

# HALL | FARLEY

HALL, FARLEY, OBERRECHT & BLANTON, P.A.

## Idaho Court Weighs in Potential Employer Liability Under Centuries-Old Legal Concepts Rooted in What's "Fair" and "Just"

*Any professional in our society readily recognizes the importance of having agreements or contracts in writing and signed (or electronically authenticated). Sometimes, perhaps, we emphasize the importance of having written documentation so much that we forget that courts still recognize centuries-old legal concepts that allow claims for compensation based on what's just, fair or "equitable"—even in the absence of a finalized contract or agreement. Tagging a specific dollar-amount to what's just and fair in a specific situation, however, generally involves protracted and expensive litigation that savvy, cost-conscious employers seek to avoid.*

*A recent decision by the Idaho Supreme Court illustrates how, even though an employee only worked for a company for several months, a dispute over what's "just" or "fair" compensation for that time period can drag on for years. In this case, *Gray v. Tri-Way Construction Services, Inc.*, the employee began working before he and the employer had worked out the specifics of his employment contract, and the employee ended up quitting after several months of unsuccessful negotiations regarding what type of bonuses he would receive. The case serves as a reminder that courts still recognize certain age-old legal concepts that can potentially lead to long, drawn-out litigation for employers when things go south and the terms of employment are not clearly defined. Additionally, this case is a springboard for a discussion of what employers can do to limit potential disclosure in this regard.*

### **Gray v. Tri-Way Construction - Factual Overview**

In January 2004, Robert Gray, was a senior construction manager for Albertson's. Around that time, Mr. Gray began discussing the prospect of working for Tri-Way Construction Services. During the spring of 2004, Mr. Gray and Tri-Way went back-and-forth proposing various possibilities for the terms of Mr. Gray's employment under a five year contract, and how he would be compensated. Shortly after a meeting in February 2004, Mr. Gray contacted his attorney to prepare a draft employment proposal and a proposal for an option to buy an interest in Tri-Way. On May 1, 2004 Mr. Gray quit his job with Albertson's and on May 19 he emailed a draft employment proposal to Tri-Way's management.

On May 21, Mr. Gray met with Tri-Way's owners to discuss his employment contract. Mr. Gray and Tri-Way's owners dispute whether they reached an agreement on the terms of Mr. Gray's compensation. It is clear, however, that nobody actually signed an employment contract at the meeting, but Mr. Gray did sign a W-4 and an I-9 and became a Tri-Way employee.

On June 1, Mr. Gray began working for Tri-Way. The parties continued negotiations by emailing different drafts of the proposed employment contract, but they never came to a concrete agreement. For several months the parties discussed different proposals regarding Mr. Gray's base-salary, the potential for bonuses whether the contract would include a noncompete agreement, and whether Mr. Gray would have the

option to buy an interest in the company. The parties never reached a final agreement, however, and Mr. Gray ended up quitting at the end of October. But during the time Mr. Gray worked for Tri-Way, he brought in two large projects to the company, leading to around \$1,175,000 in gross revenue and over \$271,000 in net income.

During the time Mr. Gray worked for Tri-Way, it paid him \$4000 a month as a base salary. Additionally, after he left, Tri-Way offered Mr. Gray \$60,000 as what it felt was reasonably reflected the value of Mr. Gray's work in bringing in and running the two projects. Rather than taking the \$60,000, Mr. Gray opted to file a lawsuit.

### **The Lower Court's Dismissal of Mr. Gray's Claim**

The trial court dismissed all of Mr. Gray's claims on the basis that there was no evidence to support the argument that a valid contract was reached between the parties. A valid contract requires that the parties come to some sort of clear agreement (a "meeting of the minds") as to the contract's specific terms. Considering that the parties were emailing and talking about different contract terms all the way up until Mr. Gray quit, the trial court concluded there was no evidence to support Mr. Gray's contention that he had a valid contract. As such, the trial court determined that the case could be dismissed before going to a trial.

