How Relocation Affects the Employment At Will Relationship

I. Introduction

Traditionally, most jurisdictions adhere to the employment at will doctrine, which allows either party to terminate the employment for any reason. The employment at will doctrine, which is not absolute, is now seeing a greater number of limitations placed upon it than ever before.

The discharge of relocated employees is an issue that the courts have heard addressed frequently. Yet, while existing scholarship discusses the various limitations placed upon employment at will, such as the implied covenant of good faith and fair dealing, the public policy exception, promissory estoppel, and the employment manual or handbook, a critical issue has not been addressed: When an employee resigns from his old employment, then relocates in order to accept an offer of employment at will, what effect, if any, does that relocation have upon his employment at will status?

The lack of attention to this issue is most unfortunate, for employee relocation is common and essential to a vibrant commerce. In 1994, 119,000,000 individuals in the United States were employed; 500,000 relocated to accept new job offers.

Employees who have relocated are vital to the productivity of our businesses and industries. The health of our communities requires that these people do not leave good jobs and relocate only to find themselves unemployed, and ultimately destitute. Thus, this issue deserves attention.

This article examines the different approaches various states take to the question of how relocating affects an employee's at will status. Some states find that the employment at will presumption is not overcome simply because the employee quit his old job and relocated to accept the offer. Other states find that when an employee relocates to accept a promise for employment, the employer is promissorily estopped from breaching that promise. Still other states find that relocating is consideration in addition to the exchange of services for wages, and thus, indicates that the contract may have been for something more than at will employment. Finally, in Connecticut, the act of relocating is evidence of the reasonable expectations of the parties that the employee would not have relocated for an at will offer.

While these states' courts clothe their various methods in the language of different doctrines, ultimately, they are asserting the same thing: where the employer has made some assurance of job security, the act of relocating to accept an offer creates an implied contract for something more than an at will relationship.

Finally, this article discusses how the courts should measure damages for employees who have been found to have been wrongfully terminated, and what employers can do to limit their exposure to such damages awards.

II. The Current Status of the Law of Employee Relocation

The employment at will doctrine creates a presumption that the employment relationship is terminable at the will of either party, whether for good reason, bad reason, or no reason at all, unless terms to the contrary are specified. There are exceptions to this doctrine. Some courts have found from circumstances surrounding
the formation of a contract that an implied contract for something other than employment at will exists.  

When an employee relocates to accept an offer of employment, the courts are divided on how that affects the legal presumption of employment at will. They either infer that relocating evidences an intention to form an implied contract for something more than at will employment, or that the act of relocation has no effect on the at will presumption.

While each state has its own jurisprudence, they may, with some exceptions, be viewed as taking one of four basic approaches:

**A. Relocation Has No Effect on At Will Status--Pure Employment At Will Approach**

In a majority of states, the act of relocating to accept employment does not have any effect upon the at will status of the employment relationship. These courts, adhering absolutely to the at will doctrine, hold that without an express contract for just cause employment, the court will not find that an implied contract exists merely because the employee has relocated to accept the position. In these states, an employer may offer an individual a job which requires relocation without being obligated to anything more than an at will employment contract.

While the reasons that these courts provide in support of this position may vary, they ultimately arrive at the same conclusion: relocation does not warrant an implied contract.

Some courts reason that since there is no inequality of bargaining power, the employee is free to have bargained for a just cause or fixed term contract. For example, in Weinberg, the court held that the employee, having quit his graduate studies and made preparations to quit his job and relocate his family, had the same bargaining power as the employer to negotiate a fixed term contract.

When employment is at will, an employer may terminate an employee on the first day that an employee begins work. Therefore, these courts argue, the employer should be free to terminate the employee before the first day of work, since the same result ensues.

This is the approach used in Virginia. In Sartin v. Mazur, for example, the employee relocated to accept an offer of employment and was terminated before she could commence her first day of work. The court held that it would not forbid an employer from terminating an employee before employment--an act which the employer could perform with impunity after employment.

Courts using this approach also reason that relocation does not rebut the at will presumption on the grounds that relocation is an act that most professionals must perform to accept employment; it is a necessary step in performing their side of the employment relationship.

For example, in Zerby v. Hechinger, the U.S. District Court, applying Maryland law, held that the fact that the employee left his old job, and the fact that the employee relocated, do not rebut the at will presumption. The court's reasoning was that resigning and relocating are acts that are merely incidental to the employee's performance of his promise to work. Thus no additional consideration flows to the employer, and so it is hardly a substantial hardship sufficient to infer additional consideration.

**B. Relocation Does Affect the At Will Status**

1. Promissory Estoppel for Relocation

When an employee relocates to accept an offer, some courts apply the contract doctrine of promissory estoppel
to bind an employer to its promise—whether that promise is for at will employment or for something more than at will.  

In traditional contract theory, the elements of promissory estoppel are that the plaintiff must establish: (1) that there was an unambiguous promise; (2) which was intended to be relied upon; (3) that there was in fact reliance; and (4) the reliance was to the promisee's detriment. 

In the employment setting, some courts have held that an employer’s promise of employment is one that the employer knows will induce action on the part of the employee. Since resignation of prior employment and relocation are necessary to accepting an employment offer, these courts reason that they are acts sufficiently demonstrating a reliance upon that offer. Therefore, since there is a promise for employment which is intended to induce reliance and an act of relocation which demonstrates reliance and detriment by the employee, the employer is estopped from revoking that promise.

What is the nature of this promise by which the employer is estopped? In Forrer v. Sears, Roebuck & Co., the employer's offer was ostensibly for at will employment, inasmuch as the terms of employment were unclear. The employee was terminated three months after he began work. The Forrer court held that promissory estoppel applied to the relocation of the employee, but because the promise was for employment at will, and the plaintiff was employed for three months, the employer fulfilled their promise.

2. Additional Consideration by Relocating

C. ADDITIONAL CONSIDERATION

The additional consideration doctrine is being applied by several states which offer protection for relocating employees. Consideration flowing between the employer and employee typically takes the form of pay in exchange for services. In some states, additional consideration such as relocating can shed light upon the intent of the parties regarding termination. The plaintiff must show that the employer has made some statement assuring the employee of job security, and that the employee relocated to accept that position. The court, in determining whether the employer's statement was intended to form an implied contract, may find that the relocation was a substantial hardship sufficient to show additional consideration existed. This additional consideration is probative to demonstrate that the employer's statement was intended to form an implied contract.

These courts favor this approach because it is an objective test to determine what kind of employment the employer intended to offer. To inquire of the parties what they intended—a subjective test—would be meaningless, since that is precisely the point which they dispute. Examining the circumstances surrounding the formation of the contract—such as the vague assurances made by the employer, and the act of relocation—is an objective test from which the court can infer whether or not the parties intended to form an implied contract for something other than at will employment.

Thus, two elements that must be shown in order to establish that additional consideration exists are: (1) that the employer made a statement assuring the employee of job security and; (2) that the employee underwent a substantial hardship by way of relocating. Upon a satisfactory showing, the courts find that the parties intended to form a contract for just cause termination for a reasonable time.

