

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
JUDGE

SUSSEX COUNTY COURTHOUSE
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December 8, 2014

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RE: Ismael Torres, Jr. v. Sussex County Council
C.A. No. S14C-05-023 THG

Dear Parties:

Before the Court is Sussex County Council's ("Defendant") Motion to Dismiss pursuant to Delaware Superior Court Civil Rule 12(b)(6) as to Ismael Torres, Jr.'s ("Plaintiff") remaining causes of action. In his amended complaint, Plaintiff asserts six claims against Defendant: (1) Wrongful Termination; (2) Wrongful Termination in Violation of Sussex County Personnel Code §29-15; (3) Wrongful Termination in Violation of Sussex County Personnel Code §29-18; (4) Breach of Contract pursuant to Sussex County Personnel Code §29-24; (5) Breach of Contract pursuant to Sussex County Personnel Code §29-25; and (6) Breach of the Implied Covenant of Good Faith and Fair Dealing. For the following reasons, Defendant's Motion to Dismiss is **GRANTED** for all six claims.

Facts

Plaintiff began his employment with Defendant on May 20, 2011. He was hired as a deputy

sheriff and reported directly to Chief Deputy Dennis Lineweaver and Sheriff Jeff Christopher (“Christopher”). Plaintiff’s primary duty was to serve legal papers for the Sussex County Courts. Plaintiff served court papers using a county owned vehicle, which was equipped with a personal computer he used to log his daily activities.¹ The county vehicle was also equipped with a GPS device that automatically recorded the vehicle’s location, speed, odometer values, and when the vehicle was turned on or off.²

On March 27, 2012, Plaintiff was on duty and attended a County Council meeting. County policy prohibited deputy sheriffs from attending County Council meetings unless they were there on official business.³ Plaintiff was not present at the meeting on official business. When Plaintiff submitted his weekly overtime report, it included the time he spent at the County Council meeting.⁴ This prompted Defendant, through the County Administrator, Todd Lawson (“Lawson”), to investigate Plaintiff’s overtime reports.⁵ A comparison of Plaintiff’s daily logs and the vehicle’s GPS records showed Plaintiff was inflating his overtime.⁶ Defendant then terminated Plaintiff for misconduct, namely misappropriated overtime, falsifying documents, and abuse of County time.

After his termination, Plaintiff invoked his rights under the Sussex County Personnel Code (“the Ordinance”) §29-15 (C)-(F) and participated in a two-day hearing before the County Personnel

¹ One of the daily activities Plaintiff would record was when and where he served legal papers.

² *Torres v. Sussex Cnty Council*, 2013 WL 6407711, *1 (Del. Super. Nov. 14, 2013).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Board. The County Personnel Board⁷ upheld Plaintiff's termination.

After his termination, Plaintiff filed a claim for unemployment benefits with the Delaware Department of Labor–Division of Unemployment Insurance. Plaintiff was awarded benefits at the referee level, but denied benefits by the Unemployment Insurance Appeal Board (“UIAB”). Plaintiff appealed the UIAB’s denial of benefits to the Delaware Superior Court, which affirmed the UIAB’s decision, finding:

[Plaintiff] falsified his daily logs, causing the County to pay him for overtime he was not entitled to receive. This amounts to willful and wanton misconduct in violation of his employer’s interest, his duties, and his expected standard of conduct. The Board’s decision is based upon substantial evidence in the record and is free from legal error.⁸

On May 22, 2014, Plaintiff initiated the instant matter against Defendant when he filed his initial complaint. Shortly thereafter, Plaintiff amended his complaint, and served it to Defendant, the Department of Human Resources of Sussex County (“the Department”), Lawson, and Karen Brewington (“Brewington”) (collectively “the Defendants”). The Defendants then filed a motion to dismiss, which was subsequently granted. Thereafter, by stipulation, Plaintiff voluntarily dismissed Count III ⁹ of his amended complaint. This letter addresses the remaining counts of Plaintiff’s complaint.

