

**2.13 ORAL PROMISES CREATING AN ENFORCEABLE CONTRACT<sup>11</sup>** (Approved 3/91)

Plaintiff has brought this case against his/her employer for breach of an oral contract of employment. Plaintiff claims that defendant's oral promises contractually obligated his/her employer to *[insert relevant promise]*. You are charged at the outset that in this state, employment without a contract is generally deemed to be "at-will," which means that employees can quit their employment at anytime and for any reason, and an employer can terminate its employees at anytime, and for any reason, for cause or for no cause at all.<sup>2</sup>

Nevertheless, an employee may establish the existence of an enforceable oral contract to *[insert promise]* if all of the following conditions are met:

1. A definite, clear, oral promise of [\_\_\_\_\_] was made especially to plaintiff.<sup>3</sup>
2. This definite, oral promise of [\_\_\_\_\_] was made to plaintiff by a person who had the authority to make this promise and the authority to bind the employer.

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<sup>1</sup>*Shebar v. Sanyo Business Systems*, 111 N.J. 276 (1988).

<sup>2</sup>*Shebar* at 285, citing *Savarese v. Pyrene Manufacturing Co.*, 9 N.J. 595 (1952).

<sup>3</sup>The Court did not decide whether an oral promise made to a group of employees would give rise to a cause of action. *Shebar* at 288.

3. Plaintiff acted in reliance upon this promise — that is, he/she performed an act or acts, or declined to perform an act or acts based upon the promise.<sup>4</sup>

**[Optional: For example, if he/she informed his/her employer of an existing advantageous employment offer from a competitor, but was persuaded to decline that offer by an express oral promise by an official of the employer who was authorized to make such a promise and to bind the employer making such a promise, that he/she would have secure continued employment if he/she declined the competitor's offer, a contract can be deemed to have been formed.]**

If plaintiff can show all of these elements, an enforceable contract has been formed.<sup>5</sup>

If you find that an oral contract of employment has been created, then you decide whether the employer failed to comply with the terms of that contract, that is, did the employer breach the contract.

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<sup>4</sup>*Shebar* uses the words “unique” (at 284), “specific” (at 284 and 288), “special” (at 288) and “clear” (at 290). “Definite” is borrowed from *Woolley v. Hoffman-LaRoche*.

<sup>5</sup>There are exceptions and modifications to *Shebar* noted at 288 dealing with life contracts. Additionally, the enforceability of each contract will depend on the intent of the parties as established under ordinary principle by contract law.