The term "consideration" is not used in the traditional contract sense. That is, the term is not used to refer to some value flowing between the parties, thus validating a contract. Rather, "consideration" here is an interpretative device for the courts, because the additional consideration of relocating sheds light on the employer's intent when the employer made vague assurances of job security. If sufficient additional consideration above and beyond the exchange of wages for service is found to be present in the relationship, the courts may infer that the parties intended that an implied contract for just cause dismissal exists for a
reasonable time.  

D. REASONABLE TIME

When courts find that sufficient additional consideration exists, placing the employee in a just cause contract for a reasonable time, the next question to ask is: what constitutes a reasonable time? The length of time during which a just cause relationship exists is commensurate with the amount of hardship the employee has endured.

For example, the court did not find a wrongful termination where the employee had been working with the employer for fifteen years. While sufficient additional consideration imports an implied contract for a reasonable time, the court in Darlington held that once a reasonable length of time had passed, the relationship reverted to an at will relationship again. A hiring for a reasonable length of time does not mean that one can never be discharged except for just cause.

The courts are ambiguous as to how long a just cause contract exists, but will decide with certainty whether the case at bar is within that time frame.

Where an employee resigned his old position and relocated, and was subsequently terminated after eight years, the court found that the additional consideration provided was not sufficient to protect him in his eighth year.

Thus, in Pennsylvania, the act of forgoing former employment and relocating one's self and family is an act of additional consideration which is sufficient to rebut the at will presumption for some reasonable amount of time, never specified, but certainly less than eight years.

In some instances, the employer's statement that the employee has job security includes an idea of a reasonable time. For example, in one Pennsylvania case, the employer assured the employee that he would be working as a publisher "for at least two years," in reliance of which the employee quit his former job, placed his former home on sale and relocated.

The court could have interpreted the employer's statement as a just cause contract for two years and then an at will contract thereafter. However, the court did not see the employer's assurance in this light. The court held that such an assurance was not sufficiently definite to remove the agreement from the at will presumption, but that the trial jury may hear the entirety of circumstances to determine if there is sufficient evidence of additional consideration to rebut the at will presumption.

III. SUBSTANTIAL HARDSHIP

Because there is a direct relationship between the hardship endured and the amount of time for which the employee is protected by a just cause implied contract, courts examine the facts surrounding the employee's relocation.

Moore v. Bally Block Co. illustrates this relationship. An employee relocated from Maine to Pennsylvania to accept an offer. At the time of the offer, he was unemployed, single, without family, and had only lived in Maine for six years. The court concluded that he had undergone a less substantial hardship than those in previous cases finding for the plaintiff, and so the employee did not prevail. Because the pay that the employer offered was greater than that which the employee received at his previous job, the employee's hardship seemed somewhat recompensed by higher salary offers.

Conversely, an employee who was married, left a job of eighteen years where he had a great deal of job security with a family-owned business, and sold his home in a community he had lived in for forty years, is
deemed to have undergone a substantial hardship in relocating. 55

In each of these cases, the employer made a vague assurances that the employment relationship had job security. The court, in all of these cases, examined the objective indicia of the employee's relocation in order to determine what the employer's intent was when he made those vague assurances.

1. Expectation Theory

Connecticut approaches the problem of employee relocation with a less rigid analysis, as it looks to the reasonable expectations of the parties, given the circumstances. The Connecticut doctrine is that if the employer makes a statement offering some assurance of job security, 56 and, in reliance upon that assurance, the employee relocates to accept the position, then the relocation is evidence of the employee's reasonable expectations of job security. 57

This has all the same elements as the additional consideration standard because an employer's vague statement of job security plus an employee's relocation may result in the courts finding an implied contract for something more than employment at will. Connecticut merely uses different language to express this.

The court in Coelho, specifically rejecting the additional consideration approach, held that the only consideration needed to sustain an implied just cause contract is the employee's acceptance of employment on the terms of the employer's assurances. 58 The court held that it is not necessary to decide whether the evidence advanced by the employee of reliance on promises was sufficient additional consideration or not. 59

The employer promised the employee that "[a]s long as you do your job, you'll have a good future with us." [FN60] The evidence of foregone job opportunities, relocation from Massachusetts to New London, Connecticut, and the purchase of a home is material proof of the employee's reasonable expectations in light of the promises made to him. 61 This evidence fulfilled its function in supporting plaintiff's version of the terms of the agreement, regardless of whether it would satisfy the criteria for separate consideration. 62

The court focuses on the intentions of the parties and not on the need for additional consideration. 63 Indeed, "the only consideration needed to sustain such a contract is the employee's acceptance of employment on such terms." 64

The reasoning that the court uses is applicable to any fact pattern wherein an employer makes an offer of employment with some statement of reassurance that the job is secure, and where the employee relocates to accept that position. 65

The result is that the court found that an implied contract exists for an employment relationship of something more than at will. 66 Broken down to its rudiments, this varies little from the additional consideration approach, except in language.

IV. Critical Analysis of Laws Affecting Relocating Employees

These four approaches bear some scrutiny. At first glance, these four approaches seem to take different directions and the issue of employee relocation for an offer of employment seems to be a morass. The question, however, that binds all of these approaches, and that all of the courts are asking, is: does the parties' behavior--the employer's vague assurances of job security plus the employee's relocating to accept that position--amount to an implied contract or not?

A. Pure Employment At Will Approach
There have been many reasons offered by states that hold that the act of resigning one's old job and relocating to accept an employment offer has no effect on the at will relationship. Despite the variety of reasons given, only one result ensues in these states: when the employer offers employment with some vague assurance of job security, and the employee relocates to accept that offer, the court will refuse to recognize that an implied contract for something more than at will employment was formed. These courts require an express promise of a just cause contract, otherwise, they will presume that the contract is at will.

Applying the additional consideration test, a North Carolina court found that relocation from one city to another in order to accept the employer's offer of employment is insufficient additional consideration to rebut the employment at will presumption. 67

This posture refuses absolutely to infer from facts surrounding the formation of the relationship that an implied contract exists. Already employed elsewhere, an employee resigned from her job in Greenville, North Carolina, with over eleven years of seniority, many benefits, and a salary of $22,000 per year. 68 She resigned from that job, and relocated to Wilmington, North Carolina with no seniority and an initial annual salary of $17,500. 69 During negotiations, one of the main topics the employee discussed was her need for job security. 70 This evidence makes it less likely that the employee would have given up so much in exchange for a job with less benefits, less seniority, and less pay, but for the fact that the employer assured her of more job security. 71 One year later, however, the employee was terminated. 72

In North Carolina, the court held that this was not sufficient proof of additional consideration. Indeed, one can hardly imagine how the employee could have provided any more proof than this. 73 Yet in North Carolina, the court will not find that a contract exists for something more than at will unless the plaintiff can show "specific assurances" that she "'could only be discharged for incompetence.'" 74 What North Carolina really requires, then, is a specific assurance that is so certain, it really is an express contract.