Standard of Review

The standards for a Rule 12(b)(6) motion to dismiss in Delaware are clearly defined. The

⁷ According to 9 *Del. C.* §7006(b), the Personnel Board “consists of 3 members appointed by the county government for terms of 3 years from among the qualified voters of the County.”

⁸ *Torres* at *5.

⁹ Count III of Plaintiff’s amended complaint addressed §29-18 of the Ordinance. Section 29-18 states “[n]o person shall be appointed to or removed from or in any way favored or discriminated against with respect to any county position . . . because of race, color, [or] national origin . . .” Count III asserted Plaintiff was fired due to him being “the only Hispanic person employed with the county.” ¶32-34 of Complaint.

Court must accept all well pled allegations as true.¹⁰ The Court must then determine whether a plaintiff may recover under any reasonable set of circumstances that are susceptible of proof.¹¹ Dismissal will not be granted if the complaint “gives general notice as to the nature of the claim asserted against the defendant.”¹² A claim will not be dismissed unless it is clearly without merit, which may be either a matter of law or fact.¹³ Vagueness or lack of detail in the pleaded claim are insufficient grounds upon which to dismiss a complaint under Rule 12(b)(6).¹⁴ If there is a basis upon which the plaintiff may recover, the motion is denied.¹⁵ However, if allegations are merely conclusory, i.e. without specific allegations of fact to support them, they may be deemed insufficient to withstand a motion to dismiss.¹⁶

Discussion

There are two preliminary matters that must be addressed prior to an analysis of the remaining claims. First, Plaintiff’s claims against the Department, Lawson, and Brewington were voluntarily dismissed by Plaintiff because they are not necessary parties to the action. Plaintiff noted in his Answering Brief that he was suing the Department, Lawson, and Brewington in their official capacities. The Stipulation dated September 29, 2014 disposed of any claims against these parties.

¹⁰ *Magnolia’s at Bethany, LLC v. Artesian Consulting Engineers, Inc.*, 2011 WL 4826106, *2 (Del. Super. Sept. 19, 2011).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Lord v. Souder*, 748 A.2d 393, 398 (Del. 2000).

Second, Counts I and VII are in fact one cause of action. Count I alleges wrongful termination and Count VII alleges Defendant breached the Implied Covenant of Good Faith and Fair Dealing (“the Implied Covenant”). Defendant notes that Delaware does not recognize the claim of wrongful termination due to the Doctrine of At-will employment (“At-will Doctrine”).¹⁷ However, Plaintiff is correct that Delaware will recognize wrongful termination in limited circumstances, such as when the Implied Covenant is breached.¹⁸ Because Plaintiff asserts these claims separately in the complaint, but later links them together in his Answering Brief, they will be addressed together.

Counts II and IV
Authority to Create a Private Cause of Action

In Delaware, an agency, or political subdivision of a branch of government,¹⁹ can create regulations and ordinances having the force of law, which can create private causes of action.²⁰ For an ordinance or regulation to create a private cause of action, the General Assembly must explicitly delegate such power to the entity by statute.²¹ When the General Assembly has not granted the power to regulate and enforce there can be no private cause of action.²²

The county or agency must also intend to create a private cause of action. Delaware has

¹⁷ See, *Goldman v. Braunstein’s, Inc.*, 240 A.2d 577 (Del. 1968).

¹⁸ *E.I. duPont de Nemours v. Pressman*, 679 A.2d 436, 441-42 (Del. 1996).

¹⁹ Like administrative agencies have been given power to regulate the implementation of legislative actions or the ability to weigh in on particular matters, county governments are also granted the ability to manage the affairs of the county and their employees.

²⁰ See, *Sammons v. Ridgeway*, 293 A.2d 547 (Del. 1972) (Delaware Supreme Court found that the State Board of Education was granted legislative authority by the General Assembly via 14 *Del. C.* §2901 to “adopt and enforce regulation[s] . . . to govern the operation of all” school buses, and that the plaintiffs were entitled to use the regulation to establish negligence *per se*.”).

