STATE OF MINNESOTA

IN SUPREME COURT

A19-0606

Court of Appeals

Thissen, J.
Dissenting, Gildea, C.J., Anderson, J.

Donald Hall,

Appellant,

vs.

Filed: February 3, 2021
Office of Appellate Courts

City of Plainview,

Respondent.

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S Y L L A B U S

1. Disclaimer language in an employee handbook did not unambiguously preclude finding an enforceable unilateral employment contract between an employer and an employee that obligates that employer to pay accrued paid time off following the end of the employee's employment.

2. Minnesota Statutes § 181.13(a) (2020) does not create an independent substantive right to payment of accrued paid time off in the absence of a contract between an employer and an employee or another source identified in the statute that establishes an obligation by the employer to pay paid time off.

Affirmed in part, reversed in part, and remanded.

O P I N I O N

THISSEN, Justice.

This case raises two related questions arising from an employer's refusal to pay accrued paid time off (PTO) when an employee's employment ended. First, do disclaimer provisions in an employee handbook stating that the handbook's policies should not be construed as a contract unambiguously allow an employer to refuse to pay accrued PTO in accordance with an employer policy set forth in the handbook? Second, does Minn. Stat. § 181.13(a) (2020) create an independent substantive right to payment of accrued PTO in

the absence of a contract between the employer and employee or another source identified in the statute that establishes an obligation by the employer to pay PTO?

We conclude that the answer to both questions is no. Therefore, we affirm in part, reverse in part, and remand to the district court for further proceedings.

FACTS

In 2017, respondent City of Plainview (the City) terminated appellant Donald Hall from his position as manager of its municipal liquor store. Hall had worked in that capacity for nearly 30 years. At the time of his termination, Hall had accumulated 1,778.73 hours of unused PTO, which was reflected in his payroll documents including his final paystub from the City. Following Hall's termination, the City refused to pay Hall the accrued PTO, citing Hall's failure to provide sufficient notice per the requirements of the City's Personnel Policies and Procedures Manual (the Handbook).

The City adopted the current version of the Handbook in April 2009. As to PTO, it states, in relevant part:

> The Paid Time Off (PTO) program combines the traditional vacation and sick leave into one plan and fills the needs that are not normally accommodated through traditional programs. PTO is an alternative way of providing employees with paid time away from work for such things as vacation, personal business, or short term illness. The City offers employees PTO in order to allow employees to take time off to attend to their personal affairs. In addition, PTO is seen as a benefit, and it is used to help recruit and retain a qualified workforce.
>
> . . . .
>
> When an employee ends their employment with the City, for any reason, 100% of the accrued unused personal leave time will be paid up to 500 hours, unless the employee did not give sufficient notice as required by the policy.

"Sufficient notice" appears to refer to a provision in the Handbook that states: "Employees wishing to leave the City in good standing shall file" a written resignation at least 14 days before their departure and that "[f]ailure to comply with this procedure may be considered cause for . . . denying leave benefits."

The introduction to the Handbook contains a disclaimer stating that "[t]he purpose of these policies is to establish a uniform and equitable system of personnel administration for employees of the City of Plainview. They should not be construed as contract terms." The Handbook introduction later states:

> The Personnel Policies and Procedures Manual is not intended to create an express or implied contract of employment between the City of Plainview and an employee. The Personnel Policies and Procedures Manual does contain language dealing with the grievance procedure, employee discipline or termination, which the City may cho[o]se to follow in a particular instance. These provisions however, are not intended to alter the relationship between the City as an employer, and an individual employee, as being one which is "at will", terminable by either at any time for any reason.

Prior to Hall's termination, the City's interim administrator sent a letter which offered Hall the opportunity to "voluntarily resign from employment" in lieu of termination. The letter stated that if Hall did so "with sufficient notice," the City would pay 100 percent of his "accrued unused personal leave time" up to 500 hours. Hall declined the offer and the city council voted to terminate his employment.

After the vote, the City's interim administrator notified Hall of his termination in a letter which stated: "You will receive all compensation owing to you related to your employment with the City on the appropriate payday." Hall then demanded payment of the entirety of his 1,778.73 accrued PTO hours. The City responded to Hall's demand by

refusing to pay the PTO hours due to Hall's failure to provide sufficient notice as set forth in the Handbook.

Hall filed a complaint in district court laying out three claims: breach of contract, violation of Minn. Stat. § 181.13, and unjust enrichment. First, Hall asserted that a binding contract existed between him and the City. Hall claimed that, by refusing to pay his accrued PTO, the City breached the contract. Second, Hall argued that his accrued PTO constituted "wages" under Minn. Stat. § 181.13(a) and that because the City discharged him without paying these "earned and unpaid" wages, it violated the statute. Finally, Hall pleaded a claim of unjust enrichment in the alternative to his contract and statutory claims, asserting that the City had been unjustly enriched by retaining his earned wages.

In response to Hall's complaint, the City moved to dismiss all three claims. The district court granted the City's motion as to Hall's contract and statutory claims but denied the motion as to Hall's unjust enrichment claim. The parties ultimately settled the unjust enrichment claim out of court and it is not before us on appeal.

Hall appealed the district court's dismissal of his contract and statutory claims. The court of appeals affirmed. Specifically, it held that the disclaimer language in the Handbook was "substantially similar to disclaimer language in other cases . . . in which [the court of appeals] has concluded that an enforceable contract did not arise." *Hall v. City of Plainview*, No. A19-0606, 2019 WL 6695142, at *2 (Minn. App. Dec. 9, 2019). With regard to Hall's statutory claim, the court noted that an employment contract must

exist to recover under section 181.13(a) for an employer's failure to pay accrued PTO. *Id.* at *3–4. We granted Hall's petition for review.[1]

ANALYSIS

This case arises from an appeal taken from the district court's order granting the City's motion to dismiss. *See* Minn. R. Civ. P. 12.02(e). Our review of whether Hall "has stated a claim sufficiently to survive a motion to dismiss is de novo." *Hansen v. U.S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 325 (Minn. 2019). To determine whether a plaintiff's claim survives a motion to dismiss, we look to "the facts alleged in the complaint, accepting those facts as true," and construing all reasonable factual inferences in favor of the plaintiff. *Id.*

This case involves issues of contract and statutory interpretation. We review both de novo. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122–23 (Minn. 2007) (reviewing a prior version of Minn. Stat. § 181.13 de novo); *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 740 (Minn. 2000) (stating that de novo review is appropriate when we consider whether a party's alleged statements constitute a unilateral offer to contract).

I.

The central question here is whether the City has a contractual obligation to pay accrued PTO to Hall. In his complaint, Hall alleged that the City "offered Plaintiff and

[1] The City also argues that even if the Handbook established a contract between Hall and the City and the disclaimer did not bar Hall's claims, Hall cannot prevail on the merits because he did not meet the eligibility requirements laid out in the PTO payment provision. Neither the district court nor the court of appeals reached this issue and we decline to do so. The district court may address that issue on remand.

other employees a number of employee benefits," including payment of accrued PTO in accordance with the Handbook. He also stated that at the time of his termination, he had accrued 1,778.73 hours of PTO, "which was reflected in his payroll documents including his final paystub from the City." He then claimed that the Handbook is a binding contract and that by refusing to pay his accrued PTO, the City violated the terms of the contract.

