



Writing An Employee Handbook Your Employees Will Read – And Heed

Part 1

By D. Albert Brannen (Atlanta)

Not complying with current law can be expensive in today's legal climate. Employers should review their employee handbooks and employment-related policies to make sure they are up to date. More importantly, employers should draft their handbooks so their employees actually read them and follow their policies.

In this article we'll provide advice on how employers should write their handbooks to get employees to actually read and understand them. In the next issue we'll identify 10 important policies that every employer should have in place to minimize the risks of employment-related litigation.

View A Handbook As A Communication Tool

First and foremost, consider your employee handbook as a management communication tool – not as merely a document for strict legal compliance. That means the handbook should positively reflect the values of upper management and create an employee friendly environment.

Use The Handbook To Set Internally-Directed Standards

In the world of handbook drafting, some handbooks are "integrity-based" and others are "compliance-based." Integrity-based handbooks are proactive, morally oriented, management directed, positive, and encouraging. The policies in an integrity-based handbook reflect internal values, not external obligations.

On the other hand, compliance-based handbooks are defensive, legalistic, lawyer driven, punitive, and based on externally-imposed rules.

Where possible, you should adopt the integrity-based model for your handbooks and hold employees to higher standards than those minimally required by applicable laws. Companies that set this positive tone in today's world are more likely to attract the next generation of workers and to succeed in the future.

Tailor The Handbook To Your Situation

Although many of the policies in a handbook will be common across industries, every employer should endeavor to tailor its handbook to its own unique situation. Tailoring the handbook should take into account the size of your company, its geographic location or scope of operations, its operating culture, employee expectations, and other relevant factors. Tailor your handbook to set the proper "tone" and to comply with the many laws that may apply.

Write The Handbook In Easily Understood, General Terms

A handbook is just a summary of benefits and an employer's most important policies. It is not intended to be a comprehensive personnel procedures manual. Nor does it need to address every possible contingency that can be expected.



By way of example, the military leave policy does not need to go into every detail about what you will do for service members while they are out on leave or when they return. The handbook can simply state that employees should provide advance notice of military leave and the company will comply with all applicable laws covering service members.

Similarly, sub-sections describing insurance or retirement benefits do not need to include deductible amounts or other coverage details that are likely to change from time to time. Instead, insurance-related sections should simply state that the employer provides such benefits, that benefit levels and costs are subject to change from time to time and that the employer pays the majority of the cost for such benefits. Employees with specific questions should be referred to either the Human Resources department or to the current Summary Plan Description document.

By using such general language, the handbook will be more readable and more dynamic in that it will not have to be revised and re-published every time specific benefits change. Generalities may also serve to allow management more discretion with specific situations that may arise.

Begin The Handbook With A Tailored Personalized Message

The handbook should begin with a letter from the company's founder or president welcoming the employee to the organization. Following that personalized message, add a positive description of the "History of the Company." This section should inform the new employee about significant facts in the company's history or about its plans for the future. You may want to highlight some of the signature projects that have been completed by your employees. The idea here is to portray the company in the most positive light and to make new employees feel that they are proud of their new employer's standing in the industry or community.

Cover Employee Benefits In The First Main Section

When employees read a handbook, they naturally want to know what the employer is going to "give" them for working for the employer.

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March Mayhem Bracket For Employers: Biggest Workplace Headaches

By Rich Meneghello (Portland)

About this time of year, most of your employees will start wasting a good chunk of their day filling out brackets in anticipation of the NCAA college basketball tournament. Why try to beat them when you can join them? Fisher & Phillips has created a bracket for employers, but instead of predicting basketball results, we want you to tell us your biggest headaches for employers.

It's simple – just like picking basketball games, we want you to go through the bracket below and let us know which is your biggest headache for each matchup. For example, in the “Medical Issues, Leave and Attendance” Region, which annoys you the most: employees on

intermittent leave, or having to figure out the “rolling backward” leave year? The winners advance, until you are left with a “Final Four” of the biggest workplace headaches, one from each Region. Then, email your Final Four to finalfour@laborlawyers.com, and next month, we'll offer some practical tips for dealing with the four biggest workplace annoyances as chosen by you.