²¹ *Id.* at 549.

²² *Id.* at 550 (in effect the ordinance or regulation merely becomes an internal guideline or a recommendation on how to handle an issue for the entity promulgating them).

adopted the United States Supreme Court’s test in *Cort v. Ash*, 422 U.S. 66, 78 (1975) to determine the existence of a private cause of action.²³ The *Cort* test asks: “(1) Is the Plaintiff of the class for whose special benefit the statute was enacted? (2) Is there any indication of a legislative intent, express or implied, to create a private remedy or deny one? (3) Is it consistent with the underlying purpose of the legislative plan to imply a private remedy?”²⁴

The County’s Procedures for Removal

The General Assembly has granted the County Administrator of Sussex County the responsibility of creating and administering the personnel system for Sussex County employees.²⁵ The personnel rules must address “[t]he policies and procedures regulating reduction in force and removal of employees.”²⁶ However, “[e]mployment or dismissal of county employees is subject to the approval of the county government, in its discretion.”²⁷

In compliance with 9 *Del. C.* §7006, the Sussex County government adopted the Ordinance.²⁸ Section 29-15 of the Ordinance states “[t]he tenure of every employee shall be conditioned on good behavior and the satisfactory performance of duties Any employee in the classified and unclassified²⁹ services may be . . . separated by . . . dismissal as designated by this section.”³⁰ The

²³ *Miller v. Spicer*, 602 A.2d 65, 67 (Del. 1991).

²⁴ *Id.*

²⁵ 9 *Del. C.* §7006 (a), (c).

²⁶ 9 *Del. C.* §7006 (c)(4).

²⁷ 9 *Del. C.* §7006.

²⁸ *Sussex Cty. Del. C.*, §29-1 (“This chapter is adopted pursuant to and in compliance with 9 *Del. C.* §7006. It shall be known as the ‘Personnel Ordinance.’”).

²⁹ A deputy sheriff is a member of the unclassified service.

³⁰ *Sussex Cty. Del. C.*, §29-15.

Ordinance goes on to state:

A permanent employee may be dismissed . . . whenever, in the judgment of the Administrator, after consultation with the department head, the employee's work or misconduct so warrants. When the Administrator decides to take such action, he shall file with the employee and the Personnel Board a written notification containing a statement of the substantial reasons for the action. The employee shall be notified not later than the effective date of the action. The notice shall inform the employee that he shall be allowed two (2) calendar weeks from the effective date of the action to file a reply with the Administrator and the Personnel Board and to request a hearing before the Personnel Board.³¹

“If the employee files a reply and requests a hearing . . . , the Personnel Board shall schedule a hearing . . . after receiving the appeal.”³² Finally:

If the Board finds the action was based on political,³³ religious, or racial prejudice, or that the Administrator failed to follow the proper procedure outlined in Subsection C, the employee shall be reinstated to his former position In all other cases wherein the Board does not sustain the action of the Administrator, the Board's findings and recommendations shall be advisory in nature, and the Administrator may affirm the original action or modify it³⁴

Application

Count II of Plaintiff's complaint asserts that Plaintiff was wrongfully terminated from employment because Defendant did not follow the proper procedures stated in the Ordinance prior to firing him. He states that Sheriff Christopher was not consulted prior to his termination, as required under §29-15 (C) of the Ordinance. However, the Ordinance does not create a private cause of action. The Ordinance merely establishes the procedures for removal; it does not to create the tort of wrongful termination. Though 9 *Del. C.* §7006 does require the Defendant to establish policies

³¹ Sussex Cty. *Del. C.* §29-15 (C).

³² Sussex Cty. *Del. C.* §29-15 (D).

³³ Section 29-18 states “[n]o person shall be . . . removed from . . . or discriminated against with respect to any county position . . . because of race, color, national origin, sex, or political or religious affiliations.”