Our assessment of whether the City has a contractual obligation to Hall to pay him accrued PTO requires us to consider two questions. First, whether the Handbook meets the requirements for formation of a unilateral contract. Second, whether the general disclaimer language in the Handbook means that the City is not obligated to pay Hall accrued PTO in accordance with the PTO payment provision set forth in the Handbook.

A.

We first consider the nature of the employment contract that Hall alleges exists between him and the City. It is not an employment contract formed by the employer and employee sitting down, mutually negotiating the terms of the employment relationship, and signing a written agreement that sets forth those agreed upon terms. Indeed, it is nearly unimaginable that the issue presented in this case—a dispute over a contract that both sets forth the terms of the compensation in the form of accrued PTO that an employee will receive upon performing work for the City and also provides that those terms do not create contractual rights—would ever arise in the context of a negotiated written employment contract. That scenario makes no sense.

Instead, the employment contract alleged in this case is a unilateral contract. As we explained in *Pine River State Bank v. Mettille*, "[g]enerally speaking, a promise of

employment on particular terms of unspecified duration, if in the form of an offer, and if accepted by the employee, may create a binding unilateral contract." 333 N.W.2d 622, 626 (Minn. 1983). Such an offer "must be definite in form and must be communicated to the offeree." *Id.* An employee may accept a unilateral offer of employment by performing the work for the employer. *See id.* at 627. By performing the job, "although free to leave, the employee supplies the necessary consideration for the offer." *Id.* Stated more simply, a unilateral employment contract is formed when an employer tells a potential employee, "If you come work for me, this is what you will get in return," and the potential employee performs the work. And once the work is performed, the employee earns the promised compensation and—at least for that period of work—the employer cannot rescind the terms of compensation.

It is important to be clear about the nature of this unilateral contract. In contrast to what has been termed a bilateral employment contract founded on negotiations between the employer and employee over the terms of compensation and other conditions of employment, a unilateral employment contract is a more one-sided and less balanced relationship where the employer states its take-it-or-leave-it terms and the employee can choose to either accept or reject those terms by performing the requested labor. *See Hartung v. Billmeier*, 66 N.W.2d 784, 789 (Minn. 1954) (defining bilateral and unilateral contracts).

We also note that the dispute between Hall and the City is over the City's alleged obligation to pay accrued PTO. Accrued PTO is a form of compensation for labor and therefore is fundamental to the employment relationship. *See Tynan v. KSTP, Inc.*, 77

N.W.2d 200, 206 (Minn. 1956). And we also observe that the City's policy regarding payment of accrued PTO remained in place up until and through Hall's termination. We are not asked in this case to decide whether the City retained the power to change the terms of the Handbook on a prospective basis.

Unilateral employment contracts are not a recent innovation in Minnesota. For instance, in *Hartung*, we held that an employer's oral promise to pay his employees a $100 bonus per year if they stuck with him for five years created a contract when one employee upheld his side of the bargain by continuing to work for the employer for five years. 66 N.W.2d at 788. *See also Mooney v. Daily News Co. of Minneapolis*, 133 N.W. 573, 575 (Minn. 1911) (stating that the publisher that offered specified compensation to the person obtaining the most paid subscriptions to the newspaper, after acceptance and part performance of the terms of the offer, was required to pay the promised compensation).

In *Pine River*, we held that the provisions in an employee handbook could form the basis for a unilateral employment contract if all the requirements for formation of such a contract were met. 333 N.W.2d at 627. *See also Feges v. Perkins Rests., Inc.*, 483 N.W.2d 701, 707 (Minn. 1992) ("[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."). We have further held that individual portions of an employee handbook may create contractual rights even if other portions of the handbook do not. *See, e.g.*, *Lewis v. Equitable Life Assurance Soc'y of the U.S.*, 389 N.W.2d 876, 883 (Minn. 1986) (concluding that a handbook section on job security amounted only to a general statement of policy, whereas

a section on employee dismissals constituted contractual terms); *Pine River*, 333 N.W.2d at 630 (holding similarly that a job security section in an employee handbook did not constitute an offer while the handbook's disciplinary policy did).

With this background in mind, we turn to the issues presented in this case. First, the parties dispute whether the first prong of the *Pine River* standard is met—that is, whether the PTO accrual and payment terms of the Handbook are sufficiently definite in form to constitute an offer to contract.

In assessing this question in past cases, we have distinguished "[g]eneral statements of policy [that] do not meet the contractual requirements for an offer" and handbook language that lays out clear and specific procedures that employees may follow. *Lewis*, 389 N.W.2d at 883.[2] In *Martens*, we posed the question this way: is the language in a handbook "sufficiently definite for a court to discern with specificity what the provision requires of the employer so that . . . it can be determined if there has been a breach[?]" 616 N.W.2d at 742; *see also Hunt v. IBM Mid Am. Emps. Fed. Credit Union*, 384 N.W.2d 853, 857 (Minn. 1986) ("To decide whether a contract has been breached, a fact-finder needs reasonably definite terms to interpret and apply . . . .").

In this case, we conclude that the Handbook contains sufficiently definite terms regarding the City's PTO program to satisfy the definiteness requirement of *Pine River* and

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[2] *Compare Lewis*, 389 N.W.2d at 883, *and Pine River*, 333 N.W.2d at 626 & n.4, 630 (detailed disciplinary procedures sufficiently definite), *with Hunt v. IBM Mid Am. Emps. Fed. Credit Union*, 384 N.W.2d 853, 857 (Minn. 1986) (employer's failure "to provide any detailed or definite disciplinary procedure" meant that the handbook at issue failed to constitute an offer).

its progeny. The Handbook provides a little over one page of details on the City's PTO program. They include: 1) an overview of the objectives of the program; 2) a detailed PTO accrual schedule based on employee seniority and hours worked per year; 3) instructions as to how and when employees may use PTO; and 4) procedures for rolling over PTO year over year. Finally, the Handbook lays out a procedure by which departing employees may cash out their PTO. These details amount to more than general statements of policy; rather, they provide specific information and procedures by which employees may comprehend and take advantage of the City's PTO program. The terms are sufficiently definite for a court to discern with specificity what the provisions require of the City and determine whether there was a breach. As a result, the terms of the program meet the *Pine River* standard.[3]

The City argues that the Handbook fails to meet the *Pine River* standard as a result of more general statements not contained with the Handbook's PTO section. Specifically, the City claims that two sentences in the Handbook make the contract insufficiently definite. First, the City points to a general statement in the introduction to the Handbook that "[t]he policies are not intended to cover every situation that might arise and can be amended at any time at the sole discretion of the City." Second, the City relies on a

[3] This conclusion is also strengthened by the fact that the City relied on the Handbook's terms regarding PTO when it initially denied payment of Hall's accrued PTO benefits. This reliance stands in contrast to *Pine River* itself, where we found the terms of a handbook's disciplinary procedures sufficiently definite to constitute contractual language despite the fact the employer there neglected to follow the handbook's procedures and did not even mention the handbook at the employee's termination. 333 N.W.2d at 625.

statement that "[t]he City Council has the authority to change the Personnel Policy, employee compensation, and employee benefits at any time."

We do not agree with the City's argument. We held in *Pine River* that a general reservation of an employer's ability to modify a handbook or depart from the handbook's procedures does not prevent the formation of a unilateral employment contract. 333 N.W.2d at 627 ("Language in the handbook itself may reserve discretion to the employer in certain matters or reserve the right to amend or modify the handbook provisions."). Thus, the general statements of discretion and modification highlighted by the City do not mean that the Handbook's PTO terms are insufficiently definite.

