**24.15B BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING – EMPLOYMENT**

In every employment [contract/agreement] there is an implied promise of good faith and fair dealing. This implied promise means that neither the employer nor the employee will do anything to unfairly interfere with the right of the other to receive the benefits of the employment relationship. However, the implied promise of good faith and fair dealing does not modify the express terms of the employment [contract/agreement] by adding terms to the employment [contract/agreement] or prohibiting what the terms of the employment [contract/agreement] explicitly permit.

[Employer] violated the implied promise of good faith and fair dealing if you find that it is more likely true than not true that:

(1) [Employer] intentionally prevented [employee] from receiving a benefit under the employment [contract/agreement]; or

(2) [Employer] deprived [employee] of a benefit of the employment [contract/agreement] by acting in a manner that a reasonable person would regard as unfair.

**Use Note**

This instruction should be given when the plaintiff claims that the defendant breached the covenant of good faith and fair dealing in an employment context. Such claims are usually asserted by an employee (not the employer) so the bracketed names identify the employee as the plaintiff, and the employer as the defendant.

This instruction should be given along with Instructions 24.00A or 24.00B [Elements], Instruction 24.03 [Breach] and appropriate instructions on damages, such as Instructions 24.09C or 24.09D.

If there is a dispute about over whether the parties were in an employment relationship, whether the plaintiff performed their obligations under the employment agreement or if defendant claims that their performance was excused, then the following elements can be used as well:

[(1) [Name of plaintiff] and [name of defendant] entered into an employment relationship;]

[(2) That [name of plaintiff] substantially performed [his/her] job duties [unless [name of plaintiff]’s performance was excused [or prevented]];]

[(3) That all conditions required for [name of defendant]’s performance [had occurred/ [or] were excused].

 **Comment**

The covenant of good faith and fair dealing is implied in all contracts. *Laybourn v. City of Wasilla*, 362 P.3d 447, 457 (Alaska 2015) (citing *Anchorage Chrysler Ctr. v. DaimlerChrysler Motors Corp.,* 221 P.3d 977, 992 (Alaska 2009)).

“Every employment contract in Alaska is subject to the implied covenant of good faith and fair dealing.” *Smith v. Anchorage Sch. Dist.*, 240 P.3d 834, 844 (Alaska 2010). “The covenant does not have a precise definition but generally requires employers to treat like employees alike and act in a manner that a reasonable person would regard as fair.” *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751, 760 (Alaska 2008) (citing *Belluomini v. Fred Meyer of Alaska, Inc.,* 993 P.2d 1009, 1012-13 (Alaska 1999)).

“The covenant contains both objective and subjective components. An employer can breach either component.” *Hoendermis v. Advanced Physical Therapy, Inc.*, 251 P.3d 346, 356 (Alaska 2011) (citing *Charles v. Interior Reg'l Hous. Auth.*, 55 P.3d 57, 62 (Alaska 2002)).

“The objective component ‘prohibits the employer from dealing with the employee in a manner that a reasonable person would regard as unfair.’” *Lentine v. State*, 282 P.3d 369, 376 (Alaska 2012) (quoting *Mitchell, Inc.*, 193 P.3d at 761. “An employer can breach the covenant of good faith and fair dealing when it treats members of the same class disparately.” *Mitchell*, 193 P.3d at 760 (citing *Charles*,55 P.3d at 62).

However, “[a]n employer is not objectively unfair by firing an employee due to the employer's belief that the employee is not adequately performing, even if the employer's belief is mistaken.” *Holland v. Union Oil Co. of Cal., Inc.,* 993 P.2d 1026, 1035–36 (Alaska 1999). Similarly, “[a]n employer does not violate the implied covenant of good faith and fair dealing by terminating an at-will employee for a personality conflict with another employee.” *McAnally v. Thompson*, 397 P.3d 322, 328 (Alaska 2017) (quoting *Era Aviation, Inc. v. Seekins*, 973 P.2d 1137, 1141 (Alaska 1999)).

“The implied covenant requires some minimal level of fairness to the employee during an employer’s investigation.” *Mitchell*, 193 P.3d at 760 (ruling that, based on the fact that employer’s personnel policies required an investigation before termination, the employer may have violated the covenant by only speaking with employee for five minutes and never informing employee of the allegations against him). But, “[t]he covenant of good faith and fair dealing will not impose procedural requirements that conflict with what is required by the parties’ agreement.” *Beach v. Handforth-Kome*, 314 P.3d 53, 56 (Alaska 2013).

The subjective component requires proof that “the employer’s termination decision was “actually . . . motivated by an improper or impermissible objective’ – that the decision ‘was actually made in bad faith.’” *Crowley v. State, Dep't of Health & Soc. Servs.*, 253 P.3d 1226, 1230 (Alaska 2011) (citing *Era Aviation, Inc.*, 973 P.2d at 1141). “An employer may breach the implied covenant of good faith and fair dealing when it terminates an employee to deprive her of compensation due under an employment contract.” *Lingley v. Alaska Airlines, Inc.*, 373 P.3d 506 (Alaska 2016) (citing *Mitford v. de Lasala*, 666 P.2d 1000, 1007 (Alaska 1983)). But “[i]t is not unfair for an employer to question or disbelieve, in good faith, an employee’s version of events.” *Smith*, 240 P.3d at 845.