³⁴ Sussex Cty. *Del. C.* §29-15 (F).

and procedures for removal of employees,³⁵ and §29-15 (F) of the Ordinance allows for reinstatement if the Personnel Board finds the removal procedures were not followed,³⁶ those mandates are qualified by “. . . dismissal of county employees is subject to the approval of the county government, *in its discretion* (emphasis added).”³⁷

Further, §29-15 (C) of the Ordinance does not show, expressly or impliedly, any indication of legislative intent to create a private cause of action; the second prong of the *Cort* test. A violation of §29-15(C) might invoke procedural due process issues since it is meant to provide a limited right of review and establishes an internal procedure for removing employees. However, in establishing the Ordinance, Defendant did not intend to create a statute that could subject it to civil liability. Thus, if anything, §29-15 (C) is more akin to an internal guideline, which does not have the force of law, than a statutory prohibition.

Plaintiff relies on *Meding v. Hurd* to support his argument that an ordinance can create a private cause of action. However, Plaintiff’s reliance on *Meding* is misplaced. *Meding*, addresses the issue of procedural due process prior to a deprivation of a property interest.³⁸ If an employee has a property interest in continued employment, established by contract or ordinance, the employee is entitled to a hearing prior to his termination.³⁹ The *Meding* court determined the plaintiff in that case

³⁵ 9 *Del. C.* §7006.

³⁶ Though Lawson was to discuss Plaintiff’s termination with Christopher, §29-15 (F) states that the Personnel Board is entrusted to determine if the County Administrator failed to follow the necessary removal procedures. Here, however, Plaintiff received a hearing pursuant to §29-15 (C) and (D), and the Personnel Board did not determine Plaintiff’s removal violated any section or procedural requirement of the Ordinance. Therefore, no violation of the removal procedures occurred.

³⁷ *Id.*

³⁸ *See, Meding v. Hurd*, 607 F. Supp. 1088, 1105, 1107-08 (D. Del. 1985).

³⁹ *Id.* at 1105, 1107-08.

was entitled to notice and a hearing with regard to his assumed resignation prior to his termination.⁴⁰ Here Plaintiff is asserting he was wrongfully terminated and that the Ordinance created a private cause of action allowing him to sue Defendant for damages. Plaintiff is not arguing that his due process rights were violated by his termination, and how could he? Plaintiff took complete and full advantage of his due process rights by opting to hold a termination hearing pursuant to §29-15 (D) of the Ordinance. Such a procedural safeguard does not create a private cause of action for the tort of wrongful termination. Therefore, Count II is dismissed.

Count IV is likewise dismissed. Plaintiff alleges he was removed due to political discrimination, which is prohibited under §29-18 of the Ordinance. However, Plaintiff has failed to allege any facts that could possibly indicate his political party registration, or his political ideology, dictated Defendant's decision to terminate his employment. He only alleges that Lawson, the County Administrator, was publically in opposition to the Sheriff's office. The pleadings are insufficient to indicate politics dictated any sort of employment decision.⁴¹

Finally, assuming *arguendo* that Counts II and IV were sufficient to survive a motion to dismiss, they are barred by the doctrine of collateral estoppel. “[I]f a court has decided an issue of fact necessary to its judgment, that decision precludes relitigation of the issue in a suit on a different cause of action involving a party to the first case.”⁴² This doctrine not only extends to issues decided by courts, but also those decided by administrative agencies acting in a judicial capacity.⁴³

⁴⁰ *Id.* at 1107-08.

⁴¹ The Personnel Board did not find any sort of political discrimination at Plaintiff's §29-15 (C) hearing.

⁴² *Messick v. Star Enterprise*, 655 A.2d 1209, 1211 (Del. 1995).

⁴³ *Id.*

In *Torres v. Sussex Cty. Council*, this Court affirmed the decision of the UIAB, finding Plaintiff's actions "amount[ed] to willful and wanton misconduct in violation of his employer's interest, his duties, and his expected standard of conduct."⁴⁴ Because the UIAB, and this Court, have already determined Plaintiff was terminated for just cause, he is precluded from relitigating that determination through these claims.

