Virginia adheres to the doctrine of employment at will. When the intended
duration of an employment contract cannot be determined by a fair inference from its
provisions, either party can terminate the contract at will upon giving reasonable notice.
See Bowman v. State Bank of Keysville, 331 S.E.2d 797, 798 (Va. 1985). However, an
employee can rebut the at-will presumption by producing sufficient evidence that the
employer fixed a definite time for the duration of employment. See Norfolk S. Ry. Co. v.
Harris, 59 S.E.2d 110, 114 (Va. 1950). Courts in Virginia interpret an employer’s
promise of just cause protection as proof of a fixed, intended duration of employment.
Id. at 114-15.

Employees have brought three types of contractual claims in their efforts to rebut
the at-will presumption: (1) reliance, (2) implied in fact, and (3) express modification.
Virginia state courts have vigorously upheld the at-will presumption. However, federal
courts in Virginia have sometimes been more willing to recognize contractual
modifications of employment at will. Despite these occasional liberal leanings, courts
in Virginia have maintained a conservative stance on the issue of employment at will.

RELIANCE

The Supreme Court of Virginia has rejected a contractual claim brought by an
employee who relied on an offer of at-will employment. See Sartin v. Mazur, 375
S.E.2d 741, 743 (Va. 1989). The plaintiff in Sartin relied on the defendant’s offer of
employment by resigning from her current job and incurring relocation costs. Id. at 742. Nevertheless, the court found it absurd to require an employer, which had changed its mind after an offer had been made, to employ the applicant for one hour or one day so that the employee could then be discharged. Id. at 743. The court distinguished its earlier opinion in Sea-Land Serv., Inc. v. O’Neal, 297 S.E.2d 647 (Va. 1982), in which it had upheld an employee’s breach of contract claim. In Sea-Land, the employer breached its promise to transfer the plaintiff to another position within the company provided she resigned from her current position. Id. at 649. The court held that the agreement to exchange positions was separate from any contract covering the particular position involved and therefore was not subject to the at-will presumption. Id. at 650. In contrast, Sartin involved an offer that had no preconditions, as opposed to a separate agreement to exchange one job for another within the same company, and is therefore distinguishable. 375 S.E.2d at 742.

The federal courts in Virginia have not addressed any claims of just cause protection based on reliance. However, a court in the Western District of Virginia has indicated in a footnote that the doctrine of promissory estoppel could be used to enforce promises in an employee handbook. See Thompson v. American Motor Inns, Inc., 623 F. Supp. 409, 417 n.15 (W.D. Va. 1985). Although the plaintiff in Thompson did not raise a claim of promissory estoppel, the court noted that the employer “should have expected its employees to act or to forbear to act in reliance on [the handbook’s provisions].” Id. Employing similar reasoning, courts in other states have used the promissory estoppel doctrine to uphold claims of just cause protection for at least some period of time after an offer has been made. For example, the Minnesota Supreme
Court upheld a reliance claim when an employer revoked an offer of employment before the plaintiff had assumed the position but after the plaintiff had resigned from his previous job.  See Grouse v. Group Health Plan, Inc., 306 N.W.2d 114 (Minn. 1981).

**IMPLIED-IN-FACT JUST CAUSE PROTECTION**

Employer statements that do not expressly promise just cause protection may nevertheless create a fair inference that the employment relationship is not at will. Claims for implied-in-fact just cause protection typically allege that oral assurances, written reprimands, or employee handbook provisions prohibit an employer from discharging the employee at will.