B.

We now turn to the second and more difficult question presented in this case, which is one of first impression for our court. We have never directly addressed whether a general disclaimer in an employee handbook stating that the provisions of the handbook are not intended to create a contract necessarily defeats the formation of a contract for every

provision in the handbook.[4] As this is an issue of first impression, we briefly outline the current state of the law.[5]

The court of appeals has on several occasions upheld the effectiveness of express disclaimers in employee handbooks as a means of preventing the formation of an employment contract. *See, e.g.*, *Klevesahl v. Ackley*, No. A10-1684, 2011 WL 1364448, at *2–3 (Minn. App. Apr. 12, 2011) (holding that an express employee handbook

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[4] In *Feges*, we stated in dicta that an express disclaimer clearly stating that a handbook does not constitute a contract "presumably precludes" employees from claiming contractual rights under the handbook. 483 N.W.2d at 708. In addition, as outlined above, we analyze employee handbooks under *Pine River* on a provision-by-provision basis, meaning that some provisions may satisfy *Pine River* while others do not. Likewise, we adopt a similar approach when considering the effectiveness of employee handbook disclaimers in assessing whether they prevent provisions that otherwise satisfy *Pine River* from forming a contract.

[5] There is not a consensus among courts in other jurisdictions regarding the effectiveness of employee handbook disclaimers. Some courts have upheld such disclaimers broadly, while others have held them invalid or not determinative for various reasons, though such cases are largely fact specific. *Compare Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 287–88 (Iowa 1995) ("A disclaimer can prevent the formation of a contract by clarifying the intent of the employer not to make an offer."), *with Wilkinson v. Shoney's, Inc*., 4 P.3d 1149, 1164 (Kan. 2000) ("[D]isclaimer language is *not* determinative and is only a factor to be considered by a properly instructed jury.").

Notably, few cases outside of Minnesota directly address the confluence of employee handbooks, express disclaimers, and PTO policies. And among those cases, no consensus exists. *Compare Amoco Fabrics & Fibers Co. v. Hilson*, 669 So. 2d 832, 834–35 (Ala. 1995) (holding that an employee handbook "created a unilateral contract regarding vacation pay policy" despite the employer claiming the handbook contained an express disclaimer), *with Dunlap v. Edison Credit Union, Inc.*, 928 N.E.2d 464, 467 (Ohio Ct. App. 2010) (holding that an express handbook disclaimer defeated an employee's claim for payment of accrued PTO), *and Brown v. Sabre, Inc.*, 173 S.W.3d 581, 589 (Tex. Ct. App. 2005) (holding that an express disclaimer "applied to the handbook as a whole" and thus defeated a similar claim for PTO pay). Because most handbook disclaimer cases are fact specific, and no consensus exists on the PTO payment issue in particular, we choose not to rely on the rationale of other courts to resolve this issue.

disclaimer excused the employer from any contractual obligation to pay accrued PTO); *Roberts v. Brunswick Corp.*, 783 N.W.2d 226, 230–31 (Minn. App. 2010) ("[E]ven if an employee handbook . . . meets the conditions set out in *Pine River* . . . [a] disclaimer . . . that clearly expresses an employer's intent will prevent the formation of a contractual right."), *rev. denied* (Minn. Aug. 24, 2010); *Michaelson v. Minn. Mining & Mfg. Co.*, 474 N.W.2d 174, 180 (Minn. App. 1991) ("An employer may include such a contract disclaimer as a valid expression of its intentions."), *aff'd*, 479 N.W.2d 58 (Minn. 1992) (mem.); *Audette v. Ne. State Bank of Minneapolis*, 436 N.W.2d 125, 127 (Minn. App. 1989) (upholding the effectiveness of an express disclaimer within an employment manual despite a lack of conspicuousness).[6]

Among these cases, only *Klevesahl* and *Roberts* involved PTO-related claims. The analysis of the issue in *Klevesahl* is quite thin. 2011 WL 1364448, at *2 ("Because the [Minnesota] supreme court denied review of *Roberts*, this court is bound by it."). And

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[6] *Audette* appears to be the original source of the court of appeals' line of precedent. The holding in *Audette* in turn relied on an earlier decision—*Kulkay v. Allied Cent. Stores, Inc.*—in which the court of appeals applied *Pine River*. *Audette*, 436 N.W.2d at 127. In *Kulkay*, the court of appeals held that a written personnel policy satisfied the *Pine River* standard so as to give rise to a unilateral contract. *Kulkay v. Allied Cent. Stores, Inc.*, 398 N.W.2d 573, 577–78 (Minn. App. 1986), *rev. denied* (Minn. Feb. 13, 1987). In dicta, the court of appeals went on to note that an employer could include an express disclaimer in their personnel policy as a means of avoiding the formation of a contract. *Id.* at 578.

Federal courts in Minnesota have generally followed the logic of the *Audette* line of cases. *See, e.g.*, *Miller v. Citizens Sec. Grp., Inc.*, 116 F.3d 343, 349 (8th Cir. 1997) ("Based on *Feges, Michaelson,* and *Audette*, we hold that the disclaimer in Citizens' employee handbook prevents Miller from claiming contractual rights under Citizens' handbook."); *Auge v. Fairchild Equip., Inc.*, 388 F. Supp. 3d 1071, 1084 (D. Minn. 2019) (concluding that under Minnesota law, a clear disclaimer in an employee handbook "prevents the formation of a contract"), *rev'd on other grounds*, 982 F.3d 1162 (8th Cir. 2020).

Roberts concerned a question not at issue here: whether an employer could *change* an existing PTO policy, instead of whether the employer was obligated to pay accrued PTO under a *current* policy. 783 N.W.2d at 229 (describing the employees' contract claim alleging a right to PTO benefits under a prior version of an employee handbook).

Roberts is illustrative of the court of appeals' jurisprudence and reasoning on this issue. The *Roberts* court relied on *Audette* and *Michaelson*—two cases that did not involve disputes over PTO benefits—to hold that 1) "a disclaimer in a handbook is a valid expression of the employer's intentions" and 2) "an understandable disclaimer in a handbook that the handbook is not intended to create a contract is enforceable." *Roberts*, 783 N.W.2d at 232. Thus, the court of appeals reasoned that a valid handbook disclaimer conclusively establishes that an employer has no intention to enter into a contract, even if the handbook otherwise would constitute an employment contract under *Pine River*. *Id.* at 230–31.

The court of appeals' decisions on the question of whether a disclaimer necessarily defeats the formation of a contract, however, are not consistent. In *Berglund v. Grangers, Inc.*, the court of appeals departed from the *Audette* line of cases in a case involving vacation benefits. No. C8-97-2362, 1998 WL 328382, at *3 (Minn. App. June 23, 1998). The court distinguished vacation benefits from other policies affecting the employment relationship, such as an employee discipline policy. *Id.* In doing so, the court of appeals relied on *Brown v. Tonka Corp.*, 519 N.W.2d 474 (Minn. App. 1994), and noted that vacation benefits are wholly contractual "because they are a form of compensation." 1998

WL 328382, at *3 (citation omitted) (internal quotation marks omitted). In *Brown*, the court of appeals quoted our statement in *Tynan* about the nature of PTO benefits:

> It is beyond dispute that an agreement to pay vacation pay to employees made to them before they performed their services, and based upon length of service and time worked, is not a gratuity but is a form of compensation for services, and when the services are rendered, the right to secure the promised compensation is vested as much as the right to receive wages or other forms of compensation.