Counts I and VII **Wrongful Termination**

In Delaware there is a strong presumption an employment contract, unless otherwise expressly stated, is at-will in nature, with potential indefinite duration.⁴⁵ At-will employees may be terminated for any reason, at any time, with or without cause.⁴⁶ Based on the At-will Doctrine, a former employee cannot have a claim for wrongful termination unless his employment contract expressly states his employment is not at-will.⁴⁷ Only then will a former employee be able to assert a claim of wrongful termination based on contract theory.⁴⁸

The Implied Covenant of Good Faith and Fair Dealing

Over the past couple decades the Delaware courts have slightly abrogated the *laissez-faire* mindset of the At-will Doctrine in two ways: (1) the doctrine of promissory estoppel;⁴⁹ and (2) the Implied Covenant.⁵⁰ The Delaware Supreme Court determined that the Implied Covenant is

⁴⁴ *Torres*, 2013 WL 6407711 at *5.

⁴⁵ *Rizzitiello v. McDonalds Corp.*, 868 A.2d 825, 830 (Del. 2005).

⁴⁶ *Lord*, 748 A.2d at 398.

⁴⁷ *Rizzitiello*, 868 A.2d at 830.

⁴⁸ *See, Goldman*, 240 A.2d at 578.

⁴⁹ *See, Lord*, 748 A.2d at 398.

⁵⁰ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 101-02 (Del. 1992).

automatically incorporated into employment contracts,⁵¹ and has interpreted it to apply in a variety of scenarios.⁵²

The Implied Covenant acts to exclude a wide range of heterogeneous forms of bad faith with regard to parties carrying out their obligations under a contract.⁵³ The Implied Covenant requires a party to a contract to “refrain from arbitrary or unreasonable actions which prevent the other party from receiving the fruits of the bargain.”⁵⁴ Parties breach the Implied Covenant when their conduct frustrates the ultimate purpose of the contract by taking advantage of their position to control implementation of the contract’s terms.⁵⁵ However, for the Implied Covenant to apply, an actual contract must exist and the contract cannot specifically address the complained of conduct.⁵⁶ As such, the Implied Covenant is rarely used, only being applicable when it is “clear from the [contract] that the contracting parties ‘would have agreed to proscribe the act later complained of . . . had they thought to negotiate with respect to the matter.’”⁵⁷

The Implied Covenant’s Impact on Employment At-Will

Though an employer has considerable leeway in how it conducts its business and

⁵¹ *Id.*

⁵² *Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 441 (Del. 2005) (“The covenant is ‘best understood as a way of implying terms in the agreement,’ whether employed to analyze unanticipated developments or to fill gaps in the contract’s provisions.”).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Bank of Delmarva v. South Shore Ventures, LLC*, 2014 WL 5390389, *3 (Oct. 21, 2014).

⁵⁶ *Id.*

⁵⁷ *Dunlap*, 878 A.2d at 441.

employment decisions, it may not engage in deceit or trickery.⁵⁸ Just as the At-will Doctrine protects employers from being liable on employment contracts for future events dictating termination, the Implied Covenant “protects employees from receiving . . . less than what was bargained for.”⁵⁹

To constitute a breach of the Implied Covenant in an employment setting, the employer’s conduct must have some element of fraud, deceit, or misrepresentation.⁶⁰ Though aspects of fraud, deceit, or misrepresentation must exist, that standard alone is incredibly vague, and could ultimately destroy the At-will Doctrine if left unchecked. Therefore, the Delaware courts interpret the At-will Doctrine broadly, while construing the Implied Covenant narrowly.⁶¹ In *E.I. DuPont de Nemours and Co. v. Pressman*, the Delaware Supreme Court explained there are limited scenarios where the Implied Covenant is breached. The Court confined the number of actionable claims based on a breach of the Implied Covenant to four categories: (1) where the employee’s termination violated public policy; (2) where the employer misrepresented an important fact and the employee relied on the misrepresentation in either accepting a new position or remaining at his current one; (3) where the employer used its superior bargaining power to deprive the employee of clearly identifiable compensation related to the employee’s past service; and (4) where the employer falsified or manipulated employment records to generate false grounds for termination.⁶² These four categories are exclusive in order to “prevent further erosion of an employment at-will doctrine already riddled

⁵⁸ *Merill*, 606 A.2d at 101.