But please – no wagering. Happy Bracketing!

For more information contact the author at rmeneghello@laborlawyers.com or 503.242.4262.

Documentation, Discipline And Discharge Region

- (1) Reductions-in-force
- (16) Past employers who refuse to give references
- (8) "I refuse to sign that warning"
- (9) Supervisors forgetting to complete evaluations
- (5) Employees rebutting every corrective action
- (12) Employees making disparaging remarks about work on Facebook
- (4) Supervisors forgetting to document warnings
- (13) Late final paychecks
- (6) Whiners
- (11) Personnel file management
- (3) Document retention policies
- (14) Unsigned employment applications
- (7) Discharges
- (10) Failure to follow internal complaint policies
- (2) Insubordinate employees
- (15) Dress code violations

Litigation, Potential Litigation, And Administrative Agency Region

- A visit from OSHA (1)
- Unemployment claim (16)
- A visit from the police (8)
- EEOC Complaint arrives in the mail (9)
- Off-the-clock allegations (5)
- Union grievance filed (12)
- Outrageous demand letter from employee's attorney (4)
- Garnishment request (13)
- Misclassification issues (independent contractor) (6)
- "Hostile work environment" allegations (11)
- Union organizing drive (3)
- Multistate compliance issues (14)
- Departing employee takes customer list (7)
- Employees telling inappropriate jokes (10)
- Class action lawsuit threat (2)
- Employees sending inappropriate emails (15)

Medical Issues, Leave And Attendance Region

- (1) Employees on intermittent leave
- (16) Figuring out the “rolling backward” leave year
- (8) Employees on perpetual leave
- (9) Unreadable doctor's notes
- (5) Vague doctor's notes
- (12) No call / no show
- (4) Hangnail workers' compensation claims
- (13) Unreasonable lifting restrictions
- (6) Telecommuting requests
- (11) Unscheduled absences
- (3) Medical marijuana requests
- (14) Drug tests with inconclusive results
- (7) Stress claims
- (10) "I had car problems!" and other attendance excuses
- (2) Stress claims right after a poor evaluation
- (15) Leave needed beyond FMLA leave

Immigration, Benefits, And Everything Else Region

- Meal and rest period abuse (1)
- Employees who want to sign up after open enrollment closes (16)
- Employees spreading rumors about other employees (8)
- Employees texting and on cell phone all day (9)
- Employee theft (5)
- Horseplay in the office (12)
- Employees telling each other about their pay (4)
- Interoffice romances (13)
- Employees who try to drop medical coverage mid-year (6)
- Employees on Facebook all day (11)
- Employees giving you a new SSN for no apparent reason (3)
- Employees stealing office supplies (14)
- Inconsistent information on I-9 form (7)
- Open enrollment time (10)
- Employees signing up boyfriend/girlfriend for spousal benefit (2)
- Employees wasting time on March Madness pools (15)



A Successful Employment Relationship Starts With A Good Interview

By Michelle Anderson (New Orleans)

Let's face it, if you have conducted any number of interviews, you know that all things being equal on paper, the face-to-face meeting with an applicant can be invaluable. For years, I advised job seekers on how to achieve the "fit-in factor" with an employer during an interview. Like it or not, this is often the ultimate hiring criteria. Will this applicant fit in with the corporate culture? Will this person enhance the cohesiveness of our "team" atmosphere? Will this individual grow with the company and contribute towards its goals and success? The fit-in factor! Or, from the applicant's perspective, the most important response to the question: "Why should I hire you?"

But how do you find that perfect match? Looking for the right employee is just like any other relationship; it takes commitment, creativity, an open mind, and time. Although the economy has forced many talented and capable individuals into the job-hunting pool, recruiting is still very much a mutual selection process. A good applicant is also sizing up your company for the "fit-in factor."

