 562 N.Y.S.2d 777 (2d Dep't 1990); *Marvin v. Kent Nursing Home,* 153 A.D.2d 553, 544 N.Y.S.2d 210 (2d Dep't 1989).

[36]160 A.D.2d 932, 554 N.Y.S.2d 658 (2d Dep't 1990).

[37]*Id.* at 933, 554 N.Y.S.2d at 659.

[38]*Id.*

v. Marine Midland Banks, Inc.,[39] the First Department held that an original job offer letter that made reference to a bonus payable in January of the following year did not provide for a guaranteed term of employment or limit the defendant's right to dismiss the plaintiff at will. The Third Department in *Novinger v. Eden Park Health Services, Inc.*[40] held that a four-step disciplinary procedure in a personnel policy manual which listed examples of misconduct for which employees could be disciplined did not alter the at-will rule. In *Tennant v. Bristol Laboratories*[41] the Fourth Department held that an employer's letter setting forth its "bumping rules" as part of a work force reduction "did not amount to a limitation on the employer's right to discharge plaintiff . . . ."[42]

V. *Second Circuit Decisions*

The federal courts in the Second Circuit have generally construed *Weiner* as a "totality of circumstances" test rather than the application of a checklist or formula.[43] Despite this more liberal pleading standard, relatively few decisions in the Second Circuit have recognized causes of action based on the *Weiner* decision.[44] Since 1991, however, several noteworthy decisions have been rendered by federal courts in the Second Circuit which have sustained *Weiner*-type claims under a variety of circumstances.

In *Mycak v. Honeywell, Inc.*,[45] for example, the Second Circuit Court of Appeals held that an employee handbook setting forth "a very specific and detailed procedure for work force reduction in mandatory and unqualified terms" imposed an "express limitation" on the defendant's right to dismiss the plaintiff.[46] The Second Circuit "also agreed with the district court's conclusion that the Hand-

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[39]180 A.D.2d 477, 579 N.Y.S.2d 670 (1st Dep't 1992); *accord, Beagan v. Manhattanville Nursing Care Center, Inc.*, 176 A.D.2d 633, 575 N.Y.S.2d 70 (1st Dep't 1991), *appeal denied*, 79 N.Y.2d 753, 589 N.E.2d 1263, 581 N.Y.S.2d 281 (1992).

[40]167 A.D.2d 590, 563 N.Y.S.2d 219 (3d Dep't 1990), *appeal denied*, 77 N.Y.2d 810, 575 N.E.2d 399, 571 N.Y.S.2d 913 (1991).

[41]155 A.D.2d 936, 547 N.Y.S.2d 757 (4th Dep't 1989).

[42]*Id.*, 547 N.Y.S.2d at 758.

[43]*Mycak v. Honeywell, Inc.*, 953 F.2d 798 (2d Cir. 1992); *Gmora v. State Farm Mut. Auto. Ins. Co.*, 709 F. Supp. 337 (E.D.N.Y.), *aff'd without opinion*, 888 F.2d 1376 (2d Cir. 1989).

[44]*Compare Gorrill v. Icelandair/Flugleidir*, 761 F.2d 847 (2d Cir. 1985) (*Weiner* claim upheld) *with Poklitar v. CBS, Inc.*, 652 F. Supp. 1023 (S.D.N.Y. 1987) (*Weiner* claim denied).

[45]953 F.2d 798 (2d Cir. 1992).

[46]*Id.* at 802.

book's language of qualification ('in the final analysis, specific judgment and discretion will govern') had a counterpart in *Weiner* ('However, if the welfare of the company indicates that dismissal is necessary, then that decision is arrived at and is carried out forthrightly.'), . . . and therefore [did] not negate the binding force of the Handbook's more specific provisions under New York law.' "[47]

The Second Circuit's decision in *Mycak* is significant in that it cites *Weiner* for the broad proposition that "policies in a personnel manual specifying procedures or grounds for termination . . . become a part of the employment contract and must be followed."[48]

