



## Writing An Employee Handbook Your Employees Will Read – And Heed, Part 2

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In Part 1 of this article (*Labor Letter* March, 2011) we looked at some of the important points to keep in mind when writing an employee handbook. In this conclusion, we'll cover ten of the most important policies that should be included.

### ***No Discrimination, Harassment and Retaliation***

With harassment verdicts against employers routinely running into millions of dollars, employers need written policies prohibiting all types of workplace discrimination, harassment and retaliation. Such policies should, at a minimum:

- cover **all** applicable protected classifications, such as race, color, national origin, sex (including pregnancy and same sex), religion, age, disability and other categories, including categories that may be protected by state or local laws or regulations;
- contain specific examples of prohibited conduct;
- explain the consequences of policy violations;
- outline a specific reporting procedure;
- include a "bypass" reporting procedure; and,

- prohibit retaliation against those who report violations.

### ***Problem Solving or Grievance Procedures***

An effective problem solving procedure can help to avoid liability for discrimination, harassment, retaliation, safety complaints, and union activity, as well as improve employee morale. Such policies should include a step-by-step procedure for addressing employee concerns. Employees should follow the "chain of command," of course, but they should also have access to a "bypass" procedure for reporting concerns if for some reason they cannot follow the standard procedures. In recent years, the best advice has been to establish a "special" direct procedure for claims of discrimination, harassment and retaliation – outside of the "normal" chain of command.

### ***At-will Statements***

Employee handbooks and written policies should contain the necessary legal disclaimers in prominent places. For example, a handbook should state that it is not a "contract" and that employment is "at-will" under state law and can be terminated at any time, for any reason, with or without cause, and without advance notice. Similar language should be included on the employment application and on a separate "acknowledgement of receipt" of handbook form signed by each employee and retained in the employee's personnel file.

### ***Rules of Conduct***

Avoid both oral and written promises of "progressive" discipline and lists of specific work rules with levels of discipline. Instead, rules of conduct should state that employees can be discharged immediately for a variety of things. That statement should be followed by a list of broadly defined acts of misconduct, such as absenteeism or tardiness; breach of confidence or security; conflict of interest; damage to property; fighting, threats or weapons; fraud, dishonesty or false statements; harassment; insubordination; misuse of property; sleeping or inattention; solicitation or distribution; substance abuse; theft; unlawful activity; unsafe work practices; or other applicable misconduct. "Poor performance," although technically not "misconduct," also should be included as a basis for termination.

### ***Drugs and Alcohol***

Drug and alcohol policies should require as a condition of employment that applicants or employees not have drugs or prohibited amounts of alcohol "in their systems." Avoid policies that refer to being "under the influence" or "impaired" since those terms create a higher legal burden. Your policy should state the consequences for testing positive or

otherwise violating the policy, and reserve the right to test "at any time" (assuming your state law allows it – some don't) and to conduct searches.

### ***Workplace Security and No Weapons***

In view of the increase in workplace violence, every employer needs policies that address workplace security and weapons. A workplace security policy should state that any employee who commits or threatens any violent act against any person while on company premises or at work will be subject to immediate discharge. The policy also should cover off-site conduct and procedures for reporting and investigating violent acts or threats. This policy should also reaffirm your right to conduct background checks at any time during employment. Of course, compliance with the Fair Credit Reporting Act is still required even with such language in the handbook.

### ***Safety***

Safety continues to be a workplace priority and your handbook should contain essential safety rules and procedures. In addition to listing specific safety rules and procedures, include at least general references to your safety "program," your safety committee, recordkeeping requirements, training procedures, and the overall importance of safety in your facility. Safety policies should reflect compliance with current standards and regulations and a "safety coordinator" should be specifically identified in the handbook.

### ***Electronic Communications***

With the extensive use of email and other electronic communications systems, employers should state their policies about the use of such tools. Among other things, you should specify the company's right to access such "systems" for business-related reasons; prohibit (or limit) personal use of such systems; prohibit insulting or offensive communications such as sexually explicit or offensive messages, jokes or cartoons, propositions or love letters, ethnic or racial slurs or any other harassing or disparaging messages; and require employees to follow the employer's encryption procedures.

Should a lawsuit arise, electronically stored and even deleted information likely will be accessible to the opposing party. In view of the recent changes to the Federal Rules of Civil Procedure, you should also include references to your document retention and "litigation hold" policies.

### ***Confidential Information and Conflicts of Interest***

Employers should have appropriate policies in their handbooks that protect their intellectual property, business relationships, information and similar assets. These

policies should prohibit conflicts of interest and unauthorized use and disclosure of confidential information and trade secrets. A confidential information policy should state, among other things, that unauthorized use or disclosure of such information may result in discipline, up to and including immediate discharge or civil or criminal actions by the employer, as appropriate.

### ***Family and Medical Leave***

The Family and Medical Leave Act requires employers with 50 or more employees within a 75-mile radius to provide eligible employees with a leave of absence for family or medical reasons, benefits continuation and reinstatement to the same job if the employee returns to work prior to the expiration of the leave. It also requires covered employers to include a family and medical leave policy in their handbooks, post a prescribed notice and follow certain unique notification procedures.

### **Conclusion**

We've tried to provide some general guidance to employers on making their employee handbooks more likely to be read and understood by their employees, and identified 10 important policies every employer should have in their handbook to cover their assets. But no one article can cover it all. This is one of the most important employee-relations projects your company can embark on. While it's a lot of work to get a handbook that does everything you need it to do, it's well worth the effort.

Let us know if you'd like our help.

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