



Employee Handbooks — Place and Purpose

By: Faith Harrison

Do we need an employee handbook?

More and more clients in recent years have inquired as to whether their company should have an employee handbook or employment manual. My answer is to always recommend having one, not because it is required by law (it is not required by law), but because it is the most effective way to make sure that ALL employees understand the company's policies and procedures. Many workplace misunderstandings and miscommunications can be avoided by having a clear and comprehensive employee manual that is distributed and available to all employees. In addition, an employee manual informs all employees what is expected of them and provides a standard for employees to measure their own performance and the performance of their co-employees so that feelings of unfair or preferential treatment of co-employees can be minimized or even eliminated.

Handbooks or manuals do not have to be long or difficult to understand. In fact, having long or difficult to understand employee manuals defeats the purpose of informing employees of the company's policies and procedures and what is expected of them. They should be compre-

hensive, but can be as brief as the employer wants. However, regardless of the length of the document, there are certain provisions which are extremely important to include. Below is a short discussion of some of these significant provisions. The following discussion should be considered only as examples of items that are important to consider when having the handbook or manual drafted. Of course, each employer's needs and goals will be different, and it is important to consult with competent counsel regarding the individual needs of the employer, so that the employee manual can achieve its goal.

Legal Provisions

The most important provisions of an employee handbook are the terms of employment provisions. If employees with the company are "at will" employees, the handbook or manual should clearly state that employment with the company is "at will". This means that either the employer or the employee has the right to terminate the employment relationship, for any reason, at any time. Keep in mind that the fact that an employee may be an "at will" employee DOES NOT allow an employer to terminate an employee for the "wrong reason." An employer cannot terminate an employee just because the employee is a member of

a legally protected class. In other words, an employee cannot be terminated solely because of his or her age, race, sex, religion, national origin, or disability. An employer also cannot terminate an employee in retaliation for filing a worker's compensation claim or a discrimination claim or for refusing to break a law. Obviously, an employee who meets one of the above criteria and who violates some other provision of employment justifying termination can be fired. However, so long as the employer is not firing an employee based solely on one of these discriminatory or unlawful reasons, the "at will" clause provides the employer with much flexibility to hire or fire as needed.

The handbook or manual should also have an equal employment opportunity statement. This statement reiterates the company's commitment to administer all terms, conditions and privileges of employment (such as hiring, promotion, compensation, and firing) without regard to an employee's race, color, creed, religion, age, gender, national origin, ethnicity, sexual orientation, marital status, or any other category which is protected by law. Essentially, it means that employees have equal opportunity within the company and therefore, employment decisions will be based solely on ability and job performance and will not be based

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on one of the legally protected categories.

Employers with more than 15 employees will want to include a statement regarding their compliance with the Americans with Disabilities Act (ADA), which applies to employers with more than 15 employees, and which prohibits discrimination against qualified individuals with disabilities. Employers with more than 50 employees will want to include a statement regarding their compliance with the Family Medical Leave Act (FMLA), which only applies to employers with more than 50 employees, and which allows eligible employees (both male and female) to take leave for up to 12 work weeks in any 12 month period for the birth or adoption of a child, to care for a family member, or if the employee has a serious health condition.

Harassment, including but not limited to sexual harassment, has become an important topic in employment law over the past several years. It is critical that a handbook or manual contain a firm statement prohibiting all forms of harassment in the work place. It is also important that information be included in the manual specifying how harassment should be reported to the employer, how complaints of harassment will be investigated by the employer, and a statement indicating that the employer will take all allegations of harassment seriously and will endeavor to maintain confidentiality with respect to harassment complaints and investigations to the best of its abilities. The goal of the employee manual or handbook's

harassment policy should be to make potential victims comfortable with reporting the harassment and confident that such reports will be taken seriously by the employer and meaningfully addressed.

Finally, a drug and alcohol policy, regardless of whether routine drug screening is performed, is important. A handbook or manual must state that the company is a drug and alcohol free work place and that there is a zero tolerance policy for employees working while under the influence of illegal drugs and/or alcohol. If the employer has instituted a routine or random drug screening program, the employee manual or handbook should specify the details of the program and the means and manner in which the program will be implemented.

Business Provisions

The level of detail in a handbook or manual with regard to business topics is up to each individual employer. I recommend including as many policies as possible so that employees have a clear understanding of what to expect from the company. Here are some examples of policies to consider:

- Work Hours and breaks
- Probationary period
- Payroll and paychecks
- Time clock/sheets
- Overtime for “Non-Exempt” employees (hourly employees)
- Paid Time Off/Vacation Time/Sick Leave/Personal Leave
- Excused and unexcused absences
- Company holidays
- Benefits (insurance, retirement)
- Job Safety
- Disciplinary action
- Company property (including tools, vehicle, cell phone, computer)

- E-mail, internet, phone usage
- General policies

Last, employers should think about their workplace, including any problems or issues that may have arisen over time, and add any additional topics as needed. A manual or handbook should be individualized for each company so that both the employer's and the employee's duties and responsibilities are clearly understood by all, and the handbook or manual should be reviewed and revised every few years to reflect changes in the law and in company policy. It does not matter whether a company has one employee or a hundred, an employee handbook or manual is an important tool that will help avoid problems in the work place.

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