**Oral Assurances**
Both the state and federal courts in Virginia have repeatedly denied claims of implied-in-fact just cause protection based on an employer’s oral assurances. Some decisions have held that the oral assurances do not sufficiently guarantee a fixed term of employment. See Addison v. Amalgamated Clothing & Textile Workers Union of America, 372 S.E.2d 403, 405 (Va. 1988) (rejecting claim based on assurances of employment for as long as the employee wanted the job and as long as one existed); Miller v. SEVAMP, Inc., 362 S.E.2d 915, 918 (Va. 1987) (rejecting claim based on assurance of employment as long as there continued to be adequate federal funding of the position). Other decisions have noted that even if the oral assurances are enough to establish implied-in-fact just cause protection, they are barred by the statute of frauds. See Falls v. Va. State Bar, 397 S.E.2d 671, 672-73 (Va. 1990) (rejecting claim based on assurance that employment would continue as long as plaintiff’s performance was satisfactory); Sullivan v. Snap-on Tools Corp., 708 F. Supp. 750, 751 (E.D. Va. 1989), aff’d, 896 F.2d 547 (4th Cir. 1990) (rejecting claim based on assurance that as long as plaintiff performed his duties to employer’s satisfaction he would be afforded job security); Derthick v. Bassett-Walker, Inc., 904 F. Supp. 510, 521 (W.D. Va. 1995) (rejecting claim based on nonspecific, vague and ambiguous statements made in a variety of contexts over the course of twenty years). The possibility of an employee’s death, resignation, or discharge within one year does not satisfy the statute of frauds’ requirement of performance within one year absent an express provision in the contract that such contingencies constitute full performance. Falls, 397 S.E.2d at 673.

Written Reprimands
The Virginia Supreme Court has rejected a claim of implied-in-fact just cause protection based on disciplinary memos issued to an employee. See *Graham v. Cent. Fidelity Bank*, 428 S.E.2d 916, 918-19 (Va. 1993). In *Graham*, plaintiff’s employer issued a disciplinary memo placing her on ninety days probation. Subsequently, her employment was terminated before the end of the probationary period. Id. at 917. The court opined that disciplinary letters should not be construed as contracts for a fixed period when the employer’s intent to make such a contract is not clear. Id. at 918.

**Employee Handbook Provisions**

Claims of implied-in-fact just cause protection based on disciplinary procedures or lists of potential reasons for termination included in employee handbooks have been rejected by the Virginia Supreme Court. The court typically has found that disclaimers in the handbooks prohibit any inference that the disciplinary procedures create just cause protection. See *Miller*, 362 S.E.2d at 918 (denying just cause protection because of handbook disclaimer which stated that “[a]n employee may be dismissed at the discretion of the Executive Director”); *Graham*, 428 S.E.2d at 918 (holding that disclaimer which reserves the right to terminate the employment relationship at any time with or without cause precludes any implication of just cause protection). The court in *Miller* stated that it could not imagine a clearer expression of intent to create at-will employment than a disclaimer contained in a personnel manual. 326 S.E.2d at 918.

Even in the absence of a disclaimer, the Virginia Supreme Court has refused to find implied-in-fact just cause protection based on employee handbooks. See *Progress Printing Co. v. Nichols*, 421 S.E.2d 428, 436 (Va. 1992). A number of jurisdictions
enforce termination for cause provisions contained in employee handbooks when the provisions are communicated to the employee in a sufficiently specific manner. Id. However, the Virginia Supreme Court has unequivocally rejected that approach. Id. Furthermore, the supreme court has indicated that employee handbooks may not survive the statute of frauds requirement of a signed writing. See Falls, 397 S.E.2d at 673 (noting that a company logo on a personnel manual did not satisfy the signature requirement of the statute of frauds).

In contrast to the Virginia Supreme Court, some federal courts in Virginia have allowed claims of implied-in-fact just cause protection based on employee handbook provisions to go to the jury. See Frazier v. Colonial Williamsburg Found., 574 F. Supp. 318, 321 (E.D. Va. 1983) (allowing question of whether employment manual constituted a binding promise that plaintiff could be terminated only for cause to go to the jury); Barger v. Gen. Elec. Co., 599 F. Supp. 1154, 1163 (W.D. Va. 1984) (holding that issue of whether layoff and recall policy in employee handbook was contractually enforceable was for jury to decide). In fact, one federal district court in Virginia has held that disciplinary procedures in an employee handbook constitute an implied unilateral contract. See Thompson, 623 F. Supp. at 418. The Thompson court purported to rely on the Virginia Supreme Court’s decision in Hercules Powder Co. v. Brookfield, 53 S.E.2d 804 (Va. 1949). In Hercules, the court enforced an express promise to pay severance benefits contained in an employee handbook, even though the employee claiming the benefits was at-will. The court’s later opinion in Progress Printing takes pains to explain that the decision in Hercules to enforce the severance pay provisions was consistent with an at-will employment relationship. See Progress Printing, 421
S.E.2d at 430. However, the federal district courts have used the Hercules holding to enforce employee handbook provisions, despite the strong commitment to the at-will presumption expressed in the Virginia Supreme Court’s decisions.