519 N.W.2d at 477 (quoting *Tynan*, 77 N.W.2d at 206).

In other words, the *Berglund* and *Brown* courts reasoned that an employer's offer of PTO is an element of compensation like an hourly wage or salary. Following this logic, once the employee accepts the offer of compensation by performing work for the employer, the employer cannot withdraw the offer, just like the employer cannot refuse to pay the employee the agreed-upon wage. *See Berglund*, 1998 WL 328382, at *4 ("[A]bsent an additional condition precedent, the right to vacation benefits attaches as soon as an employee has performed the work for which the benefits constitute consideration."). "[I]f an employee is not entitled to rely on the language of an employer's written description of the consideration for his employment, the employer effectively is free to modify the contract retroactively by inserting compensation terms under which the employee might not have agreed to work."[7] *Id.* at *3.

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[7] A Minnesota federal district court similarly held that termination provisions in an employee handbook were sufficiently definite to form a unilateral contract despite the existence of a separate provision that specifically stated that neither employer nor employee were "bound by contract" and both were "free to terminate the employment relationship at any time." *Gilbertsen v. Codex Corp.*, No. 4-89-308, 1990 WL 606165, at *5 (D. Minn. Nov. 14, 1990), *aff'd*, 950 F.2d 727 (8th Cir. 1991) (mem.). The court

The court of appeals in *Roberts* declined to apply *Berglund*'s rationale, explaining that because *Berglund* relied heavily upon *Brown*—which did not involve a dispute about whether a unilateral contract existed in the first place and contained no discussion about express disclaimers—*Berglund*'s reasoning should not prevail over that of the *Audette* line of cases. *Roberts*, 783 N.W.2d at 231–32. But the *Roberts* court's analysis misses the point of *Berglund*, which is that PTO is a form of compensation and compensation is treated differently than other employee handbook provisions because the employee earns it when they complete the work required by the employer.

We now turn to the City's arguments. Its assertion that it has no contractual obligation to pay Hall his accrued PTO is straightforward. An express disclaimer stating that an employee handbook is not a contract means just that; none of the provisions in the Handbook creates an enforceable contractual right. According to the City, the disclaimer language here precludes any potential offer to contract, even if the Handbook otherwise satisfies the *Pine River* standard.

The City also urges us to affirm what it deems to be 30 years of fairly consistent precedent from the court of appeals to promote "stability, order, and predictability in the law." *See Fleeger v. Wyeth*, 771 N.W.2d 524, 529 (Minn. 2009). *But see Popovich v. Allina Health Sys.*, 946 N.W.2d 885, 891–95 (Minn. 2020) (abrogating 30-plus-year-old court of appeals jurisprudence when ruling on a matter of first impression). As already

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reasoned that "[t]o hold that the . . . disclaimer could effectively undo provisions in the . . . employee handbook and related policies which were specific enough to form the basis of a unilateral contract would be unwise because it would make all such specific communications to employees meaningless." *Id.* at *6.

noted, however, the court of appeals case law regarding employee handbook disclaimers is inconsistent and has addressed the specific question before us only twice: in *Berglund* and *Klevesahl*. 1998 WL 328382, at *3; 2011 WL 1364448, at *2.

Applying the City's rule of law to Hall's case, the express disclaimers located in the introduction to the Handbook as a matter of law necessarily and conclusively defeat the formation of a contract requiring payment of accrued PTO because the City never made an offer to contract with Hall. Stated another way, nothing the City told its employees in the Handbook is binding on the City.

We are not convinced that the disclaimer language in the Handbook on which the City relies unambiguously means that the provision on payment of accrued PTO is not binding on the City. Whether a contract is unambiguous is a question of law for the court to decide. *Staffing Specifix, Inc. v. Tempworks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018).

The first provision that the City relies on states:

> The Personnel Policies and Procedures Manual is not intended to create an express or implied contract of employment between the City of Plainview and an employee. The Personnel Policies and Procedures Manual does contain language dealing with the grievance procedure, employee discipline or termination, which the City may cho[o]se to follow in a particular instance. These provisions however, are not intended to alter the relationship between the City as an employer, and an individual employee, as being one which is "at will", terminable by either at any time for any reason.

The language of this provision is aimed at preserving the City's ability to terminate an employee at its sole discretion; it has no bearing on the issue of payment of accrued PTO. This type of disclaimer falls squarely in the class of cases like *Audette*, which involved a

dispute over whether an employee handbook restricted the employer's ability to fire the employee. 436 N.W.2d at 126. If Hall were disputing whether the City had the ability to terminate his employment without cause (or otherwise make a fundamental change to his employment status), the provision would be relevant. But Hall does not dispute the City's ability to terminate him; rather, he argues that, following his termination, the City had no right to renege on its promise to pay him compensation in the form of accrued PTO according to the Handbook policy in place at the time of termination. Thus, this particular provision is not relevant to Hall's claim for payment of accrued PTO.

The second, more general provision in the Handbook upon which the City relies states that "[t]he purpose of these policies is to establish a uniform and equitable system of personnel administration for employees of the City of Plainview. They should not be construed as contract terms." Once again, the City asserts that this language means that no provision in the Handbook creates any contractual rights for employees that are binding on the City. We conclude that this broad and general contract disclaimer language in the Handbook's introduction, in the context of the entire Handbook and the relationship between the City and its employees, is ambiguous as to its applicability to the PTO policy.

This disclaimer language is general, lacks precision, and most importantly, the City's reading is internally inconsistent. What does it mean for the City to state that it intends to provide a "uniform and equitable system of personnel administration for employees" (including provision for a uniform PTO policy) while at the same time saying that it need not follow that system for a particular employee at its own discretion? That is the practical effect of the City's argument. An alternative reasonable interpretation of the

more general disclaimer is that it allows the City to alter its uniform and equitable system of personnel administration for employees on a prospective basis at the City's sole discretion without consent or input from its employees. That is the circumstance addressed by the court of appeals in *Roberts*, 783 N.W.2d at 229, but not what the City argues here.

Further, our "cardinal purpose [in] construing a contract is to ascertain the intention of the parties from the language used by them and by a construction of the entire instrument." *Emps. Liab. Assur. Corp. v. Morse*, 111 N.W.2d 620, 624 (Minn. 1961); *see also Egner v. States Realty Co.*, 26 N.W.2d 464, 470 (Minn. 1947). The City's interpretation of the general disclaimer language in the introduction creates a conflict with the detailed and concrete explanation of the City's unilaterally imposed policy to compensate employees who have performed work for the City with accrued PTO when their employment ends.

Additionally, Hall alleges that the accrued PTO payment provision in the Handbook forms compensation terms for a unilateral employment contract. The Handbook itself is not the contract. Rather, provisions of the Handbook provide some of the terms of a unilateral employment agreement. And as we have described above, once an employee performs work in accordance with the unilateral offer of the employer, the employee earns his compensation and—at least for that period of work—the employer cannot refuse to pay that compensation. *See, e.g.*, *Pine River*, 333 N.W.2d at 626–27; *Cederstrand v. Lutheran Bhd.*, 117 N.W.2d 213, 222 (Minn. 1962) (stating in the context of a unilateral employment contract that we look at the entire context of the employment relationship and the words said by the employer and that we decipher the parties' intent " 'by applying the words used,

with all their reasonable implications, to the subject matter as the parties themselves, under all the surrounding circumstances, must have . . . understood them' " (quoting *Hartung*, 66 N.W.2d at 788)). If the City truly wanted to preserve the right to withhold accrued PTO compensation from an employee after the employee had performed work for the City while the provision governing payment for accrued PTO was in place, it should have been more precise and clear about that intent.