After an employee has relocated, but before the employee has actually begun his first day of work, pure at will courts hold that employment at will applies. Their reasoning is that there is no reason why an employer should not terminate an employee before he begins work, because after all, the employer will be allowed to terminate the employee in the first hour after the employee begins work. 75 This seems disingenuous; states that find an implied contract would hold that the employer cannot terminate the employee upon arrival before or after the employee commences work. 76

Some courts argue that in order to accept an offer it is a necessary prerequisite that the employee relocate to the site where the employment occurs, and is not sufficient additional consideration. It is merely the necessary act of placing one's self in a position to accept the offer, 77 and thus it is what every professional must do to perform his employment duties.

Yet the court cannot have this argument both ways; if relocating is what every professional must do, then it is all the more important that some protections are implemented to facilitate the exchange of professionals from one employer to another.

Moreover, if relocation is a necessary act in accepting an offer, then it must have been an act that was contemplated by the employer; and, therefore, the offer of employment is a promise designed to induce reliance. Relocation, because it was intended by the employer, then becomes an element in proving that promissory estoppel applies to the termination. 78

Thus, while the reasonings that these courts offer may vary, their holding is essentially the same. These courts refuse to acknowledge that an implied contract can be formed in an employment relationship, even while enforcing implied contracts in all other areas of contract. This is anomalous; for these courts do not seem to take the implied contract doctrine seriously, yet it is an established principle of contracts in every jurisdiction. 79
B. Promissory Estoppel Theory

1. Promissory Estoppel Theory Is Too Easy to Enter Into, and Too Hard to Get Out of

The promissory estoppel theory essentially conditions an employer's obligation upon the following: (1) a promise was given; (2) with the reasonable expectation that the promise will be relied upon; (3) the promise was in fact relied upon; and (4) to the detriment of the promisee. Should this condition precedent occur, then the promisor is estopped from revoking its promise of employment. But for what kind of employment was the promise--for at will employment or for something more than at will?

The estoppel operates once the promisee begins to act--he need not complete performance of his promised act; the promisor is already bound by his promise. This can be expressed as a unilateral contract which arises the moment the promisee begins to act upon the promise.

Further, the employee's act of reliance can take the form of a promise to relocate in exchange for the promise to employ. Therefore, in a state which applies promissory estoppel to employee relocation, if an employer offers employment, and the employee accepts that offer, the employer is obligated to that offer the moment the employee begins preparing to relocate, or promises to relocate and forego other offers.

The result appears to be a relationship for employment for something more than at will which is very easy to enter into but very difficult to exit. It is easy to enter because all it requires is a promise by the employer; it is difficult to get out of because that promise can be binding once the employee promises to rely upon it, and thereafter the employer may not be able to revoke his promise.

2. Promissory Estoppel as a Toothless Tiger

If the employer's promise is for at will employment, then he fulfills his promise the moment the employee begins work. Therefore, after that first moment of work, the employer may terminate the employee with impunity. Promissory estoppel only estops the employer from revoking his promise after the promise is made, but before the employee commences work. For all the protection that promissory estoppel offers in estopping the employer from revoking his offer before the first day of work, it really offers no protection beyond that, which is indeed little protection at all.

The promissory estoppel doctrine is inherently incompatible with the existing employment law jurisprudence. Promissory estoppel operates to provide some protection only to at will employees.

Promissory estoppel, then, is a modification of the at will doctrine. Yet when an offer is for employment at will, it is a promise for an employment contract that can be terminated at any time. Thus, at the end of the very first instant of employment, the promise has been fulfilled, and is no longer binding.

In Wisconsin, the court in Forrer v. Sears, Roebuck & Co., considered promissory estoppel where a farmer gave up farming operations, leased equipment and sold livestock to accept an offer with the employer. The employee, having worked with the employer less than two months, was terminated. The court said that while promissory estoppel did apply, the promise was nonetheless fulfilled. Thus, the employee's reliance in giving up his farming business was rewarded by five months of employment.

The court again arrived at the same conclusion when, in Smith v. Beloit Corp., the employer promised employment and then, after the employee relocated from Montreal to Wisconsin, terminated the employee less than three months after he began.

The court held that justice did not require the application of the promissory estoppel doctrine, because "insofar as [the promise] was one of employment, [the promise] was kept."
Interestingly, then, the court held that the promise for permanent employment was kept after less than three months of work. Indeed, the Wisconsin position seems to be that the employer has kept its promise after the first instant of work has been performed.

This reasoning would suggest that if an employee relocated to accept employment, and was terminated before commencing work, then promissory estoppel would apply. This must be so, according to Wisconsin's logic, because the promise has not been kept yet—even the first moment of work has not been performed.

In Sheppard v. Morgan Keegan & Co., the employee, after resigning from his former job and making great efforts to relocate, was terminated. The court found that the termination was promissorily estopped precisely because the employee had not even begun work yet, and the employee had a right to assume he would have been given an opportunity to perform his duties on the job.

So exactly what, then, is the employer promising? It is apparently a hollow promise, an illusory promise.

Fairly, the employer may well defend himself against a promissory estoppel claim by arguing that one ought never have relied in the first place upon a promise for at will employment, because it is an illusory promise; he is a fool who relies upon it, for he relied upon a promise for nothing. However, an employee must rely upon that promise before he can begin performing his duties to the employer; that is, in reality an employee must relocate before he can accept work; such reliance is necessary, not foolish.

The doctrine only operates to protect employees who have already relocated, but have not yet commenced work. The promissory estoppel doctrine becomes a toothless tiger; it offers extremely limited application to the issue of employees who have relocated to accept an offer.

C. Consideration Theory

1. Additional Consideration Inconsistently Compares Relocation with Employer's Promises Instead of Employee's Expectations

The additional consideration concept is inconsistent with the traditional approach of contract law which refuses to examine the quantum of consideration. Contract law looks only to see if there was consideration flowing from both sides, not how much, or how adequate, the consideration is. Therefore, additional consideration courts have engineered a just result out of flawed reasoning.

While Pennsylvania and other states hold that the additional consideration doctrine is not a substantive rule of law, but an interpretive device, they nonetheless hold that some promise of permanency is required.

The act of relocating does not substantiate the employer's promises—the employer may have said nothing about job security and the employee still may have moved cross country. The act of relocating is, instead, evidence in support of the employee's expectations when he moved. This is the Connecticut approach; Connecticut courts merely ask if there was a promise of job security, and if the relocation validated the employee's expectations of job security.

There is a closer nexus between the employee's relocation and his expectations. Thus, relocation is also evidence in support of promissory estoppel theory, because promissory estoppel asks whether the promisee acted in reliance upon the promise.

2. Problems with Reasonable Time in the Additional Consideration Test

The additional consideration test gauges the quantum of the substantial hardship endured by the employee, and
uses that to measure the quantum of protection. Thus, an employee who has resigned from a more secure job, or left a community with which he has stronger ties, or moved his whole family, will have a just cause implied contract for a longer duration than the employee who resigned a less secure job, or left a community with which he had brief ties, or is a single person without family, or was unemployed when he accepted the offer.

As a result, the employer, when hiring, is forced to second-guess the courts on how much protection the courts would give this employee, and must attempt to provide the same amount. The result is that the court gains a more fair solution, but trades away certainty of the law.

