

13-832. Good faith and fair dealing.

In every contract, there is an implied promise of good faith and fair dealing. The implied promise protects the parties' reasonable expectations under the contract. The implied promise is breached only when a party seeks to prevent the contract's performance or to withhold the contract's benefits from the other party. The implied promise of good faith and fair dealing does not change the express terms of the contract. It does not add terms to the contract. It does not prohibit the parties from doing what the contract expressly allows them to do.

To prove that _____ (*name of the defendant*) breached the promise of good faith and fair dealing, _____ (*name of the plaintiff*) must prove that _____ (*name of the defendant*) acted in bad faith in [performing] [enforcing] the contract or wrongfully and intentionally used the contract to harm _____ (*name of the plaintiff*).

USE NOTE

If there is an at-will employment relationship, there is no covenant of good faith and fair dealing regarding termination and this instruction will not be given. *See Melnick v. State Farm Mut. Auto. Ins. Co.*, 1988-NMSC-012, ¶ 13, 106 N.M. 726, 749 P.2d 1105 (pointing out that New Mexico courts "do not recognize a cause of action for breach of an implied covenant of good faith and fair dealing in an at-will employment relationship"). If there is a factual issue as to whether an at-will employment relationship regarding termination exists, the jury will need to be instructed that the covenant of good faith and fair dealing does not apply if the jury determines the employment relationship was at-will. Under these circumstances, a special verdict form should be used to guide the jury.

[Adopted by Supreme Court Order No. 12-8300-011, effective May 12, 2012; as amended by Supreme Court Order No. 18-8300-013, effective for all cases pending or filed on or after December 31, 2018.]