Following the lead of Virginia’s federal district courts, the Fourth Circuit has found that a personnel manual which intricately detailed disciplinary offenses and described with particularity the disciplinary response for those offenses created an implied-in-fact contract. See Bradley v. Colonial Mental Health and Retardation Svcs. Bd., 856 F.2d 703, 708 (4th Cir. 1988). The Fourth Circuit clarified the type of disciplinary procedures sufficient to support a claim of implied-in-fact just cause protection in Sullivan v. Snap-on Tools Corp., 708 F. Supp. 750 (E.D. Va. 1989), aff’d, 896 F.2d 547 (4th Cir. 1990). The court in Sullivan rejected a claim of implied-in-fact just cause protection, finding that the disciplinary provisions in the employee handbook lacked the specificity and intricateness of those contained in the manual referred to in Bradley. Id. at 753. Specifically, the court stated that the procedures were not all-inclusive, did not include the specific discipline for each listed offense, and, most importantly, did not include any termination for cause language. Id.

The federal courts in Virginia have take a fairly restrictive approach to implied-in-fact claims based on employee handbook provisions. The courts have held that no implied contract arises when an employer does not generally distribute the handbook to its employees but provides it only on request. See Swengler v. ITT Corp., 993 F.2d 1063, 1070 (4th Cir. 1993). However, if an employer usually provides an employment policy manual only to supervisors but initiates the distribution of the manual to some of its employees, an implied contract arises with those employees who receive the

EXPRESS MODIFICATION

Employers can expressly modify an employee’s at-will status by making oral or written promises of just cause protection. Claims based on oral modifications are rarely successful since they are typically barred by the statute of frauds. See Graham, 428 S.E.2d at 918. Additionally, express oral statements that an employee will only be fired for cause may be inadmissible under Virginia’s parol evidence rule when an employee later accepts a written offer of employment which contains no promise of just cause protection. See Swengler, 993 F.2d 1063 at 1069.

The Virginia Supreme Court has held that a written provision in a collective bargaining agreement which states that an employee will not be dismissed without just cause rebuts the at-will presumption. See Norfolk Southern Railway Co. v. Harris, 59 S.E.2d 110, 114 (Va. 1950). However, the Virginia Supreme Court has yet to address whether express promises of just cause protection contained in employee handbooks rebut the at-will presumption. But see statute of frauds discussion in Falls, 397 S.E.2d at 673.

Several Virginia state and federal court decisions have focused on employer’s attempts to modify handbooks containing written promises of just cause protection.
The Virginia Supreme Court has held that an amendment which changes an employee’s status to at-will is correctly characterized as an offer which the employee accepts by returning to work. See Progress Printing Co., 421 S.E.2d at 431. The federal courts have taken a tougher stance on when an employer can modify an employee’s at-will status requiring employers to establish the employee’s acceptance of the amendment. See Thompson v. Kings Entertainment Co., 674 F. Supp. 1194, 1198 (E.D. Va. 1987). Employers must demonstrate that the employee was aware of the handbook, understood that its terms governed the employment, and worked according to those terms. Id. The fact that an employee continues to work after receiving an amendment changing his status to at-will is not dispositive in the federal courts on the issue of acceptance. Id at 1199. See also Sullivan, 708 F. Supp. at 752 (determining that handbook which employee received, relied on, and signed for governed the employment relationship).