We conclude that the general disclaimer language in the Handbook's introduction—the provision "to establish a uniform and equitable system of personnel administration"—does not unambiguously mean that Hall has no contractual entitlement to payment for accrued PTO in exchange for the labor that he provided to the City while the provision for that payment was in place.[8] Accordingly, the question of the impact of the Handbook's general disclaimer on Hall's claim is for a fact-finder to determine. *See Staffing Specifix, Inc.*, 913 N.W.2d at 692.

Common sense and fairness support this conclusion. An ordinary Minnesota employee who is provided with a detailed PTO policy that his employer follows when its employees leave, and who watches PTO accrue on his paycheck every pay period, would

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[8] The dissent emphasizes our prior distinctions between wages in the form of accrued PTO and "ordinary wages," correctly observing that PTO "is entirely a creature of contract" while ordinary wages enjoy certain statutory protections under Minnesota law. *Lee*, 741 N.W.2d at 128 n.8. This distinction has no bearing on the outcome of our decision on this issue. The core premise of our holding is that a fact-finder could have reasonably found that Hall is contractually entitled to payment of his accrued PTO under the terms of the PTO payment provision of the Handbook. We do not hold that a right to PTO wages—in this case or otherwise—can be classified as anything other than a contractual right.

have a legitimate expectation that he would be paid for the earned PTO for the hours he worked. Additionally, as the court of appeals noted in *Berglund*, if a general disclaimer allowed the City to arbitrarily decide to pay some employees accrued PTO as set forth in the Handbook and not pay others, the Handbook itself and the promises about what can be expected as compensation would be pointless.[9] *See Berglund*, 1998 WL 328832, at *3. *See also Gilbertsen v. Codex Corp.*, No. 4-89-308, 1990 WL 606165, at *6 (D. Minn. Nov. 14, 1990), *aff'd*, 950 F.2d 727 (8th Cir. 1991) (mem.) (noting that to allow disclaimer language to "effectively undo provisions" in an employee handbook would make communications to employees "meaningless"). While the dissent characterizes our holding as an "overzealous quest for subtle ambiguity to destroy the intent of the parties," our interpretation of the Handbook is a reasonable one that aligns with what most

[9] The dissent downplays the consequences of such a dynamic between employers and employees by suggesting that aggrieved employees can always resort to promissory estoppel or unjust enrichment as alternative remedies, as Hall did here. While true, such claims require plaintiffs to prove different elements than under a contract theory and often provide a narrower path to recovery. *See, e.g.*, *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012) (limiting "the application of unjust enrichment to claims premised on an implied or quasi-contract between the claimant and the party alleged to be unjustly enriched"); *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152 (Minn. 2001) (distinguishing between contract claims and promissory estoppel claims and suggesting that the latter generally require a showing of good faith reliance to prevail); *see generally* Mark Pettit, Jr., *Modern Unilateral Contracts*, 63 B.U. L. Rev. 551, 576–83 (1983) (discussing the advantages and disadvantages between unilateral contract theories and promissory estoppel theories). Moreover, legal remedies and equitable remedies by design are intended to fix different harms and can result in different forms of recovery.

Finally, establishing the existence of a unilateral contract in employee handbook cases like this one also opens up the possibility of accessing statutory remedies for the failure to pay wages under Minn. Stat. § 181.13(a). *See* discussion Part II *infra*. That remedy is not available to plaintiffs in similar circumstances who bring equitable claims.

employees would expect to receive as compensation under language in similar employee handbooks.

The dissent forecasts dire consequences as a result of our decision, arguing that we have "created uncertainty and confusion" for employers because "a jury may find that an employer intended for an employee handbook to be a contract even when the employee handbook specifically says it is not a contract." We disagree.

First, as we have emphasized, this case presents the narrow question of whether the general disclaimers in the Handbook mean that the City is not obligated to honor the detailed promises about compensation (in this case PTO accrual and payment) set forth in a different part of the Handbook. We express no opinion today about the impact of a general disclaimer on non-compensation conditions of employment.

Further, we are confident that most Minnesota employers do not act like the City did in this case, refusing to pay accrued PTO to a terminated employee despite the existence of a detailed PTO payment policy in an employee handbook.[10] That we have never directly addressed such an issue before this case and the court of appeals has decided only two such cases in the past 30 years suggests that these incidents are not widespread.

Finally, we note that employers are not rendered helpless by our decision. As we have discussed, well-drafted, specific, disclaimers can prevent the formation of contractual rights stemming from employee handbook provisions, including provisions concerning

[10] In fairness, we acknowledge the City's alternative argument, which we do not reach; namely, that Hall does not qualify for the accrued PTO under the terms of the Handbook because he was terminated rather than leaving voluntarily.

PTO. Employers can and should include more than boilerplate "no contract" disclaimers in their employee handbooks, both for their own benefit as well as for the benefit of their employees, who will have a clearer understanding of how they may rely on the terms of a handbook provided to them by their employer. A textbook example of such a disclaimer can be found in the City's Handbook: the at-will disclaimer included at the end of the Handbook's introduction. That disclaimer clearly states that the Handbook's employee grievance and termination procedures do not alter the nature of the at-will employment relationship or provide any sort of for-cause termination protection. This level of drafting clarity avoids confusion for employers and employees alike.[11]

II.

In addition to his contract claim, Hall also alleged in his complaint that following his termination, the City violated Minn. Stat. § 181.13(a) because it failed to pay "earned and unpaid" wages in the form of accrued PTO. Hall argues that the statute creates an independent substantive right for an employee to demand and receive payment of accrued PTO upon termination. We review such questions of statutory meaning de novo. *Lee*, 741 N.W.2d at 122. "If the meaning of a statute is unambiguous, the plain language of the statute controls." *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 458 (Minn. 2016).

[11] Another example is a disclaimer that reserves an employer's right to modify an employee handbook prospectively. We acknowledged an employer's ability to include such language in an employee handbook in *Pine River*. *See* 333 N.W.2d at 627 ("Language in the handbook itself may reserve discretion to the employer in certain matters or reserve the right to amend or modify the handbook provisions."). Such a disclaimer prevents an employee from claiming that the employer is barred from altering the terms of the employee handbook. *See, e.g.*, *Roberts*, 783 N.W.2d at 229.