3. Problems with Substantial Hardship in Additional Consideration Test

The purpose of the law should be to facilitate the free movement of workers. Where talent resides in one state and need in another, the marriage of the two requires that one must move. Yet the additional consideration doctrine discourages free movement, because the farther an employee must move to accept the position, the longer he is protected by a just cause contract. This discourages employers from hiring from farther away.

So this adds a dimension to the criteria used by employers to evaluate the best candidate. Whereas, the employer formerly asked questions of merit—what experience, education, knowledge the applicant possessed—the employer now also asks questions such as where the applicant lives, how long he has lived there, what his ties to that community are, whether he was formerly employed and what his salary was.

It also necessitates that the employer ask questions that are inherently bad interview questions. If an employee with a family undergoes more substantial hardship in relocating than a single person, as is suggested by Moore, then the employer must legally protect itself by inquiring whether the applicant has a family. This question is otherwise thought of as an improper question for gender discriminatory reasons.

These are all problems that arise out of the complexity of the additional consideration test. Yet through all the confusion that this test creates, something can be saved. A simple formula describing the elements that the employee must show would be: (1) the employer made some assurance that there was some job security; and that (2) the employee underwent the hardships of resigning and relocating to accept that job. From this, the court may determine that an implied contract for something more than at will employment was created.

D. Examining the Connecticut Doctrine

The Connecticut approach, in its essence, is as follows: if a plaintiff can show: (1) that some statement was made by the employer encouraging him in the belief that the offer was for employment with some job security; and (2) the employee relocated in fact, then the relocation is evidence of the employee's expectations that the contract was for something more than at will. 101

While refusing to adopt the additional consideration test, the court has nevertheless retained the same formula. An employee must show that the employer made some vague assurance of job security, and that the employee relocated on the basis of those assurances. In both cases, what the courts are really finding is an implied contract for something more than at will employment when an employee relocates to accept an offer that promised job security.

This approach has the advantage of promissory estoppel in that it has certainty, and has the advantage of additional consideration in that it allows the relocation itself to affect the employment relationship. In the promissory estoppel theory, the promise is the event that the courts use to enforce a contract; 102 in the additional consideration theory, it is the act of relocating cross-country. 103 In the Connecticut courts, much like additional consideration theory, the court looks to the act of relocating as an event which enables the courts
to draw inferences about the contract. 104

In the additional consideration theory, the amount of hardship determines the amount of time for which the contract is a just cause contract; 105 in promissory estoppel, the court enforces the employee’s expectations to be able to perform his duties to the employer’s satisfaction. 106 This has more certainty. The Connecticut approach attempts to enforce the parties' expectations that the employee be able to perform his duties to the employer's satisfaction. Thus, the Connecticut approach is to form, out of the best elements of promissory estoppel and additional consideration, a method which is nevertheless logically consistent.

Some criticism has fallen upon the Coelho decision, saying that the court has failed to clarify between promissory and contractual issues, and "has led to a blurring of the law." 107 The court never expressly applied the promissory estoppel doctrine, however; the court held that there was an implied contract. 108

The court based its holding in part upon the interview. In the interview, the employer made statements reassuring the employee's concerns about leaving a secure job for the one in question. 109 The jury found that, in reliance upon such implied representations, the employee rejected other offers, sold his house, relocated, and purchased a house near the employer. 110 But the court did not state that it was invoking the promissory estoppel doctrine; Rather, it stated that the evidence of the employee having foregone other jobs, and relocating and purchasing a new home were material proof of his reasonable expectations in light of the promises made to him. 111 The court stated that this evidence fulfilled its function in supporting the plaintiff's version of the terms in dispute. 112 This is a simpler, more streamlined test than the one used to prove promissory estoppel. 113 It is essentially the same test used to show additional consideration.

But the result in all of these doctrines is that actions surrounding the formation of the relationship--actions such as resigning an old job and relocating to accept a new one--may operate to evidence an implied contract for something more than at will employment.

V. Towards a More Equitable Paradigm

A. Economic Efficiency

Providing some protections for an employee who must relocate to accept a position is in the interests of economic efficiency. Laws favorable to relocation facilitate the movement of talent to the site where talent is demanded. The contrary result is that there is great demand for a skill in one part of the country, and a great pool of talent elsewhere in the country, and employees are afraid to move because they may undergo the expense and trouble and risk of relocation only to face termination.

The problem arises because the at will laws do not comport with many employees' and employers' expectations of the laws. Many employees believe that if they leave a secure position and relocate to accept an offer wherein the employer has assured him that the job is secure, then the employee will enjoy some amount of security in fact. In pure at will states they would be incorrect. The result is that employees are giving up good jobs for bad ones. This leads to an inefficient result; we have employees making moves that they should never have made because the employee relocation laws are not what they expected.

At least one state has statutorily enacted provisions to prevent this mishap. Alaska has enacted a statute offering protection for an employee who relocates to accept an employment offer by offering return transportation. 114 The state's purpose in providing this remedy is to prevent the societal dilemma that results when employees relocate, lose their jobs, and then become destitute and a burden upon the state's resources. 115

B. Expectation Theory
Contracts scholars have asserted the theory that contract laws purport to fulfill the expectations of the parties. The courts will enforce the expectations of a reasonable person, had they been promised the same. Thus, the courts look to extrinsic evidence as well as within the four corners of the contract to shed light upon what a reasonable expectation might have been.

One piece of extrinsic evidence is that the employee resigned a job with security and promise, and relocated cross-country to accept an offer with more security and promise. Had the employee contemplated the possibility of being terminated immediately upon arrival, he may have negotiated a clause in his contract protecting against that possibility. This would suggest that in the absence of such a clause, the employee expected that he would not be terminated upon arrival.

The act of relocation, with all its risks and hardships, suggests to us that an employee would not have gone through all that trouble only for an illusory promise of at-will employment. To be certain, expectation theory fulfills the employer's and employee's expectation that when an employee relocates to accept a job, it is with the protections of a just cause relationship.

In essence, this is the Connecticut approach. The Connecticut courts have held, in Coelho and Torosyan, that where: (1) an employer makes a reference to job longevity or security; and (2) in reliance upon that assurance, the employee relocates to accept the position, then the relocation is evidence of the employee's reasonable expectations of job longevity or security. This is consistent with experience; an employee would not rationally surrender a secure job and relocate to risk being terminated at his arrival.

The Minnesota Supreme Court, in applying the promissory estoppel doctrine, gave as its rationale that after going through the expense and trouble and risk of relocation, the employee had a right to assume that he wouldbe given a good faith opportunity to perform his duties to the satisfaction of his employer.

Once courts have established upon what theory they will accord or deny relief to a terminated relocated employee, the next question is of damages. If a court awards damages to a relocated employee, by what measure are they to be awarded?

VI. Damages for Relocated Employees

A. Damages Premised upon Additional Consideration Theory

Since courts that employ additional consideration theory hold that the employee, having provided additional consideration, holds an implied contract for a reasonable time, the courts are logically compelled to award salary to the end of that reasonable time. Here a problem arises, for the amount of time in question is purely speculative. It is impossible to say with certainty how long the relationship would have continued but for the termination.

