Legal and Ethical Concerns of Rescinding Job Offers

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In today's economic environment, more and more employers are rescinding job offers. Is there anything legally an individual can do to secure the position or recoup his or her losses? Additionally, what are the ethical concerns with regard to reneging on an offer?

In general, candidates who are on the end of a rescinded offer do not have much in terms of legal recourse. Although it varies from state to state, unless otherwise specified, employment is “at-will”, meaning either the employer or the employee can terminate the employment relationship at any time and for any reason. Consequently, candidates have a difficult time enforcing a job offer or recovering damages for a rescinded offer when there is no duty on the part of the employer to keep the individual employed.

That said, there are some circumstances in which a candidate may have legal recourse if an employer rescinds a job offer. The candidate may be able to pursue a claim against the employer under one of the following theories: 1) Promissory estoppel, 2) Fraudulent misrepresentation, 3) Breach of contract, and 4) Discrimination.

**Promissory Estoppel**
Under the theory of promissory estoppel, an employer may be held liable if the promise of employment results in a loss of some kind to the candidate. Generally, such a claim arises when an employer makes a job offer and the candidate, in relying on the offer, loses or gives up something of value in order to accept the offer (e.g., leaves an existing job or incurs moving expenses to relocate for the job), only to have the employer rescind the offer.

The potential for recovery varies from state to state, but some courts have found that even if the employment relationship is merely “at-will”, the candidate is nevertheless entitled to the damages incurred as a result of his or her “detrimental reliance” on the offer. It is unlikely, however, that an individual will receive the job that he/she was promised.

**Fraudulent Misrepresentation**
A second type of action a candidate can bring against an employer is for fraudulent misrepresentation. To maintain such a claim, an individual must establish that the company that made the offer did so with knowledge that the offer was false and intended for the applicant to rely upon it.

A claim of fraudulent misrepresentation may arise where an employer offers an individual, who is currently employed, a position with its company. The individual quits her current position and moves to the employer’s location. Upon arriving to work, the individual is informed that the offer is rescinded because the employer is closing the location, a fact that was known by the employer prior to offering the individual employment. In this situation, the employer fraudulently represented the facts to the individual with the intent that she quit her job and move her family; as such, she may be able to establish a claim for fraudulent misrepresentation.

While this is a difficult case for a candidate to prove, the potential damages to a candidate are significant. A candidate who prevails under a claim for fraudulent misrepresentation may be entitled to past and future lost earnings in addition to possible punitive damages.
Breach of Contract
The third circumstance in which a candidate may have legal recourse for a rescinded offer is breach of contract. If an individual can prove a contractual relationship, above and beyond an employment at-will relationship, he or she may have a cause of action for breach of contract against an employer when an offer is unexpectedly withdrawn. When an offer and acceptance specify a length of time of employment or that employment may only be terminated for "just cause", a contractual relationship may exist between the parties. If an employer thereafter rescinds the offer, breach of contract liability may be imposed. If a candidate is successful with respect to such a claim, he or she may obtain the total value of the contract.

On the other hand, a candidate must also be wary of a claim for breach of contract if he or she fails to adhere to the terms of the agreement. If a candidate reneges on an employment agreement after acceptance, the employer may bring a cause of action for breach. In this case, the employer would need to show that the organization was damaged by having to forgo the candidate’s services or because of the costs incurred with respect to replacing such a candidate.

Discrimination
Candidates should also be wary of the reasoning behind an employer’s revocation of an offer. If a candidate falls within a protected class (e.g. race, age, disability, gender, and so forth) and is qualified for the position, and the offer is withdrawn and offered to a person outside the protected class, the candidate may have been subjected to unlawful discrimination if the revocation comes after determining the candidate’s religious background or after discovering a disability. For example, the candidate should consider filing a claim for discriminatory failure to hire.

Does a Signing Bonus Make the Contract Enforceable?
As a practical matter, accepting a signing bonus forms a legal commitment by the job candidate to work for the employer. Unless there is a contract indicating otherwise, however, it is likely that the employment relationship will remain at-will. As such, the employee can resign one minute after beginning work.

In this scenario, however, it is very likely that the employer will seek repayment of the signing bonus from the employee. To avoid post-termination issues, employers should provide such signing bonuses only pursuant to a written agreement clearly defining the employee’s commitment in exchange for the bonus. Generally, such agreements will indicate what an employee’s requirements are with regard to repayment should employment terminate earlier than anticipated by the agreement. Such agreements must be clearly drafted so that the status of employment is not altered and the employment remains at-will.

Notwithstanding the foregoing, if an employer provides an individual with a signing bonus prior to the commencement of employment without a written agreement, the employee may have no legal obligation to return the bonus. Absent such an agreement, the employer’s only recourse may be a claim for unjust enrichment.

Further, at least one court has held that the language of an offer letter can determine when a signing bonus vests requiring payment to the candidate. A candidate may be entitled to payment of the signing bonus, regardless of whether he or she actually commenced employment, if the offer letter suggests that the bonus “vests” upon acceptance of the offer. If, on the other hand, the signing bonus is payable to the candidate only upon commencement of employment, the employer, generally, has no legal obligation to provide payment if the candidate never actually starts working. As such, a candidate should make sure that the offer letter clearly states that he or she is entitled to the signing bonus even if the offer is rescinded.

In sum, because most employment offers and acceptances are for unspecified periods of time, the creation of an enforceable employment contract based on an offer and acceptance is unlikely. While there may be a moral commitment to follow through with the employment relationship, especially in the case of a signing bonus, the employer and job candidate must rely on their ethical commitments to each other for the agreement to have any viability.

When Can an Offer Be Revoked Ethically?
There are times when the employer may have to revoke an offer. The employer may make an offer based on the organization’s needs and later find that the needs have changed, e.g. downsizing or withdrawing contracts; therefore, offers must be withdrawn. The employer should let candidates know as soon as possible if circumstances have changed that require the employer to revoke offers. The employer should offer some type of assistance to help the student get back into the recruiting process, such as providing outplacement services or a stipend to help the student cover expenses.