Minnesota Statutes § 181.13(a) provides:

> When any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee. Wages are actually earned and unpaid if the employee was not paid for all time worked at the employee's regular rate of pay or at the rate required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater. If the employee's earned wages and commissions are not paid within 24 hours after demand, whether the employment was by the day, hour, week, month, or piece or by commissions, the employer is in default. In addition to recovering the wages and commissions actually earned and unpaid, the discharged employee may charge and collect a penalty equal to the amount of the employee's average daily earnings at the employee's regular rate of pay or the rate required by law, whichever rate is greater, for each day up to 15 days, that the employer is in default, until full payment or other settlement, satisfactory to the discharged employee, is made. In the case of a public employer where approval of expenditures by a governing board is required, the 24-hour period for payment does not commence until the date of the first regular or special meeting of the governing board following discharge of the employee. An employee's demand for payment under this section must be in writing but need not state the precise amount of unpaid wages or commissions. An employee may directly seek and recover payment from an employer under this section even if the employee is not a party to a contract that requires the employer to pay the employee at the rate of pay demanded by the employee, so long as the contract or any applicable statute, regulation, rule, ordinance, government resolution or policy, or other legal authority requires payment to the employee at the particular rate of pay. The employee shall be able to directly seek payment at the highest rate of pay provided in the contract or applicable law, and any other related remedies as provided in this section.

Hall's argument that section 181.13(a) creates an independent substantive right to recover PTO or other compensation is contrary to our holding in *Lee v. Fresenius Med. Care, Inc*. In *Lee*, we held that vacation pay is solely a matter of contract between employer and employee and "that section 181.13(a) is a timing statute" that does not create a substantive right to recover vacation pay or other wage payment on termination. 741

N.W.2d 117, 125 (Minn. 2007) ("[I]t does not appear that the legislature intended to create a substantive right to vacation pay in section 181.13(a).").[12] We further refined our *Lee* rationale in *Caldas v. Affordable Granite & Stone, Inc.*, concluding "that the Payment of Wages Act does not create a substantive right to the recovery of a particular wage. . . . To recover under the statute the employee must establish an independent, substantive legal right, separate and distinct from section 181.13 to the particular wage claimed." 820 N.W.2d 826, 837 (Minn. 2012). We have not revisited section 181.13(a) since our decision in *Caldas*.

Hall argues that amendments to Minn. Stat. § 181.13(a) enacted in 2013 created a new, independent, substantive right to recover compensation, thereby abrogating our holding in *Lee*. We disagree.

The 2013 amendments made three specific changes. First, the Legislature defined when wages are "actually earned and unpaid." Minn. Stat. § 181.13(a). Second, the Legislature permitted employees to charge and collect a penalty for unpaid wages at the "regular rate of pay or the rate required by law," not just based on an agreed-upon contract rate. *Id.* Finally, the Legislature changed the law to allow employees to recover wages "even if the employee is not a party to a contract that requires the employer to pay the employee at the rate of pay demanded by the employee, so long as the contract" itself or

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[12] Although in *Lee* we held that the employee handbook in question was a unilateral contract, we ultimately determined that the plaintiff was not entitled to a PTO payment because she failed to meet the contract's conditions; therefore, her PTO wages were not "actually earned" and thus owed to her under section 181.13(a). 741 N.W.2d at 124, 127–28.

some other applicable legal authority mandates payment at the rate demanded by the employee. *Id.* As discussed below, none of these amendments created a substantive right to payment of accrued PTO absent a contract or otherwise abrogated our holding in *Lee.*

"Actually earned and unpaid." This amendment simply clarified when wages are earned and unpaid for the purpose of determining what is due and payable to an employee upon discharge. The definition is clear on its face: wages are earned and unpaid if "the employee was not paid for all time worked at the employee's regular rate of pay or at the rate required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority . . . ." *Id.* The definition clarifies the timing of when an employee can bring a claim under section 181.13(a) by specifying when wages are actually earned and unpaid. *Id.* It does not create a substantive right to payment. In other words, the new language does not alter the conclusion in *Lee* that section 181.13(a) is a "timing statute." 741 N.W.2d at 125.

Revisions to the penalty provision. The amendments to the penalty provision were necessary to ensure that the provision is consistent with the newly added "actually earned and unpaid" definition. Instead of limiting an employee to collection of a penalty at an agreed-upon contract rate, this provision provides for collection of a penalty "at the employee's regular rate of pay or the rate required by law, whichever rate is greater." Minn. Stat. § 181.13(a). The amendment did not create a new substantive right to wages.

Permissive recovery without contract. This addition permits an employee to recover payment even when not a party to a contract that requires the employer to pay the employee at a specific rate of pay. This provision overruled our holding in *Caldas* that a claim under

section 181.13(a) cannot be based on a contract to which the employee was not a party or a third-party beneficiary. 820 N.W.2d at 837. However, even after the amendment, the statute still requires that an employee prove an underlying contract or "any applicable statute, regulation, rule, ordinance, government resolution or policy, or other legal authority [that] requires payment to the employee at the particular rate of pay" under which an employee can claim a substantive right to payment. Minn. Stat. § 181.13(a).

We conclude that Minn. Stat. § 181.13(a) remains unambiguous. The statute's revised language comports with our core holdings in *Lee* and *Caldas* that section 181.13(a) is a timing statute that does not create a substantive right to recover compensation independent of a contract or some other applicable legal authority providing for such compensation.[13] Accordingly, because Hall's argument for payment of PTO wages is based on a contractual right (and not some other legal authority), Hall cannot recover his accrued PTO under section 181.13(a) without a valid contract entitling him to payment.[14]

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[13] Amicus curiae Commissioner of the Minnesota Department of Labor and Industry argues that Minn. Stat. § 181.13(a) provides an employee a "substantive right" to recover wages owed. However, unlike Hall, the Commissioner *does not* argue that the statute provides a substantive right to recover PTO wages specifically. At any rate, because section 181.13(a) is unambiguous, "the plain language of the statute controls" and we need not defer to an agency's interpretation. *Wilson*, 888 N.W.2d at 458; *see also Soo Line R.R. Co. v. Minn. Dep't of Transp.*, 304 N.W.2d 301, 305 (Minn. 1981) ("When reviewing an issue of statutory construction, [we are] not bound by the agency's interpretation of the statute.").

[14] Amicus curiae Minnesota Attorney General also argues that the district court erred by failing to consider whether the Handbook could constitute a "government resolution or policy" under Minn. Stat. § 181.13(a) because the City is a government entity. This is a novel question for three reasons. First, section 181.13(a) identified a "government resolution or policy" as an independent basis that could establish an obligation to pay

See Lee, 741 N.W.2d at 123. Thus, whether Hall can now recover for breach of a contractual obligation under section 181.13(a) depends on whether he establishes in district court, on remand, that 1) a contract exists and 2) he satisfied the requirements of the Handbook's PTO payment provision and is owed payment for his accrued PTO under that contract.[15]

CONCLUSION

For the foregoing reasons, we affirm in part and reverse in part the decision of the court of appeals, and remand to the district court for proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

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compensation. Minn. Stat. § 181.13(a). Second, the City is a municipal government entity that titled its Handbook "Personnel Policies and Procedures Manual." Finally, it does not appear that the question of what constitutes a government resolution or policy under section 181.13(a) has been interpreted by any Minnesota appellate court. Despite its potential merit, however, Hall did not make this argument at the district court or court of appeals. Therefore, we will not address it because we generally "will not decide issues raised solely by an amicus." *Hegseth v. Am. Fam. Mut. Ins. Grp.*, 877 N.W.2d 191, 196 n.4 (Minn. 2016).

[15] Hall moved to strike those portions of the City's brief stating that Hall was terminated for "egregious and undisputed misconduct" and describing the reasons for Hall's termination. We do not rely on the evidence of the reasons for Hall's termination that Hall seeks to strike because it is not relevant to the disposition of the legal issues before us. But the evidence of reasons for Hall's termination upon which the City relied is in the record before us on appeal. We deny the motion to strike portions of Hall's brief.

