

1 **13-2302. Wrongful discharge; implied contract to discharge only for cause.**

2 In this case you must determine whether there was an implied agreement that
3 _____ (*employee*) could be discharged only for cause. In order for there to
4 be an implied agreement, there must be a promise, representation or conduct sufficiently specific
5 to create a reasonable expectation in the mind of _____ (*employee*) that
6 ~~[[he] [she]]~~ _____ (*employee*) could be discharged only for cause. In
7 determining whether there was an implied agreement, you may consider all the surrounding
8 circumstances, including the parties' words and actions, [what they wanted to accomplish], [the
9 way they dealt with each other], [how other employees in the same or similar circumstances were
10 customarily dealt with by _____ (*employer*)] [and] [any writings,
11 handbooks or procedures used by _____ (*employer*)].

12 [How other employees in the same or similar circumstances were customarily dealt with
13 cannot by itself constitute sufficient evidence to establish an implied contract.] If such an
14 agreement existed, and if _____'s (*employee's*) discharge violated that
15 agreement, then the discharge was wrongful.

16 USE NOTES

17 The bracketed circumstances should be given when the evidence in the case permits. When
18 this instruction is given, it should immediately follow UJI 13-2301 NMRA, and be given with UJI
19 13-2306 NMRA.

20 [Approved, effective January 1, 1999; as amended by Supreme Court Order No. 08-8300-012,
21 effective June 13, 2008; as amended by Supreme Court Order No. S-1-RCR-2025-00126, effective
22 for all cases pending or filed on or after December 31, 2025.]

1 **Committee commentary.** — "New Mexico recognizes an exception to at-will employment for an
2 implied contract based on words and conduct of the parties..., including provisions in a personnel
3 manual or handbook". *Newberry v. Allied Stores, Inc.*, 108 N.M. 424, 426, 773 P.2d 1231, 1233
4 (1989) (citing *Kestenbaum v. Pennzoil Co.*, 108 N.M. 20, 766 P.2d 280 (1988)). Normally, whether
5 there is an implied agreement "is a question of fact to be discerned from the totality of the parties'
6 statements and actions regarding the employment relationship". *Newberry*, 108 N.M. at 427, 773
7 P.2d at 1234; *see also Lukoski v. Sandia Indian Management Co.*, 106 N.M. 664, 666, 748 P.2d
8 507, 509 (1988). In determining whether the at-will employment is altered by an implied contract,
9 all the circumstances surrounding the employment relationship will be considered. *Kestenbaum*;
10 *Newberry*.

11 The ultimate question is whether the employer, by sufficiently specific words or conduct,
12 has created in the employee a "reasonable expectation" of job security. *Hartbarger v. Frank Paxton*
13 *Co.*, 115 N.M. 665, 672, 857 P.2d 776, 783 (1993); *Lukoski*, 106 N.M. at 667, 748 P.2d at 510.

14 The Supreme Court has indicated that the manner in which other employees were treated
15 is not by itself a sufficient basis for finding an implied contract. *Hartbarger*, 115 N.M. at 674, 857
16 P.2d at 785.

17 Where an implied agreement requiring good cause for termination is found, discharge of
18 the employee cannot be justified on the basis of the employer's good faith, but rather must be
19 supported by "reasonable grounds [for the employer] to believe that sufficient cause existed to
20 justify [the employee's] termination". *Kestenbaum*, 108 N.M. at 27, 766 P.2d at 287. This is "an
21 objective standard of reasonable belief". *Id.* at 28, 766 P.2d at 288.

22 **2008 Committee commentary.** — *See also Mealand v. Eastern N.M. Med. Center*, 2001-NMCA-
23 089, ¶ 9, 131 N.M. 65, 33 P.3d 285 (stating that New Mexico adheres to an objective theory of

1 contracts and that regardless of an employer's subjective intent, the employer may be bound by
2 words in an employee handbook that support reasonable expectations on the part of the employee
3 of specified procedures, and noting a potential conflict with *Garrity v. Overland Sheepskin Co. of*
4 *Taos*, 1996-NMSC-032, ¶ 12, 121 N.M. 710, 917 P.2d 1382 (holding that a manual could not
5 create a reasonable expectation of an implied contract when it contained an express reservation of
6 the right to terminate an employee for any reason); *Garcia v. Middle Rio Grande Conservancy*
7 *Dist.*, 1996-NMSC-029, ¶ 20 (holding that the conservancy district's written personnel policy
8 constituted an implied employment contract and a valid written contract for the purposes of
9 governmental immunity); *Sanchez v. The New Mexican*, 106 N.M. 76, 78, 738 P.2d 1321, 1324
10 (1987) (holding that an employee handbook did not constitute an implied contract when the
11 language lacked specific contractual terms, made no promises, but simply declared a general
12 approach to employment).