Pennsylvania, for example, held that the employee is only required to provide the jury with a reasonable amount of information for them to make an estimate without engaging in speculation. Mere uncertainty, the court held, will not bar recovery where it is certain that the damages were the result of the employer's conduct.

B. Damages Premised upon the Parties' Reasonable Expectations

The idea of reasonable expectations itself suggests the nature of damages. Since an employee's reasonable expectations are fulfilled by the court, and the employee is to be given the good faith opportunity to perform his duties to the satisfaction of his employer, then naturally, the amount of damages should be his salary for the amount of time it would have taken him to perform his duties to the satisfaction of the employer--no more.
Measuring damages based upon the expectations of the parties is consistent, for the damages are the amount that the parties intended.

That is, a professor may require two years to become effective at teaching a course and publishing articles. A scientist may require two years to conduct an experiment and publish her findings. A secretary may only require two months to establish that he can perform his duties to the satisfaction, or dissatisfaction, of the employer. For each job description, then, a different amount of time is necessary to provide the opportunity to perform satisfactorily, and the courts should allow the parties to provide evidence as to what amount of time would be necessary. Very likely, the courts would consistently find that two to three years is necessary for a skilled, experienced, or formally educated worker to establish that he can perform satisfactorily. After an employee has been given the opportunity to prove his satisfactory work, it is purely speculative whether that employee would have indeed performed satisfactorily and therefore would have been retained longer; therefore he should not be able to recover on further, speculative damages.

While for some occupations, such as unskilled work or work requiring little formal education, two to four months seems a sufficient time for the employer to see if the employee is performing satisfactorily, these are usually the type of occupations in which people do not relocate for work. If such employees do relocate, their reason is usually other than for an employment offer; the reason for this is that such occupations are diffuse through almost every location, and, moreover, often are not reimbursed sufficiently to compensate one for relocation. Therefore, while this approach at damages offers these workers only a few months damages, this is still appropriate, for their cases are few.

This measure of damages requires that, in the damages hearing, the court hear evidence on how long a gestation time that particular position must be allowed before an employee can fairly establish whether he is satisfactory. Up until that time has expired, his act of resignation and relocation gives him an enforceable reasonable expectation that he will be given that opportunity. Beyond that time, the employee was never given any reasonable expectations as to his job security—not, at any rate, by the mere act of relocation.

This is a more limiting amount of damages than currently exists in additional consideration jurisdictions, but a more logically consistent one, for the quantum of damages would reflect the reason that damages are being given.

1. Premised upon Probationary Periods

Some employers have probationary periods, often lasting from sixty days or ninety days to six months. A probationary period is the initial length of time wherein an employee is unprotected from termination. While this probationary period creates a strong presumption of at will employment, it should therefore also create the presumption that this is at least the length of time in which the employer wishes to gauge the employee's performance before making him a permanent, or nonprobationary employee. Therefore, the length of an employer's probationary period should serve as a guideline in determining the minimum amount of time for which the employee is entitled to prove that he was performing satisfactorily.

VII. Practical Advice

A. Limiting the Employer's Liability

Employers can take practical lessons from the study of employee relocation jurisprudence. An employer, with the best of intentions, may, in an interview, assure an employee that he hopes the relationship is a long one, or that they will retire together. But these are promises an employer cannot keep, for he is in no better position to predict the future than the employee. These assurances are best left unspoken.

In every jurisdiction that has constructed a theory of protection for the employee who relocated--be that theory
promissory estoppel, additional consideration, or Connecticut's reasonable expectations theory—a required
element of their analysis is that the employer made some statement of job security, however vague. Ultimately, these employers have found their unsuspecting remarks to be the centerpiece of suits.

Another common error that employers make is to premise their hiring decisions on the notion that since employment is at will, not as much thought need be put into the hiring decisions until after the employer has hired a full staff. Often, immediately after the offer is made the employer decides that he does not in fact need to fill that position, or that business is not good enough to support that position and revokes the offer. An employer can limit its exposure to litigation by more carefully examining his needs before he hires an employee. The mere fact that the employee is at will is not, in all states, license to hire frivolously.

Employers in states where some protection is offered to the relocating employee must beware of the expectations that may be created by the vagueness of the length or termination procedures of the position. Further, some courts will hold that an employer's past termination practices, or an employer's policies set forth in an employment handbook or manual, may be used as evidence of the nature of the relationship of the relocated employee.

In practical reality, it is unlikely that an interviewing applicant will ask an employer for contract terms that will protect him in the event of termination. Such a clause has the unpalatability of a prenuptial marriage agreement; the contract, by anticipating, predicts the failure of the relationship. Thus, when an employee negotiates—or even suggests—a contract that will protect him against termination after relocating, he has compromised his job even as he has secured it.

The result is that this term never gets negotiated. While the parties discuss everything from salary to pension plans to office furniture, they never give utterance to the ultimate issue: have I asked this employee to give up a secure job and relocate here with no guarantees of good faith whatsoever?

In states where the law infers from the circumstances that relocation effectively rebuts the at will relationship, the employer must be careful to articulate that this is an at will contract. Even in states where the court holds steadfastly to the at will doctrine, and holds that relocation has no effect upon the at will relationship, the employer must still be cautious. The employer must still carefully examine his past employment practices, and his employment handbook or manual, to see if these are not at odds with his assertion that the relocated employee was hired at will.

B. Proving the Employee's Case

The employment law practitioner must carefully examine the jurisprudence that his jurisdiction has developed before setting out to prove the necessary elements of his case. In states applying the additional consideration test, for example, the employee must demonstrate that the employee underwent a substantial hardship by relocating to accept the job offer, and that the employer made some promise of job security. By contrast, in jurisdictions which adopt a pure employment at will rule, the employee must demonstrate that the employer's promise of job security clearly placed the employee out of the employment at will rule. The employee must demonstrate that he had an express contract which permitted only just cause termination. For, in many of the pure at will jurisdictions, such as Virginia and North Carolina, the courts have refused entirely to recognize an implied contract in the employment setting. Thus the elements necessary to proving a wrongful termination subsequent to an employee's relocation is to demonstrate that an express contract existed.

VIII. Conclusion

Courts have offered many approaches to the issue of employees who relocate to accept an offer. It is important not to focus on the varying ways these courts view employee relocation, but Rather to view the
employee relocation jurisprudence as a whole. For while states apply the promissory estoppel doctrine, the additional consideration test, or the Connecticut approach, these courts are all really doing the same thing: they are finding that an implied contract arose out of a promise of job security and a relocation to accept that job.

For their credibility, courts must take a posture which is consonant of the expectations of the parties to contract. All courts recognize the implied contract in contract law while many courts refuse to recognize it in employment contracts. Yet arising out of the facts and acts of the formation of the contract, an implied contract is often created.

The implied contract concept recognizes that an employee with a good job is not likely to have intended to resign and relocate across the country for the possibility of being terminated upon his arrival. The parties intended to give the employee a good faith opportunity to perform his duties to the satisfaction of the employer. Thus the employer's promise of job security and the employee's act of relocating to accept that offer create an implied contract for something more than at will employment.