⁵⁹ *Id.* at 102.

⁶⁰ *Merill*, 606 A.2d at 101; *Rizzitiello*, 868 A.2d at 830.

⁶¹ *Rizzitiello*, 868 A.2d at 830-31.

⁶² *See, Pressman*, 679 A.2d 441-44; *Lord*, 748 A.2d at 400.

with exceptions.”⁶³

In the case at bar, Plaintiff asserts Defendant wrongfully terminated him based on the Implied Covenant. Specifically, Plaintiff alleges Defendant “ignored evidence presented that discredited the inaccurate GPS reports,”⁶⁴ and “conducted a secret investigation for two months without advising the Plaintiff . . . of the findings of the ongoing investigation.”⁶⁵ Neither of these cited allegations fall within one of the four limited exceptions of the Implied Covenant. First, ignoring “evidence presented that discredited the inaccurate GPS reports” completely lacks any element of fraud, deception, or misrepresentation, and thus cannot invoke the Implied Covenant’s protection. Second, Plaintiff claims Lawson, the County Administrator, defrauded him because Lawson failed to inform Plaintiff he was being investigated for misrepresenting his work and overtime logs. This argument is unpersuasive. An employer should be able to conduct a private audit of an employee suspected of defrauding it of money. To alert the employee of the investigation could allow the employee to continue the prohibited conduct in a more covert manner. The continued employment of the employee could also affect co-worker morale or even lead co-workers to engage in similar intolerable conduct. The Implied Covenant’s exceptions are meant to protect employees from wrongful terminations by their employers, not to coverup an employee’s misconduct. Therefore, Plaintiff was properly terminated as an at-will employee and Counts I and VII are dismissed.

Claims V and VI
Benefits of Employment

_____According to §29-24 of the Ordinance, “[f]ull-time . . . employees in the unclassified . . .

⁶³ *Lord*, 748 A.2d at 401.

⁶⁴ Complaint ¶ 23 (As the finder of fact, the Personnel Board was entitled to place as much weight on the inaccurate GPS reports as it saw fit).

⁶⁵ Complaint ¶ 52.

service shall be eligible for sick leave at the rate of ten (10) hours per month.”⁶⁶ The Ordinance goes on to state:

In the event the employee leaves the employment of the county, the employee will receive one (1) days pay for every one (1) day of accrued sick leave up to a maximum accumulation of forty-five (45) days and thereafter one (1) day’s pay for every two (2) days of accrued sick leave . . . to a maximum of ninety (90) days.⁶⁷

Likewise, §29-25 of the Ordinance states:

Employees who qualify for vacation leave . . . and resign or are otherwise terminated from the payroll . . . shall receive a vacation allowance at the time of termination equal to one (1) day’s pay at his current rate for the employee’s position for each day of vacation leave accumulated to the date of his termination.⁶⁸

In Delaware an employee may file a claim against his employer to recover wages, salary, overtime, performed labor or personal services, or for any benefits arising from the employee’s work, labor, or services he has already performed.⁶⁹ If an employee decides to bring such an action, he must do so within one year from the accruing of the cause of action on which his claim is based.⁷⁰ However, an action based on a written contract has a statute of limitations of three years from the date of the breach.⁷¹ Since an employment scenario can potentially invoke either statute of limitations, an examination as to when each statute of limitations applies is necessary.

The Statutes of Limitations

The determination as to which statute of limitations applies is dictated by what the plaintiff

⁶⁶ Sussex Cty. *Del. C.* §29-24 (B).