Hall also moved to strike the City's addendum under Minn. R. Civ. App. P. 130.02(b), which provides that an addendum "must not exceed 50 pages" subject to exceptions that do not apply here. The City submitted a 70-page addendum that consisted solely of the Minnesota Judicial Branch Human Resources Policy. The City did not respond to Hall's motion to strike the City's addendum. We grant Hall's motion.

D I S S E N T

GILDEA, Chief Justice (dissenting).

This case involves statements in an employee handbook about paid time off. In clear language on the first page, the handbook says that the policies in the handbook "should not be construed as contract terms." Later on that same page, the handbook states that it "is not intended to create an express or implied contract of employment between the City of Plainview and an employee." Notwithstanding this clear language, the majority holds that there is ambiguity over whether the terms in the handbook about paid time off give rise to a contract claim. I agree with the majority that the terms of the employee handbook governing payment for accrued paid time off are sufficiently definite under our decision in *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 625-27 (Minn. 1983). But I disagree with the majority that the employer's intent to form a binding contract is ambiguous and must be determined by a jury. Because the majority's conclusion ignores traditional contract principles and is inconsistent with our precedent, I respectfully dissent.

I.

At issue here is whether the employee has a contractual right to direct, monetary payment for accrued, unused paid time off after the City of Plainview terminated him for gross misconduct. Whether an employer's statements form an offer for a unilateral contract is "a question of law to be resolved by the court." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 740 (Minn. 2000). We apply "traditional contract formation principles" when determining whether "an employee handbook may constitute terms of an employment contract." *Feges v. Perkins Rests., Inc.*, 483 N.W.2d 701, 707 (Minn. 1992).

"[T]he primary goal of contract interpretation is to determine and enforce the intent of the parties." *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). "Contract actions protect the interest in having promises performed where the parties manifested their consent to be bound by the contract." *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 544 (Minn. 2014). "[A]n offer to make a contract may be revoked by words or conduct inconsistent with the offer at any time before the offer is accepted." *Feges*, 483 N.W.2d at 708.

In determining whether an employer's promise is enforceable in a contract action, the question is "one of intention to make such a promise as an offer and to be bound by it." *Cederstrand v. Lutheran Bhd.*, 117 N.W.2d 213, 222 (Minn. 1962) (concluding that the employer's statements did "not contain the indicia of intent to contract"); *see also Martens*, 616 N.W.2d at 743 (concluding that the employer's statements did not demonstrate an "intent to contract for a specific right or benefit"). To answer this question, the court looks to the language of the employee handbook. "Where there is a written instrument, the intent of the parties is determined from the plain language of the instrument itself." *Travertine Corp. v. Lexington–Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). A contract is ambiguous only if the contract "is susceptible to more than one interpretation based on its language alone." *Hous. & Redevelopment Auth. v. Norman*, 696 N.W.2d 329, 337 (Minn. 2005). And the "proper administration of justice does not permit an overzealous quest for subtle ambiguity to destroy the intent of the parties." *Hartung v. Billmeier*, 66 N.W.2d 784, 788 (Minn. 1954).

As noted above, the introduction to the employee handbook clearly states that "[t]he Personnel Policies and Procedures Manual is not intended to create an express or implied contract of employment between the City of Plainview and an employee." The handbook also clearly states that the policies "should not be construed as contract terms." There is nothing uncertain or imprecise about the language of the disclaimer. As the employer argues, nothing could "be clearer about a party's intent not to create a contract than specific language stating it is not a contract." In fact, the employee does not dispute that this language means that "the handbook does not constitute a contract between the employer and employee." Therefore, I conclude that the language of the employee handbook unambiguously demonstrates that the employer did not intend to create a binding, contractual entitlement to direct, monetary payment for accrued, unused paid time off.

The argument of the employee is, in essence, that we should not enforce this clear contractual disclaimer.[1] But "[w]e have consistently stated that when a contractual provision is clear and unambiguous," we are "not to rewrite, modify, or limit its effect by a strained construction." *Travertine*, 683 N.W.2d at 271. Because the contractual language is unambiguous, I would uphold the district court's dismissal of Hall's contract claim. There is no ambiguity in the language of the contract that calls for a remand to a fact-finder.

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[1] The employee also argues that the employer "retroactively" denied him earned paid time off, even though "the same employee handbook" that contained the policies regarding paid time off specifically stated that the policies "should not be construed as contract terms." Because the employer did not retroactively modify any relevant provisions of the employee handbook during his employment, the employee's argument lacks merit.

II.

The majority comes out differently, putting great emphasis on the fact that this case involves paid time off, which the majority says is "a form of compensation for labor." But we have distinguished "wages in the form of paid time off" from "ordinary wages." *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 128 n.8 (Minn. 2007). We have long held that "paid time off is entirely a creature of contract," *id.*, because "Minnesota law does not provide for employee vacation time or pay as of right," *id.* at 126; *see also Tynan v. KSTP, Inc.*, 77 N.W.2d 200, 206 (1956) (holding that an employer's "liability as to vacation-pay rights is wholly contractual"). Accordingly, we have advised employers that they "have considerable discretion in choosing how and whether to compensate employees" for paid time off. *Lee*, 741 N.W.2d at 126. "If an employer does offer an employee paid time off," we have explained that "what is earned during the specified pay period during which paid time off accrues is *not a right to a direct, monetary payment*"; rather, the employee has the right "to take time off from work in the future but nevertheless be paid." *Id.* (emphasis added). We have made clear that employers are free to place conditions on an employee's entitlement to payment in lieu of paid time off and that any "such conditions define *what* has been earned." *Id*. I would adhere to that precedent.

The majority, without explanation, applies a heightened level of contract scrutiny to the paid time off policy, suggesting that the City just needed to draft clearer language. According to the majority, "If the City truly wanted to preserve the right to withhold accrued PTO compensation from an employee after the employee had performed work for the City while the provision governing payment for accrued PTO was in place, it should

have been more precise and clear about that intent." At the same time, the majority apparently would not enforce such "precise and clear" language, stating that "once an employee performs work in accordance with the unilateral offer of the employer, the employee earns his compensation and—at least for that period of work—the employer cannot refuse to pay that compensation."

The majority ultimately concludes that it is simply unfair to enforce the words of the handbook as they are written. The majority's analysis focuses on policy considerations at the expense of the language of the employee handbook. Amicus curiae Minnesota Attorney General is transparent about this position, urging us to hold that public policy and principles of fairness dictate that employer promises concerning compensation cannot be negated by a handbook disclaimer. Our court, however, has "long held that 'public policy requires that freedom of contract remain inviolate except only in cases when the particular contract violates some principle which is of even greater importance to the general public.' " *Lyon*, 848 N.W.2d at 545 (quoting *Rossman v. 740 River Drive*, 241 N.W.2d 91, 92 (Minn. 1976)). In the context of employee handbooks, we have consistently supported an " 'employer's prerogative to make independent, good faith judgments about employees' " as an important part of " 'our free enterprise system.' " *Martens*, 616 N.W.2d at 741-42 (quoting *Pine River*, 333 N.W.2d at 630). Today, the majority effectively makes new judicial policy under the guise of contract interpretation.