A strong interview not only provides you the insight into a potential employee, but affords you the opportunity to make a good impression, market your company, and set the tone for a possible employer-employee relationship. In the grand scheme, you do not want someone to take a job out of desperation only to leave you high and dry when the economy improves. Turnover is costly. While interviewing may at times feel like a chore, it can be a positive and rewarding task when you find that perfect match.

Here are some important considerations before you conduct that next interview.

Has The Job Changed Since You Last Recruited For The Position?

Before you open a job posting, review the current position description to determine whether the duties, qualifications, and other requirements of the job have changed over time. An exit interview with the employee who last held the job can be very useful in determining how the position may have evolved. In fact, if your company does not have a routine practice of reviewing job descriptions, then the ideal time to perform this task is prior to recruiting a new employee.

Position descriptions should always include the essential functions of the job so that an applicant may appropriately consider their abilities in light of these functions. This can be critical for applicants with disabilities as they must be able to perform the essential functions of the job with or without a "reasonable accommodation." In this same regard, carefully consider what tasks and qualifications are essential, and which are merely desirable.

Know Your Applicant Pool

The unemployment rate remains high. With the influx of job seekers, now is a great time to fine tune your company's hiring practices. Here are some ideas on how to do that.

First, unless your business is in a constant recruiting mode for specific positions, you should not accept applications on an open basis. Provide applications only when there is an actual vacancy. Second, if there is more than one opening with varied job descriptions, require applicants to submit separate applications for each position. Finally, applicants are always tempted to complete one general application and write "see resume" throughout. Require a complete application.

My own practice as a manager was to interview all applicants who applied within the prescribed timeframe, I also strictly enforced that applicants would not be considered for an interview without previously

submitting a COMPLETED application packet. This included not submitting a resume in lieu of completing a formal application. There are lots of good reasons for this. An application creates a sworn record of the individual's stated background, qualifications and abilities for a specific job, and prior experience. A resume is just a selection of highlights, sometimes cleverly worded, and always unsigned. When appropriate, ask applicants to submit references and work samples along with their application. This should be completed prior to an interview so that you have time to review each individual's credentials and prepare for the actual meeting.

The Wrong Questions Can Cost You!

Even if you are in a hurry to hire someone, take the time to cover more than the basics. Remember that state, federal, and local anti-discrimination laws cover applicants, as well as employees. While you don't need a canned checklist of questions, it's important to determine what you need to learn about each interviewee. Generally, a list of topics relevant to the position will suffice. This should include a review of qualifications, previous employment, and reasons for leaving. A good practice is to apply the 80/20 rule, i.e. you listen, while they do most of the talking.

If you really want to be prepared, as you review application packets jot down specific questions for the individual to supplement your general topics. This is helpful for you as an interviewer to know your applicants and will also show the interviewee that you are looking closely at the information submitted and are interested in what they have to offer.

Remember there are certain questions you cannot ask without running afoul of anti-discrimination laws. Here are some questions that could lead to trouble, and that should be avoided in an interview:

- Does your religion prevent you from working weekends and holidays?
- Are you married?
- Do you live with your parents?
- What year did you graduate high school or college?
- Are you pregnant?
- Do you have childcare responsibilities?

Additionally, the Americans with Disabilities Act prohibits questions such as those relating to an individual's past medical history or present medical condition and those related to an individual's health asked prior to a contingent offer of employment.

Finally, allow time at the end of the interview for the applicant to ask questions. If they have prepared properly, they will have at least one or two probing questions. If all they want to know about is salary and benefits, this may signal someone who is focused only on the short term job prospect. Be observant: if applicants have done their homework, they will appear at the interview ready to start work, i.e. dressed appropriately, knowledgeable about the position for which they applied and how their skills and abilities fit, and exhibiting a positive attitude. Sometimes it is the non-verbal statements that are the most telling.

The Interview Is Over, Now What?

Depending on the caliber of the position you are attempting to fill, one interview may not be enough. A second, or even third, interview with a different interviewer or a panel of interviewers may well be appropriate, particularly when considering an individual for a supervisory or executive position.

