

## 101 ARTICLE SERIES: ESSENTIAL ELEMENTS OF AN EMPLOYEE HANDBOOK

By  
Andrew M. Schpak<sup>1</sup>

While employee handbooks set forth company expectations on policies and procedures, if they are poorly-written, they might be interpreted to limit management's authority or perhaps even change the "at-will" status of an employment relationship. This article sets forth the most essential elements of an employee handbook, along with some basic advice about what those elements should include.

- **Introduction:** Every handbook should begin with some language welcoming the employee to the company. In addition, the introduction should specify that:
  - The handbook is not a contract of employment and in no way modifies the "at-will" nature of the employment relationship; only the company president may modify the "at will" nature of the employment.
  - The company has the exclusive right to delete, modify, and interpret all handbook provisions; and
  - The employee is encouraged to ask his/her supervisor when a question not addressed by the handbook arises.
- **Equal Employment Opportunity:** Perhaps the most essential component of an employee handbook is the equal employment opportunity policies:
  - Non-Discrimination Policy: Specify that the company will not discriminate on any basis protected by state or federal law. Make sure that the policy applies to all employees (including supervisors and upper management), and that it is clearly communicated that each employee has a responsibility for assuring that the policy is followed.
  - Anti-Harassment Policy: Expressly prohibit harassment or discrimination of any kind. Include a brief definition of harassment, and explain that it may take the form of threats, unwelcome advances, verbal abuse, physical abuse or the display of sexually suggestive objects. Require immediate reporting of harassment to management or human resources. State that employees will not be retaliated against for reporting harassment, and that complaints will be investigated as promptly, thoroughly, and confidentially as reasonably possible. Finally, make it clear that a violation of this policy may result in corrective action up to and including termination of employment.
- **Benefits and Leave:** Companies differ on the issue of whether they offer vacation time, sick leave, and certain other benefits to its employees. The employee handbook is a convenient place to include the company's policies on benefits and leave so that the employee always knows where to look for that information. Also, make sure to include language that all policies will be interpreted in accordance with all state and federal laws.
  - Vacation and Sick Leave: Specify the rate of accrual of vacation and sick leave, as well as the procedure for requesting such leave.

---

<sup>1</sup> Andrew M. Schpak is an associate with Barran Liebman LLP in Portland, Oregon, where he practices labor and employment law. Mr. Schpak is admitted to practice in Oregon. He is an active member of the American Bar Association, currently serving as a Vice-Chair of the Young Lawyers Division's Labor and Employment Committee. Mr. Schpak is also the President-Elect of the Multnomah Bar Association's Young Lawyer Division.

- Protected Medical Leave: Explain that federal and state law grants employees unpaid medical leave from work when certain conditions are met. The policy can be short and refer the employee to a company representative who can explain the employee's rights, or else it can be more detailed and discuss the duration of the leave, qualifying events, and reinstatement rights.
- Military Leave: This is a fast-growing area of the law, and companies are well advised to include a military leave policy in their handbooks. The policy should include notification requirements and a brief discussion of reinstatement rights.
- **Workplace Conduct**: Discuss conduct that you consider most important so that an employee cannot argue that he/she was not aware of the policy after a violation has occurred.
  - Attendance: Start with the obvious: "all employees are expected to be at work on time every day." Include information about whom an employee should call if the employee will be absent or tardy. Establish a policy that three days of "no call, no show" will be considered a voluntary quit. Require a note from a doctor if the employee is absent for three or more successive days.
  - Safety: Set forth any relevant safety rules, and set penalties for failing to follow those rules. Require mandatory and immediate reporting of any on-the-job injury, as well as any potentially hazardous situation.
  - Workplace Violence: Make it clear that the company has zero-tolerance for any actions that threaten its employees, customers or vendors. Ban any weapons in the workplace or on company premises, including the company parking lot.
- **Privacy Issues**: Companies should reserve the right to search and monitor all company property and anything on the company's premises so that an employee cannot later refuse a search on the basis of an expectation of privacy.
  - E-mail/Internet: State that company property, including computers and e-mail, should only be used for conducting company business. Incorporate the anti-harassment and anti-discrimination policies into this policy, stating that those policies apply to e-mail and internet use. Prohibit the illegal download or upload of copyrighted materials. Reserve the right to monitor all employee use of company computers, voicemail, internet and e-mail.
  - Drug and Alcohol Policy: Clearly state that the company is committed to a drug-free workplace. State that reporting for work under the influence or in the possession of alcohol or drugs is prohibited. Require any employee who is medically authorized to use drugs or over-the-counter substances which impair the safety of the workplace to report the use of the substance to his or her supervisor. Reserve the right to conduct pre-employment drug testing, reasonable suspicion drug and alcohol testing, drug testing after an on-the-job accident, and random drug testing.
  - Lockers/Purses/Backpacks: Explain whether the company reserves the right to search any bags, purses, or other items brought to the workplace, even if those items are stored in employee lockers. State that an employee may be terminated for failure to consent to a search upon request. Make sure that such searches are conducted in the presence of the employee.
  - Video or Audio Surveillance: If the company will be performing video or audio surveillance in the workplace, put the employees on notice of that fact. Setting

forth this information up front in an employee handbook helps avoid potential invasion of privacy suits down the road.

- **Receipt and Acknowledgement:** The last page of the employee handbook should be a receipt and acknowledgement page. The page should include a statement that the employee has received and understands that the employee should read and abide by the company handbook. It should also restate that the employee's employment is "at-will," and that both the employee and the employer are free to terminate the employment relationship at any time, with or without reason. Provide a space for the employee to date and sign the page, and then place a copy of that signed page in the employee's personnel file.