### **Appeal to the Idaho Supreme Court**

Mr. Gray appealed and the Idaho Supreme Court held that the lower court properly dismissed *some* of Mr. Gray's claims, but should not have dismissed the entire case. Specifically, the Supreme Court said that the lower court improperly dismissed two of Mr. Gray's other claims, reasoning that Mr. Gray could still be entitled to additional payment by Tri-Way *even if no valid contract was ever entered into*. Essentially, the Court reasoned that under centuries-old principles of "equity" or fairness—there was evidence that the "fair" or "just" result would have been to pay Mr. Gray a bonus in addition the \$4000 monthly salary he had already received for the five months he worked. As such, the Court concluded that there was sufficient evidence to proceed to trial. The Supreme Court said that two venerable concepts might entitle to Mr. Gray to be paid money: quantum meruit and unjust enrichment.

### **Quantum Meruit – What's it Really Worth?**

"Quantum Meruit" is Latin for "what it's worth." This is a centuries-old legal concept that basically says that if I provide you with something of value, even if we never come to an agreement as to the price, you still have to pay me what the something I gave you is worth (unless, of course, I gave it to you as a gift). Applying this concept, the Court determined that there was evidence that Mr. Gray's work during the four or five months he worked for Tri-Way was actually worth more than the \$4000 per month Mr. Gray received.

Specifically, the Court noted four pieces of evidence that supported this conclusion that Mr. Gray's services were "worth" more: (1) Tri-Way received hundreds of thousands of dollars in net profits for the two projects Mr. Gray worked on; (2) Tri-Way said that it thought \$60,000 was a fair bonus given Mr. Gray's work on the two projects when Tri-Way offered to pay Mr. Gray this amount; (3) the fact that Mr. Gray's previous salary and bonus at Albertson's (\$108,000 per year plus stock options and bonus) were significantly higher than Mr. Gray's base salary of \$4,000 per month at Tri-Way; and (4) the fact that Tri-Way employees filling lower positions than Mr. Gray earned significantly more than \$4,000 per month.

## **Unjust Enrichment – Because “There Ain’t No Such Thing as A Free Lunch”**

The Court also determined that Mr. Gray might be entitled to relief based on the legal concept of “unjust enrichment.” As people who understand economics but don’t understand grammar like to say: “there ain’t no such thing as a free lunch.” The concept of unjust enrichment is the law’s way of recognizing this “no free lunch” principle, and that it’s not fair or just for one person to get something for free when somebody else ends up paying for it.

Basically, unjust enrichment says that if you are unfairly enriched and that harms me, you have to pay me back. Based on the same evidence that the Court used to conclude that Mr. Gray’s quantum meruit claim should not be dismissed, the Court said there was evidence sufficient to support the claim that Tri-Way was “unjustly enriched” by getting Mr. Gray’s services for only \$4000 a month, without paying a bonus on top of that.

### **Effect of Court’s Conclusion**

As such, the Supreme Court determined that Mr. Gray’s case should not be completely dismissed. Rather, the Court said that Mr. Gray’s quantum meruit and unjust enrichment claims could proceed to trial. It is important to note that the Supreme Court did not determine whether Mr. Gray was actually entitled to more money, and if so, how much. The Court only determined that there was sufficient evidence that Tri-Way might have been unjustly enriched to warrant having the case proceed to trial. At trial, either a trial judge or a jury would decide whether it would be fair or just for Mr. Gray to get more money, and if so, how much.

Of course, Tri-Way could possibly present a number of arguments why Mr. Gray should not be entitled to more money. For example, Mr. Gray left Tri-Way after four months even though the parties tried to negotiate a five year contract. Tri-Way may be able to contend that employee longevity is very important for its customer relationships, such that even though Mr. Gray may have brought in a couple of valuable projects, his quick departure from the company may have actually hurt Tri-Way in the long-run. Putting up such potential defenses at trial, however, would be expensive and resource consuming for Tri-Way.