In the employment contract, as with all contracts, courts should enforce the parties' expectations when an employee relocates, by finding that an implied contract was formed by the parties' acts of promise and relocation.

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[FN4]. For a look at the public policy exception to the At-Will Doctrine, see generally Lisa B. Bingham, Employee Free Speech in the Workplace: Using the First Amendment as Public Policy for Wrongful Discharge Actions, 55 OHIO ST.L.J. 341 (1994); Elletta S. Callahan, The Public Policy Exception to the Employment At Will Rule Comes of Age: A Proposed Framework for Analysis, 29 AM.BUS.L.J. 481 (1991); Frank J. Cavico,


[FN8]. Lini S. Kadaba, Pulling Up Stakes No Bull: Moving Is No Fun, GREENSBORO NEWS & RECORD, Dec. 4, 1994, at G3. Employers may recognize the importance of relocation not only in its frequency, but its cost, often reaching tens of thousands of dollars per home-owning employee. Id.


[FN10]. See supra notes 7-9 and accompanying text.


[FN12]. In one Alabama relocation case, the employee failed to establish fraud, even though the employer stated the employee had excellent prospects with the company and then later terminated him. Selby v. Quartrol Corp., 514 So.2d 1294, 1299 (Ala.1987). Alaska has enacted a statute that requires any employer who pays for relocation to Alaska to also pay for return passage, should that employee be terminated. See Vail v. Coffman Eng'rs, 778 P.2d 211, 216 (Alaska 1989). California has enacted a statute which prohibits the employer from fraudulent misrepresentation in order to induce an employee to relocate. See Schultz v. Spraylat Corp., 866 F.Supp. 1535, 1546 (C.D.Cal.1994); Lazar v. Rykoff-Sexton, Inc., 35 Cal.Rptr.2d 578, 581 (Cal.Ct.App.1994); Tyco Indus. v. Richards, 211 Cal.Rptr. 540, 545 (Cal.Ct.App.1985). Florida has heard a case wherein the employee was terminated after having prepared for a year, going through customs and
immigrations preparations, in order to relocate from the United Kingdom to Florida, and all that while the employer knew but did not tell the employee that it had no work for him and he was terminated upon his arrival; the court held that employment at will required reasonable notice of termination, and that here, reasonable notice would mean that if the employer knew before the employee left the U.K. that the employee would not have a job, the employer should have notified the employee before he left the U.K. for Florida. See Crawford v. Shapiro, 490 So.2d 993, 995-96 (Fla.Dist.Ct.App. 1986).

[FN13]. Horizon Corp. v. Weinberg, 531 P.2d 1153 (Ariz.Ct.App.1975) (holding the employee had provided insufficient evidence to rebut the at will presumption, where the employer offered relocation expenses and an assurance that employment was for an indefinitely long period of time— at least one year; the employee severed an advantageous employment relationship with former employer, withdrew from his graduate studies, severed ties to friends and family, and relocated from Chicago to Tuscon; and the employer terminated employee after seven months). Selby v. Quartrol Corp., 514 So.2d 1294 (Ala.1987) (holding employer’s oral statement insufficient to defeat at will presumption where employee relocated from Arkansas to Alabama; the employee asked if he should build a new home and the employer said yes, the employee had excellent prospects with company. The employee was terminated after 14 months. The court held that the employer’s oral statement was not enough to defeat employment at will). Snoey v. Advanced Forming Technology, Inc., 844 F.Supp. 1394 (D.Colo.1994) (holding employment was at will when the employer hired the employee, who moved to Colorado, and was terminated after two months. The court held that there was no evidence that the relocation was in reliance upon the employer’s offer, and therefore, the employment was at will.). Romack v. Public Serv. Co., 499 N.E.2d 768 (Ind.Ct.App.1986) (holding that employment is at will unless the contract is for a five year term when employee said he already had permanent employment and would only consider if this job had same permanency, to which the employer responded that the employee would have such permanent employment. The employee then purchased real estate, at the request of the employer, and relocated his self and family; one year later the employer terminated the employee. The court held that unless the contract is for a fixed term, employment is at will. The court further held that since moving expenses have been paid, there is no detrimental reliance). Ohio Table Pad Co. v. Hogan, 424 N.E.2d 144 (Ind.Ct.App.1981) (holding insufficient additional consideration to support finding of good cause contract when the employee accepted job, moved from Ft. Wayne, Indiana to LaGrange, Indiana, and was terminated after three years. The court held that moving and purchasing a new house are not enough additional consideration to support a good cause contract). Zerby v. Hechinger Co., No. CIV.A. 91-2108, 1991 WL 175452 (E.D.Pa. Sept. 5, 1991) (holding that Maryland will not allow Employment At Will presumption to be rebutted by the fact that employee left old job or relocated). Schenk v. Red Sage, Inc., No. CIV.A. 91-7868, 1994 WL 18630 (S.D.N.Y. Jan. 21, 1994) (awarding as damages only what relocation agreement allows; does not imply into the agreement any duties or debts; thus, in Schenk, court allowed moving costs only, not rent, nor security deposits). Peters v. MCI Telecommunications Corp., No. CIV.A. 87-8335, 1989 WL 67220, at *2 (S.D.N.Y. June 14, 1989) (holding that for relocating, and being terminated thereafter, an employee cannot get breach of contract for employment). House v. Cannon Mills Co., 713 F.Supp. 159 (M.D.N.C.1988) (holding that the employee’s act of changing jobs and relocating does not constitute additional consideration over and above ordinary exchange of services for wages as would remove the employment contract from the at will rule). Rupinsky v. Miller Brewing Co., 627 F.Supp. 1181 (W.D.Pa.1986) (following North Carolina law the court held that employer must offer of permanent employment, else relocation has no effect upon employment at will). Salt v. Applied Analytical, Inc., 412 S.E.2d 97 (N.C.Ct.App.1991) (holding that since there was relocation, but not assurance or promise of a just cause or permanent employment, the relationship was at will.). Spoone v. Seaman Corp., No. CIV.A. 90-413, 1990 WL 103745 (Ohio Ct.App. July 20, 1990) (holding that the promise of employment was so vague, employee, after fifteen years of working at the employer’s Ohio plant, was asked to transfer to their plant in Bristol, Tennessee; employee moved from Ohio to Tennessee, and was fired shortly thereafter and that there was no meeting of the minds). Sartin v. Mazur, 375 S.E.2d 741, 742 (Va.1989) (holding employment was at will when employee was offered a job and relocated to accept it; she was terminated on her starting day. The court held that it would be absurd for the court to require the employer to hire the employee for one day, and then terminate the employee instead of terminating the employee before the employee starts).

[FN14]. See supra note 13 and authorities cited therein.

[FN16]. Id. at 1156.

[FN17]. Sartin, 375 S.E.2d at 743 ("it would be absurd," the court reasoned, to require the employer to actually employ the employee for one hour so that the employee could then be discharged).


[FN19]. Id. at 742.