You cannot spend too much time interviewing, it is a skill that develops with time and experience. 95% of employee problems are often

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To meet this expectation – and to make a positive first impression on the handbook reader – the first major section of the handbook should list all of the benefits and other things of value that the employer provides employees in addition to just their pay. Obviously, this part of the handbook should list all of the insurance and retirement benefits, preferably with a one paragraph or so description of each. Listing each such benefit in a separate paragraph allows the table of contents to include a heading for each benefit and makes the list of benefits have more impact on employees.

This first major section of the handbook should also include sub-sections on the employees' pay, paid holidays, vacations, and other paid time off from work, such as sick or medical leave, bereavement leave, civic duty leave. Leave that is not paid should also be listed here, including extended medical or family leave, military leave or personal leave.

Other benefits, such as tuition reimbursement programs, relocation benefits or employee discounts should also be listed here. Even government required benefits should be included here as subsections, including social security, workers' compensation, COBRA, modified duty or reasonable accommodation policies and other benefits which the employer provides should be addressed in this major section of the handbook.

Emphasize Safety And Security Issues

Your handbook should stress your concern for safety in the workplace in the most employee-oriented way possible. No employer wants its employees to be injured at work and this message should come through

loud and clear in the handbook. Employees that get this message will be positively influenced by the handbook.

Your safety programs, references to a safety committee and training, and to policies covering drugs and alcohol, workplace security, weapons, driving and criminal records, workplace chemicals, and related matters will all reinforce your overarching concern for safety on the job.

Communicate Your Expectations

Although employees do not necessarily like to read all of the ways they can be terminated, it's much worse not to inform them of your legitimate expectations *before* issues arise. Use the handbook to outline major work rules, such as rules of conduct, and policies relating to harassment or discrimination, drugs and alcohol, electronic communications, workplace violence, conflicts of interest, confidential information, driving or criminal records, and other significant policies.

Organize The Handbook With Many Headings

To make a handbook more readable by employees, use numerous headings and sub-headings as guides. Headings break up long stretches of text and help employees to understand the handbook's content. They also make it easier to find topics and for employees to actually use the handbook. A table of contents is essential and can also be used as an outline for the orientation process.

Update The Handbook Periodically

Circumstances and laws are constantly changing. Although the handbook may be drafted to adapt to changes over time, you will inevitably need to review and update your handbook regularly. When making updates, reflect on past situations and incorporate changes into the handbook to address such situations in the future. Before publishing and distributing a new employee handbook, have your employment lawyer review any changes, just to make sure that the handbook remains in compliance with all the applicable laws at the time.

These are a few ways to make an employee handbook more likely to be read by employees. In next month's issue we'll summarize 10 important policies that every employer should have in their employee handbook.

For more information contact the author at dabrannen@laborlawyers.com or 404.231.1400.

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Office Locations

Atlanta phone 404.231.1400	Irvine phone 949.851.2424	Orlando phone 407.541.0888
Charlotte phone 704.334.4565	Kansas City phone 816.842.8770	Philadelphia phone 610.230.2150
Chicago phone 312.346.8061	Las Vegas phone 702.252.3131	Phoenix phone 602.281.3400
Columbia phone 803.255.0000	Los Angeles phone 213.330.4500	Portland phone 503.242.4262
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Houston phone 713.292.0150	New Orleans phone 504.522.3303	Washington, DC phone 202.429.3707

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caused by 5% of the employees. A good interviewer can spot these potential problem employees before a job offer is made.

Once you have found your ideal candidate and made a conditional offer of employment, it is a good idea to do some post-interview investigation. For example, checking references, running a criminal background check, or drug testing. You should always consult your local counsel when developing post-interviewing investigations, as many states have specific policy and procedural requirements.

Finally, once you have concluded the hiring process, it's a good idea to notify those who received an interview that the position was filled by someone else and advise whether their application will be kept on file for a specified period of time or that they must reapply for future openings.

For more information contact the author at manderson@laborlawyers.com or 504.522.3303.