⁶⁷ *Id.*

⁶⁸ Sussex Cty. *Del. C.* §29-25 (B).

⁶⁹ 10 *Del. C.* §8111.

⁷⁰ *Id.*

⁷¹ 10 *Del. C.* §8106 (c).

is ultimately asserting, namely whether his claim arises out of work or services already performed, or whether his action is based on the violation of a promise.⁷²

10 *Del. C.* §8111 is applicable to claims for “wages, salary, or overtime for work, labor or personal services performed.” By contrast, §8106’s three year limitation applies to actions “based on a detailed statement of mutual demands in the nature of debt and credit between parties arising out of contractual . . . relations,” [or] based on a promise⁷³

In *Goldman v. Braustein’s, Inc.*, the Delaware Supreme Court explained when each statute of limitations applies. Section 8111 governs all claims arising from services which have *already been performed* (emphasis added).⁷⁴ Section 8106, on the other hand, does not control claims based on services already performed, but rather claims for wrongful termination or breach of a contract.⁷⁵ The Delaware Supreme Court has reconciled these two seemingly conflicting statutes by distinguishing between claims arising out of benefits already owed due to services that have already been performed, and claims arising upon or after the a breach of contract.⁷⁶

Application

Plaintiff’s breach of contract claims with regard to paid sick leave and paid vacation are barred by the applicable statute of limitations under 10 *Del. C.* §8111 for two reasons. First, Plaintiff is suing the Defendant for benefits arising from the services he has already performed. Sections 29-24 and 29-25 make clear that sick leave and vacation leave are benefits that flow from an employee’s employment with Sussex County. An employee’s entitlement to those benefits is not

⁷² *Brown v. Colonial Chevrolet Co.*, 249 A.2d 439, 441 (Del. 1968).

⁷³ *Stifel Financial Corp. v. Cochran*, 809 A.2d 555, 558 (Del. 2002).

⁷⁴ *Goldman*, 240 A.2d at 578.

⁷⁵ *Id.*

⁷⁶ *Cochran*, 809 A.2d at 558.

contingent on the occurrence of a breach of contract. Plaintiff worked for Defendant and accumulated these benefits *because of and during* his employment (emphasis added). Plaintiff's claims do not correspond to his breach of employment contract claim, i.e. the Implied Covenant claim, because the amount of money owed him via §§29-24 and 29-25 were determinable *prior to* the alleged breach (emphasis added).

Second, statutes and ordinances are not considered contracts.⁷⁷ As stated above, the Ordinance in question is more akin to an internal guideline because it only explains which benefits an employee is entitled, how they are calculated, and when an employee may claim them. When an employer's internal guidelines are transcribed, they are a mere unilateral expression of an employer's policies and do not establish contract rights.⁷⁸ Here, the Ordinance was only meant to establish how the Sussex County government operated with regard to its employees, not to create some contractual obligation. Therefore, Plaintiff's assertion that 10 *Del. C.* §8106 is the applicable statute of limitations is incorrect.

Plaintiff was terminated from his employment on May 22, 2012. The statutory period as to when Plaintiff could assert a claim for his benefits under 10 *Del. C.* §8111 lapsed on May 22, 2013. Plaintiff did not assert these claims until May 22, 2014 when he filed this suit. Therefore, Claims V and VI of Plaintiff's complaint are time barred.

Conclusion

Based on the above, Defendant's Motion to Dismiss as to Counts I, II, and IV through VII is **GRANTED**.

⁷⁷ *Villinger/Nicholls Development Co. v. Meleyco*, 31 Cal. App. 4th 321, 327-28 (Cal. App. 1995).

⁷⁸ *See Heideck v. Kent General Hospital, Inc.*, 446 A.2d 1095, 1097 (Del. 1982) (Internal guidelines do not grant an employee a specific term of employment).

IT IS SO ORDERED.

Very truly yours,

_____ /s/ *T. Henley Graves*

T. Henley Graves