[FN20]. Id. at 743 (reasoning that "it would be absurd," to require the employer to actually employ the employee for one hour so that the employee could then be discharged). Some courts have held the converse: that the employer should be allowed to terminate neither immediately after the relationship commences nor before the first day of work. This is the position taken by the Minnesota courts, discussed below.


[FN22]. Id.

[FN23]. Id.

[FN24]. Id.

[FN25]. Id.

[FN26]. Gould v. Artisoft, Inc., 1 F.3d 544, 549 (7th Cir.1993) (holding that a promise in exchange for a promise is adequate consideration for the court to recognize the formation of a contract); Sheppard v. Morgan Keegan & Co., 266 Cal.Rptr. 784 (Cal.Ct.App.1990) (holding where employee was terminated after making preparations to relocate but before having relocated that the employer's conduct is governed by the doctrine of promissory estoppel); Grouse v. Group Health Plan, Inc., 306 N.W.2d 114 (Minn.1981) (holding where the employer terminated the acceptee before he even relocated to begin work, that the promise to hire implied the contract principle of promissory estoppel, and saying that the employee had a right to assume that he would be given a good faith opportunity to perform his duties to the employer's satisfaction once he was on the job); Forrer v. Sears, Roebuck & Co., 153 N.W.2d 587, 589 (Wis.1967) (holding that where the employee sold farm, livestock and equipment in order to accept employment, and was terminated four months later, that although the promissory estoppel doctrine applied, the promise was in fact kept because he was hired) (citing Hoffman v. Red Owl Stores, Inc., 133 N.W.2d 267 (Wis.1965)); Reimer v. Badger Wholesale Co., Inc., 433 N.W.2d 592, 594 (Wis.Ct.App.1988) (holding that an employee who moved in reliance of employer's promises could recover damages incurred in reliance of the promise).


[FN29]. Id.

[FN30]. The Seventh Circuit, interpreting Illinois law, has even held that the mere promise to relocate is sufficient to estop the employer from revoking his promise to employ. See Gould v. Artisoft, Inc., 1 F.3d 544, 549 (7th Cir.1993). A promise in exchange for a promise is sufficient for the formation of a contract, and each
promise binds the parties to their agreement.  Id. at 550.  In Gould, a promise to relocate was binding enough to have detrimentally changed the position of the employee, and thus the employer was estopped from altering the contract.  Id.

[FN31]. Grouse, 306 N.W.2d at 116.

[FN32]. 153 N.W.2d 587 (Wis.1967).

[FN33]. Id. at 589.

[FN34]. Id. at 588.

[FN35]. Id. at 588-90.

[FN36]. Ohanian v. Avis Rent A Car Sys., Inc., 779 F.2d 101, 104-05 (2d Cir.1985) (holding that where the employer, in order to attract the employee, continued to assure the employee that he would have a secure job if he moved from the west coast to New York, and then terminated him shortly after his commencement, the employee had provided sufficient additional consideration to find a just cause contract existed); Lucacher v. Kerson, 48 A.2d 857, 857- 58 (Pa.1946) (holding the jury may examine the circumstances surrounding the formation of the contract, such as resignation of old employment and relocation, to conclude that there is an enforceable contract); Scullion v. EMECO Indus., Inc., 580 A.2d 1356, 1358-59 (Pa.Super.Ct.1990); Veno v. Meredith, 515 A.2d 571, 577 (Pa.Super.Ct.1986).  Other states have heard cases where the additional consideration doctrine was raised in the context of an employee relocating to accept an offer, but have either applied it so narrowly that, in effect, relocation is not sufficient additional consideration, or have merely held that the issue was one which merited proceedings: Murphree v. Alabama Farm Bureau Ins. Co., 449 So.2d 1218, 1221 (Ala.1984) (holding that employee's relocating to accept an offer was sufficient evidence of additional consideration to warrant a hearing as to whether a permanent contract may have existed); Salt v. Applied Analytical, Inc., 412 S.E.2d 97, 100-01 (N.C.Ct.App.1991) (holding that while North Carolina cases have applied additional consideration, this plaintiff, who relocated to accept employment, had failed to show sufficient hardship for additional consideration to be found).

[FN37]. Often, the statement is of the nature: "[your] future is secure in the company, unless [you] screw up badly." Ohanian, 779 F.2d at 104.

[FN38]. See id. at 109.


[FN40]. Id. at 314.

[FN41]. Id.


[FN43]. Darlington, 504 A.2d at 308.

[FN44]. Id. at 311.

[FN45]. Id.
[FN46]. Scullion v. EMECO Indus., Inc., 580 A.2d 1356, 1359 (Pa.Super.1990) (holding that where the employee turned down other offers, turned down his former employer's incentive to remain, relocated himself and family from California to Pennsylvania, sold his old home and purchased a building lot in Pennsylvania, and was discharged two months later, the Pennsylvania court found that this was sufficient evidence to support the jury's finding that an implied contract for a reasonable time existed). While not establishing exactly how long a reasonable time might have been in this instance, the court held that three months was certainly not it, but far shorter than a reasonable time. (This posture is tantamount to the court saying: "We may not know what is a reasonable time, but we know when it isn't."


[FN49]. Id. at 494-95.


[FN51]. Id. at *1.

[FN52]. Id. at *5.

[FN53]. Id. at *4.


[FN55]. See id. at 583.

[FN56]. An employer's vague statement assuring the employee of some job security often sounds like that in Coelho: "If you come to work with us, you'll never have to worry. Grow with us into the future. As long as you do your job, you'll have a good future with us." Coelho v. Posi-Seal Int'l, Inc., 544 A.2d 170, 172 (Conn.1988).

[FN57]. Id. at 177; Torosyan v. Boehringer Ingelheim Phar., Inc., No. C.V. 86-0043446, 1993 WL 21213 (Conn.Super.Ct. Jan. 25, 1993), supplemented, No. C.V. 86-0043446, 1993 WL 128204 (Conn.Super.Ct. April 15, 1993), aff'd, 662 A.2d 89 (Conn.1995) (finding material proof of employee's reasonable expectations, in light of employer's promises about job security, and when, in reliance, employee quit old job, sold his old home, relocated to California, bought a home and took out a mortgage, when employer, in response to employee's concerns about relocating cross-country and the job security employer told employee that if he did a good job, the employer would take care of him and would hope he would stay there forever). Id. at *2.

[FN58]. Coelho, 544 A.2d at 177.

[FN59]. Id. at 177.

[FN60]. Id. at 172.

[FN61]. Id. at 177.

[FN62]. Id.
Coelho, 544 A.2d at 176.

Id.


Coelho, 544 A.2d at 174.


Id.

Id.

Id. at 98.


Salt, 412 S.E.2d at 98.

Id. at 100-01 (suggesting that relocation plus an assurance of termination only for cause would be sufficient additional consideration, but that the plaintiff here did not show that the assurances were of a definite enough nature). Huffman, supra note 71, at 2100-01. This requirement is consistent with other additional consideration courts, such as Pennsylvania. See, e.g., Darlington v. General Elec., 504 A.2d 306, 314-15 (Pa.Super.Ct.1986). The difference between them is that North Carolina requires assurances of far more certainty. Requiring evidence of a just cause assurance to be of this certain a nature effectively renders evidence of relocation superfluous, and the additional consideration test a sham.