Aside from *Mycak,* two 1991 decisions rendered by district courts in the Second Circuit have also broadly construed *Weiner* in sustaining wrongful dismissal claims. In *Reeves v. Continental Equities Corp.,*[49] the Southern District of New York construed *Weiner* as providing an employee with "a 'cause of action for breach of [an implied] contract against his employer' where he is discharged in the absence of the circumstances or the procedures specified in the employer's personnel handbook."[50] The *Reeves* court therefore upheld the plaintiff's wrongful dismissal claim based on an "Involuntary Termination" policy set forth in an employee manual where the plaintiff alleged "that he received neither a written warning nor probationary period, as provided in the manual, and that prior to his summary suspension, he had received nothing but praise."[51] In dismissing the defendant's motion for summary judgment on the plaintiff's breach of contract claim, the court quoted the plaintiff's allegations that he had been aware of the manual both before and during his employment with defendant and that he had relied upon the provisions in question in resigning from his prior position of employment and in continuing his employment with defendant.[52]

In *Jones v. Dunkirk Radiator Corp.*[53] the Western District of New York, in denying defendant's motion for summary judgment, found that an oral agreement between the parties which provided that the plaintiff would not have to relocate his home from Indiana

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[47]*Id.* (citation omitted).

[48]*Id.* at 801, *citing Gorrill v. Icelandair/Flugleidir,* 761 F.2d 847 (2d Cir. 1985), where the Second Circuit held that a provision in defendant's operations manual that "[s]eniority shall be the sole factor for determining demotions, transfers or termination" created an enforceable contract right under *Weiner.* 761 F.2d at 850.

[49]767 F. Supp. 469 (S.D.N.Y. 1991).

[50]*Id.* at 472.

[51]*Id.*

[52]*Id.*

[53]778 F. Supp. 108 (W.D.N.Y. 1991).

to New York limited the defendant's right under *Weiner* to discharge him for refusing to relocate, even though the plaintiff's employment was otherwise an at-will relationship under New York law. Unlike *Mycak* and *Reeves,* the *Jones* case did not involve a "just cause" or other disciplinary provision set forth in an employee handbook or other document.

VI. *Conclusion*

The high degree of uncertainty surrounding the *Weiner* decision for the past ten years is readily confirmed by the recent decisions in the Second Circuit in which the federal courts have considered a variety of factors under the "totality of circumstances" test to sustain *Weiner*-based claims of wrongful dismissal. The apparent willingness of the federal courts to interpret *Weiner* more broadly than the checklist approach generally used in state court cases demonstrates the need for the New York Court of Appeals to reexamine the types of circumstances which may give rise to enforceable contract rights to job security in an otherwise at-will employment relationship. Even the issue of which statements constitute an "express limitation" on an employer's right to dismiss employees has resulted in a high degree of inconsistency between federal and state court decisions and needs to be clarified by the Court of Appeals.[54]

Based on the current state of the law, it is therefore clear that *Weiner* and its progeny offer little guidance to both employers and employees as to the types of conduct and statements that may create enforceable rights to job security, unless the circumstances of an employment relationship fall squarely within the four-corners of the facts of *Weiner.* As a result, *Weiner* has invited the commencement of lawsuits by former employees to determine after their dismissal on a case-by-case basis whether the facts of their respective employment relationships suffice to state a cause of action under *Weiner.* While the New York Court of Appeals has repeatedly reaffirmed its longstanding view that any "significant alteration" of employment

[54]*Compare Jones v. Dunkirk Radiator Corp.,* 778 F. Supp. 108 (W.D.N.Y. 1991) (relocation statement created *Weiner*-type claim) *with Hager v. Union Carbide Corp.,* 106 A.D.2d 348, 483 N.Y.S.2d 261 (1st Dep't 1984) (relocation statement did not support *Weiner*-based claim).

relationships "is best left to the Legislature," it is clear that the court should resolve the high degree of uncertainty that has surrounded *Weiner* for the past ten years pending further legislative action on the respective rights of the parties to employment relationships.[55]

[55]A model Employment Termination Act was approved on August 8, 1991 by the National Conference of Commissioners on Uniform State Laws for consideration by state legislatures. 137 L.R.R. (BNA) 522 (1991). A bill entitled the "Unjust Dismissal Act," A.904, 211th Leg., Reg. Sess., 1988 N.Y. Leg. Dig. A60, that would have limited employment dismissals to job performance problems and violations of company policies was unsuccessfully introduced in the New York State Legislature during the 1987-1988 legislative session. Other wrongful dismissal bills have also been proposed without success in New York. *E.g.*, "Wrongful Discharge Legislation: A Proposed Statute in New York," *Insight*, Lab. L. Rep. (CCH) No. 137, Issue 34, at 1 (July 1989).