By unwinding precedent holding that an employer's obligation regarding paid time off is wholly contractual, *Lee*, 741 N.W.2d at 126, and renouncing prior guidance on the

enforceability of disclaimers in employee handbooks,[2] the majority has unsettled the reasonable expectations of hundreds if not thousands of Minnesota employers. Employee handbooks are prevalent in Minnesota, and employee handbooks "typically include disclaimers."[3] Minnesota employers, public and private, will now be exposed to unanticipated and unintended contractual liability for an employee's accrued, unused paid time off if an employee handbook addresses payment for accrued paid time off in

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[2] Our court does not have binding precedent governing the enforceability of disclaimers in employee handbooks. Nonetheless, over 25 years ago, when establishing the law in this area, we stated that a disclaimer in an employee handbook "presumably precludes employees" from "claiming contractual rights" under the handbook. *Feges*, 483 N.W.2d at 708. Similarly, in a nonprecedential order, we affirmed a court of appeals decision holding that "[a]n employer may include a contract disclaimer" in an employee handbook "as a valid expression of its intentions." *Michaelson v. Minn. Mining & Mfg. Co.*, 474 N.W.2d 174, 180 (Minn. App. 1991), *aff'd*, 479 N.W.2d 58 (Minn. 1992) (mem.). While recognizing that the statement in *Feges* was dicta, the United States Court of Appeals for the Eighth Circuit concluded that this court "would hold that a disclaimer prevents an employee from claiming contractual rights under an employee handbook even when other provisions of the handbook are specific and unequivocal." *Miller v. Citizens Sec. Grp., Inc.*, 116 F.3d 343, 348-49 (8th Cir. 1997). The Eighth Circuit noted that this conclusion was reinforced by Minnesota Court of Appeals decisions holding that "a disclaimer in an employee handbook prevents an employee from claiming contractual rights under that handbook." *Id*. at 349; *see, e.g., Audette v. Ne. State Bank of Minneapolis*, 436 N.W.2d 125, 127 (Minn. App. 1989).

[3] Cindy A. Schipani, Frances J. Milliken & Terry Morehead Dworkin, *The Impact of Employment Law and Practices on Business and Society: The Significance of Worker Voice*, 19 U. Pa. J. Bus. L. 979, 1004 (2017). An employment guide available from a Minnesota state agency advises employers that "[e]mployee handbooks can be an efficient and effective way for employers to communicate their workplace rules" and communicate policies like "[v]acation and/or sick leave policies." Minn. Dep't of Emp. & Econ. Dev. & Ballard Spahr LLP, *An Employer's Guide to Employment Law Issues in Minnesota* 80-81 (14th ed. 2018). The employment guide also advises employers to consider having a disclaimer in the "[i]ntroduction, which includes language indicating that the handbook is not an employment contract." *Id*. at 81.

sufficiently definite terms. Minnesota employers also may face a statutory penalty and statutory attorney fees if a jury finds that they breached a contractual obligation. *See* Minn. Stat. § 181.13 (2020); Minn. Stat. § 181.171 (2020).[4]

I acknowledge that enforcing the contract disclaimer here might seem unfair to the employee, but courts are not supposed to create a contract right where no contract exists. Our job is simply to enforce unambiguous contract language "even if the result is harsh." *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999).

III.

Although the employee does not have a contractual right to payment for accrued, unused paid time off, the promise in the employee handbook may be enforceable under equitable principles. For example, promissory estoppel implies "a contract from a unilateral or otherwise unenforceable promise coupled by detrimental reliance on the part of the promisee." *Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 593 (Minn. 1975). Promissory estoppel "requires proof that 1) a clear and definite promise was made, 2) the promisor intended to induce reliance and the promisee in fact relied to his or her detriment, and 3) the promise must be enforced to prevent injustice." *Martens*, 616 N.W.2d at 746. The "equitable nature of promissory estoppel allows a court to capture and weigh competing interests of the public and the public employee." *Norman*, 696 N.W.2d at 332

[4] The majority remands the contract claim to the district court to be resolved by a fact-finder; however, the majority has prejudged the contract claim. The majority effectively finds that the City breached the contract by "refusing to pay accrued PTO to a terminated employee despite the existence of a detailed PTO payment policy in an employee handbook."

(citing *Christensen v. Minneapolis Mun. Emps. Ret. Bd.*, 331 N.W.2d 740, 748 (Minn. 1983)).

We have applied promissory estoppel in a similar situation involving noncontractual public pension rights. In *Christensen*, a city employee had a statutory pension, which the Legislature attempted to reduce by amendment after he retired. 331 N.W.2d at 747. We explained that it was "clear that the state and its political subdivisions" could, by legislation, make an offer to employees regarding pension benefits and, "at the same time, say that it is not creating any contract rights." *Id.* at 748; *see, e.g.*, Minn. Stat. § 353.38 (1982) (repealed 1984) (providing that "[n]othing done under the terms of this chapter [governing the Public Employees Retirement Association] and acts amendatory thereof shall create or give any contract rights to any person"). We rejected a "conventional contract approach," 331 N.W.2d at 747, recognizing that the State had "not promised its employees any pension as a matter of contract right," *id.* at 749. Nonetheless, we held that it was "realistic, fair and practical" in that situation "to judge the state's promise by the doctrine of promissory estoppel." *Id.* at 748.

As an alternative claim here, the employee asserted an equitable claim for unjust enrichment. *See Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 330 (Minn. 2004) (stating that an equitable remedy "is only available where there is no contract remedy"). The parties later settled that claim, and the equitable claim is not before us. Accordingly, enforcing the clear language of the handbook, as is our obligation, does not leave the employee without a remedy.

IV.

In conclusion, even though we have held that an employee's entitlement to payment in lieu of paid time off is wholly contractual, *Lee*, 741 N.W.2d at 126, as determined by traditional contract principles, *Feges*, 483 N.W.2d at 707, the majority's decision means that employers may no longer rely on traditional contract principles to determine whether they have a contractual obligation to pay a discharged employee for accrued, unused paid time off. Instead, a jury may find that an employer intended for an employee handbook to be a contract even when the employee handbook specifically says it is not a contract.

The majority minimizes the impact of its decision, suggesting that employers can rely on "well-drafted, specific disclaimers" that "prevent the formation of contractual rights." A specific disclaimer, however, would present an even sharper "conflict" with the City's paid time off policy than the City's general disclaimer, which the majority concludes is beset by problems of internal inconsistency. Although the majority maintains that its decision here is limited to policies governing compensation, it is not clear why other policies in an employee handbook would not similarly be affected. The majority's contract analysis contains an element of circularity. An employment policy must be sufficiently definite to form the basis for a contract claim, but a disclaimer will not reliably refute the contract claim if the employment policy is sufficiently definite.

In its quest for fairness, the majority has created uncertainty and confusion, which will benefit neither employees nor employers. Amicus curiae Association of Minnesota Counties predicts that this uncertainty and confusion will have a particularly "disastrous impact on Minnesota's public employers," which "must budget for critical services."

Further, employers may respond to today's decision by modifying or eliminating policies offering additional forms of compensation, such as payment in lieu of paid time off. Or employers may choose "to extinguish employee handbooks" altogether. *Workman v. United Parcel Serv., Inc.*, 234 F.3d 998, 1001 (7th Cir. 2000).

For these reasons, I respectfully dissent.

ANDERSON, Justice (dissenting).

I join in the dissent of Chief Justice Gildea.