Grouse v. Group Health Plan, Inc., 306 N.W.2d 114, 116 (Minn.1981); see also Marsh v. Boyle, 530 A.2d 491, 494 (Pa.Super.Ct.1987) (stating that if additional consideration is proven, but length of time for contract cannot be determined, a "reasonable time" will be inferred); Coelho v. Posi-Seal Int'l, Inc., 544 A.2d 170, 175-76 (Conn.1988) (explaining that as general rule a contract for employment, whether express or implied cannot be terminated at the will of the employer).


It is not even enough, in Colorado, for the employee to show that he did in fact relocate to the site of
the employer and began employment. Snoey v. Advanced Forming Tech., Inc., 844 F.Supp. 1394, 1399 (D.Colo.1994). The employee may be required to show that he relocated primarily because of the employer's offer. Id. An employee relocating to Colorado, told the employer in his interview that he liked Colorado because he wanted to be closer to his wife's family. Id. at 1396. Yet, while the court held that this was evidence that the relocation was not related to the offer, no evidence was raised in the opinion as to whether the employee made this statement to improve his candidacy or because he really meant it. Id.

[FN79]. At least thirty-three jurisdictions have recognized the implied contract theory in employment contracts. Mark A. Rothstein, Wrongful Refusal to Hire: Attacking the Other Half of the Employment-At-Will Rule, 24 CONN.L.REV. 97, 106 (1991) (citing 9A Lab.Rel.Rep. (BNA) 505:51-52 (1989)). By contrast, in other areas of contracts, the implied contract doctrine is well established. See generally JOSEPH M. PERILLO, CORBIN ON CONTRACTS 57-59 (rev. ed. 1993) (noting that "[t]he distinction between an express and an implied contract is of little importance").

[FN80]. See, e.g., Gould v. Artisoft, Inc., 1 F.3d 544, 550 (7th Cir.1993) (noting that the employee had begun making relocation arrangements).


[FN82]. Id.

[FN83]. See Gould, 1 F.3d at 549.

[FN84]. Promissory estoppel is inapplicable to just cause employees because just cause employees have their protection in their just cause contract, not in promises.

[FN85]. See supra note 9 and accompanying text.

[FN86]. See, e.g., Sheppard v. Morgan Keegan & Co., 266 Cal.Rptr. 784, 787 (Cal.Ct.App.1990) (employee was protected by promissory estoppel doctrine where he had not yet begun actively working but had accepted the job and relocated across the country).

[FN87]. 153 N.W.2d 587 (Wis.1967).

[FN88]. Id. at 589.

[FN89]. Id. at 588.

[FN90]. Id. at 589.

[FN91]. 162 N.W.2d 585 (Wis.1968).

[FN92]. Id. at 586.

[FN93]. Id. at 588.

[FN95]. Id. at 785-86.

[FN96]. Id. at 787.

[FN97]. See Forrer v. Sears, Roebuck & Co., 153 N.W.2d 587, 590 (Wis.1967) (stating that the employee should have instead stated a claim that the act of selling off his farm, equipment, and livestock was additional consideration which evidenced a just cause contract). This, however, is strictly obiter dicta.


[FN100]. See infra notes 93-99; and accompanying text; see supra notes 101-103 and accompanying text.


[FN104]. Coelho, 544 A.2d at 177.

[FN105]. Marsh, 530 A.2d at 494 (holding that a "reasonable time" should be "commensurate with the hardship the employee has endured or the benefit he has bestowed") (quoting Veno v. Meredith, 515 A.2d 571, 580 (Pa.Super.Ct.1986)).

[FN106]. Grouse, 306 N.W.2d at 116 (stating that with facts given the employee has "right to assume he would be given a good faith opportunity to perform his duties to the satisfaction of [the employer]").


[FN109]. Id.

[FN110]. Id. at 175.

[FN111]. Id. at 177.

[FN112]. Id.

[FN113]. In states that apply promissory estoppel to situations involving a relocated employee, the courts require that the employee establish the following elements: (1) the promise was one which the promisor should reasonably expect to induce action by promisee; (2) the promise induced such action; and (3) injustice can be avoided only by enforcement of such promise. Forrer v. Sears, Roebuck & Co., 153 N.W.2d 587, 589 (Wis.1967) (citing Hoffman v. Red Owl Stores, Inc., 133 N.W.2d 269, 275 (Wis.1965)). Since, in Connecticut, the court allows additional consideration to be shown, but does not require it, the third part of the promissory estoppel test fails in every case in Connecticut, because an employee may always use the additional consideration approach to avoid injustice. It is premised upon this distinction that I say that therefore Connecticut uses a
different and more streamlined approach than the promissory estoppel approach.


[FN115]. Id. at 213-14.

[FN116]. ARTHUR L. CORBIN, CORBIN ON CONTRACTS § 1, at 2 (1952) (contract laws attempt the realization of reasonable expectations induced by a promise); HOWARD O. HUNTER, MODERN LAW OF CONTRACTS, BREACH AND REMEDIES, § 7.02[2] (1986) (reciting that courts award remedy in the measure of what the nonbreaching party could have expected to have made on the contract; the goal of the courts is to satisfy the promisee as closely as possible, as if there had been performance).

[FN117]. CORBIN, supra note 116, § 1, at 2.

[FN118]. CORBIN, supra note 116, § 1, at 1-2.

[FN119]. See supra notes 93-103 and accompanying text.


[FN122]. Coelho, 544 A.2d at 177; Torosyan, 1993 WL 21213, at *2 (holding that when the employee, in reliance upon assurances by the employer, relocated himself and his family in Connecticut, purchased a home, and obligated himself to a mortgage thereon, this was material proof of his reasonable expectations, in light of the promises made about job security).

[FN123]. Grouse v. Group Health Plan, Inc., 306 N.W.2d 114, 116 (Minn.1981). This, in essence, is the rationale behind the Connecticut cases.


[FN125]. Id.

[FN126]. Indeed, of all the cases cited in this article, or used in researching this article, none involved plaintiffs of unskilled or non-formally educated occupations.


[FN128]. Id. While an at-will employee is also unprotected from termination, courts find that for a probationary employee there is a stronger presumption of at-will; further, probationary employees may lack some benefits, notice and review for termination, and may lack and grievance procedures that are afforded to nonprobationary employees. Id.

[FN129]. Conversely, one employer made an offer of employment "for a minimum period of one year." Weaver v. Shopsmith, Inc., 556 F.Supp. 348, 351-52 (S.D.Ohio 1982). The court held that this was not an employment at will contract, but an express contract for one year, and then an employment at will relationship.
thereafter. Id. at 351-52. Another court held that where the employer assured the employee that he would be working there for "at least two years," the court held that this alone was not sufficient to take the agreement out of the at-will presumption, but that additional consideration was necessary. Marsh v. Boyle, 530 A.2d 491, 494-95 (Pa. Super. Ct. 1987). Thus, such terms are also indicative of a minimum amount of time necessary to prove one's performance is satisfactory.