### **Upshot for Employers**

Considering the litigation expenses and potential exposure employers can face from these age-old types of “quantum meruit,” “unjust enrichment” and other similar claims, there are a few things you should keep in mind to avoid such litigation from happening in the first place:

- 1. Slow Down and Make Sure You Workout the Specifics of the Employment Terms – the Devil Truly is in the Details***

First and foremost, make sure the specific terms of the employment are clearly understood by both parties before the employee begins working. Normally, such advice seemingly should almost go without saying. In Tri-Way’s case, however, recall that the employment negotiations with Mr. Gray took place back in 2004, a time when the construction industry was booming. In order to capitalize as much as possible on that construction boom, Tri-Way may have felt that its best strategy was to get project managers like Mr. Gray on board as quickly as possible—even if it meant the terms of employment had not been completely hammered out before the start date. A potential result of such a strategy, however, is the prolonged lawsuit that Tri-Way found itself involved in.

Had Tri-Way and Mr. Gray finalized a five-year employment contract before Mr. Gray began working, Tri-Way’s obligations would have been clear and Mr. Gray would have been in breach of the contract had

he still left company after only several months. Thus, despite the urgency that immediately accompanies many employment actions (whether it be hiring, terminating or something else), make sure you slow down enough to hammer out all of the detail *before* the action is taken. Otherwise, the unresolved issues could come back to haunt you in the form of a lawsuit.

## **2. *Step Back and Ask Yourself: “Could Someone Reasonably Argue that What We’re Doing is Just not Fair?”***

ADA, ADEA, FMLA, DOL, EEOC, IHRC—just to name a few. The number of acronyms HR professionals in Idaho inevitably become familiar with reflects the complexity of the statutes, regulations and agencies that make up the modern employment law landscape. Given the intricacies of these numerous notice requirements, posting requirements, records keeping requirements, deadlines, etc., sometimes it may be easy to forget that age-old legal doctrines rooted concepts of fairness and justice still apply in employer-employee relations.

As such, before taking employment related actions (especially actions that are adverse to the employee), in addition to assuring that the action complies with the applicable statutes and regulations, also step back and ask yourself: “Could someone *reasonably* argue that what we’re about to do fundamentally just is not fair?” (For example, could someone reasonably conclude that it was not fair or right for Tri-Way to lure Mr. Gray away from his six-figure job at Albertson’s, only to turn around and pay him significantly less and never agree to specific contractual terms?)

If you think the answer may be yes, proceed with caution—you may be setting yourself up for a lawsuit. Even if *you* think what you’re doing is fair, if someone else could *reasonably* disagree with you, consider the potential risks and benefits carefully before proceeding.

## **3. *Although It’s Good to Be Nice, Still Be Candid and Don’t Give Compliments Employees Don’t Really Deserve***

As you are well aware, one of the numerous functions HR professionals have to serve is that of “peace-maker.” In that role, intangible factors such as tactfulness, mutual respect and patience can be invaluable in making upset employees feel that they are valued and that their concerns are appropriately being addressed. The Idaho Supreme Court’s reasoning in *Gray v. Tri-Way*, however, illustrates that giving an employee undeserved praise or flattery could come back to bite an employer later on. Specifically, in reaching its decision, the Court considered statements that Tri-Way had made regarding the value that Mr. Gray had added to the company as evidence that Tri-Way could be unjustly enriched if it were not required to pay Mr. Gray a bonus.

Among other factors, the Court considered as supportive of the view that Tri-Way should have to pay Mr. Gray a bonus on top of the \$4000 per month, is that Tri-Way offered Mr. Gray a \$60,000 bonus after he left and said that Tri-Way thought the \$60,000 reasonably reflected the value of his work on the two projects he brought it. Now, under the facts of this case, Mr. Gray may still have had some pretty good arguments that he was underpaid even if Tri-Way had not come right out and said that they thought his work warranted a \$60,000 bonus (after all, Mr. Gray did bring in two big projects netting over \$270,000 in profits for Tri-Way).

But let’s rewind and hypothetically change the facts a bit. Let’s say that a similar construction company—that we’ll call Four-Way Construction—similarly tried to hire a project manager—who we’ll call Mr. White. Just like in the real case involving Mr. Gray and Tri-Way, in our hypothetical (1) Mr. White started working for Four-Way before they had finally agreed on the terms of his contract, (2) Four-Way

paid Mr. White only \$4000 a month although they had been talking about giving him additional bonuses and (3) Mr. White worked for Four-Way for five months before leaving the company.

Unlike the real case, however, in our hypothetical, let's say that Mr. White was a Grade-A certified, scum-of-the-earth, rotten-apple, deadbeat, egotistical jerk; a quintessential "bad employee." Not only did he not bring in a single new project during the five months he worked for Four-Way, he was so rude to several of Four-Way's longtime customers that these customers and up took their business elsewhere.

Needless to say, everyone at Four-Way was so happy after Mr. White left that they moved the annual company picnic up a couple months to celebrate his departure (without him present, of course). Because Mr. White was such a quintessential egotistical jerk, however, some of the managers at Four-Way were concerned that Mr. White would sue the company, potentially for over \$100,000 in bonuses related to projects that other employees had brought in and that Mr. White worked on only minimally.

Thus, in an attempt to be rid of Mr. White once and for all, Four-Way decided to make an offer of \$60,000 in bonus payments. Having worked with Mr. White, Four-Way's management knew that Mr. White was under the egotistical delusion that he was an outstanding employee and that everyone else at Four-Way was the problem. Accordingly, Four-Way thought Mr. White might be more likely to accept the \$60,000 (and forego filing a lawsuit), if they also sent him a letter containing the following bit of flattery: "Please accept this \$60,000 as a token of our appreciation for your hard work and as a reflection on the value you added to Four-Ways. We learned a lot from working with you."

Even though Mr. White was touched by Four-Way's kind and thoughtful letter, he went ahead and filed a lawsuit anyway. In his lawsuit, Mr. White claimed quantum meruit and unjust enrichment. Four-Way moved to dismiss the case on the basis that there was no evidence to support a reasonable finding that Mr. White was in anyway unfairly benefited or unjustly enriched by Mr. White enduring Mr. White for four months at a mere \$4000 a month. In response, Mr. White was able to point to only one piece of such evidence: the letter saying that the \$60,000 offer was "a reflection to the value [Mr. White] added Four-Way." After reading the *Gray v. Tri-Way* decision, the trial judge ruled that such evidence is sufficient to prevent early dismissal of a case.

Based on these hypothetical facts, Four-Way would probably have some very good arguments to present at trial that Mr. White it is completely fair and just to deny Mr. White any bonus. Yet Four-Way would have to deal with the cost and hassle of taking the action through to trial. Although this hypothetical is pretty extreme, it illustrates issues that employers can run into by providing unwarranted praise to employees in an effort to resolve a dispute. HR personnel who handle issues tactfully and treat all employees with respect and dignity can have a profound impact on overall employee morale, productivity and retention. To the extent this desire to make employees feel valued leads to unwarranted and undeserved praise and flattery, however, such praise can create potential legal issues for the employer.

This issue can arise in a number of other contexts as well. Say, for example, that you have an employee who has been truly problematic for a longtime. Rather than carefully documenting her misconduct, however, when she's really upset, you verbally tell her and send her emails saying that her performance is improving, that she's a great asset to the company, etc. Such praise would temporarily help her clam down enough to allow her co-workers to get their work done. But things only get worse and you finally have to terminate her for cause. She files a claim saying that her termination for alleged misconduct is merely pretextual for illegal discrimination. To support her claim, she points to the conversations and emails you sent saying how valuable of an employee she is. Thus, you can see where undeserved flattery or praise could lead to legal issues down the road.

## In Summary

While the *Gray v. Tri-Way* case deals specifically with an employment contract, it also serves as a reminder that in addition to the myriad employment regulations promulgated in recent years, employers also need to protect themselves from potential claims under centuries-old legal doctrines based on “equitable” concepts fundamental fairness and justice. There are, however, things employers can do to limit exposure in this regard:

- Make sure all terms of employment are agreed upon and that the employment contract is signed (if there is an employment contract at issue) before the employee begins working. Even seemingly innocuous issues that are left unsettled could potentially come back to bite you—the devil truly is in the details.
- Before taking an action as to an employee (especially an adverse action), take a step back and ask yourself: “Could someone *reasonably* conclude that what we’re doing here is just fundamentally unfair?” If so, the employer could face potential “equitable” claims.
- While still treating employees with dignity and respect, be candid with employees and do not give undeserved praise.