

OVERVIEW OF EMPLOYEE HANDBOOKS

Presented by:

Drew J. Cochrane



222 West Washington Avenue, Suite 900
Madison, WI 53701
608.256.0226
dcochrane@staffordlaw.com

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I. Why Have a Handbook?

The benefits of well drafted handbook include the following:

1. It promotes positive employee morale by conveying the message that the employer is concerned about its' employees' welfare.
2. It eases the transition and training of new employees by outlining major policies and procedures.
3. It fosters a team approach and open communication with your employees.
4. It helps to solve disputes in a fair and even-handed way by outlining exactly what the employer expects of its' employees.
5. It can serve as an important management tool and can guide human resources and other personnel who are charged with handling complicated employment matters in accordance with applicable state and federal law.
6. It helps to protect against lawsuits and unemployment claims by clearly and unambiguously identifying and describing a company's policies and procedures.

There are also some potential risks associated with having a handbook, including the following:

1. Unless it is carefully drafted, the possibility exists that a court will find that the handbook is a contract that gives employee a "property interest" in either their jobs or in particular benefits offered by the employee.
2. Over time, the contents may conflict with the employer's changing obligations under state, federal, and local law. Accordingly, the policies must be constantly modified or updated to ensure compliance with applicable law.
3. If not uniformly applied and enforced, a handbook can leave the employer open to claims of discriminatory treatment in violation of state and federal anti-discrimination laws.
4. The employer may lose some flexibility by having clearly defined policies.
5. Even where an employer reserves the right to change its policies at any time, employees may nonetheless come to have a sense of entitlement to existing policies and may actively resist-or at least resent-subsequent changes.

II. Employment-at-Will and the Employee Handbook as a Contract

Most legal jurisdictions presume that, absent a statute, policy or contract which dictates otherwise, the relationship between employer and employee is at-will. An at-will relationship is one that can be terminated at any time by any party for any reason or for no reason at all.

Language in employee handbooks have the potential alter the at-will nature of employment by giving employees contractual or “property” rights in their jobs or benefits. A handbook that provides employees with contractual rights to jobs and benefits creates the risk that disgruntled employees will bring breach of contract claims against their employers. Such a shift in the employment relationship also means that employees may be entitled to due process before the rights.

The following is a brief outline of the kinds of language employers should use in handbooks to express the intent to maintain an at-will employment relationship.

- Express statements that the handbook and the provisions in it do not create a contract or any contractual commitment of continued employment.

SAMPLE LANGUAGE: “This handbook is intended to give you information about the main features of our employment policies, benefits, and certain other general information. It does not and is not intended to cover these matters in detail or serve as a contract between you and the Employer.

- Express statements that employment with the employer is at-will. Such language should be in addition to and separate from the statement denying contractual commitment.

SAMPLE LANGUAGE: “As a matter of policy, the Employer does not generally enter into written or oral contracts or agreements guaranteeing employment or compensation for any particular period of time with any individual employees. No employee is authorized to make guarantees of employment or compensation. Employment with the Employer is at-will; that is, employment may be terminated with or without cause and with or without notice at any time by the employee or by the Employer. Nothing in the employee handbook or any other document or statement shall limit the right to terminate employment at-will. No express or implied agreement to the contrary may be made unless it is made by the [designated person] of the Employer and only if the [designated person] does so in a formal written agreement that is signed by both the [designated person] and the employee.”

- Permissive language for all discipline and discharge provisions.

SAMPLE LANGUAGE: “This handbook sets out guidelines for employee behavior. Employees may be subject to discipline or discharge for any reason, whether or not set forth in this handbook. In all cases, determination of appropriate discipline, including discharge, rests solely in the discretion of the employer and will be determined on a case-by-case basis.”

- Language giving the employer the right to unilaterally change the terms of the handbook at any time, without prior notice.

SAMPLE LANGUAGE: “The Employer reserves the right to revise, supplement, or rescind any policies or portion of the handbook from time to time as it deems appropriate, in its sole and absolute discretion. Employees will be notified of changes in policy, benefits or to the handbook as they occur.”

- It is also a good idea to have all employees sign a form that both acknowledges receipt of the handbook and reaffirms the at-will nature of the employment relationship.

SAMPLE LANGUAGE: “I hereby acknowledge that I have received the Employee Handbook, and I understand that it is my responsibility to read and understand the policies contained in the Handbook and any revisions made to it. I further acknowledge that the Handbook is neither a contract of employment nor a legal document.

The Handbook describes important information about the Employer. I understand that I should consult [designated person] about any questions not answered in the Handbook. I have entered into my employment relationship with the Employer voluntarily and acknowledge that there is no specified length of employment. Accordingly, either I or the Employer may terminate the relationship at will, with or without cause, at any time.

I acknowledge that the information, policies, and benefits described in the Handbook are subject to change.”

There are other provisions that employers seeking to preserve at-will employment should *not* put in the handbook. These include the following:

- Do not include a probationary period or similar language indicating that “probationary” employees may be “summarily discharged.” If all employees are truly at-will, then *all* employees can be summarily discharged at any time. Specifically identifying one particular category of employees as subject to termination for good cause, bad cause, or no cause at all implies that termination of all other classes *does* require cause.
- Language promising employees that they will not be discharged without “just cause,” “proper cause,” “cause,” etc. This language clearly confers a property interest, and due process rights, upon employees.
- Language requiring that a progressive disciplinary policy be followed in all cases and leaving the employee with no discretion to deviate from the policy.
- Language that does not merely request but actually *requires* a certain period of notice in advance of a quit, upon penalty of forfeiting some accrued benefit. Such provisions can imply the existence of a contractual relationship—the employer is offering a tangible benefit in exchange for the employees conduct.

III. General Guidelines for Employee Handbooks

The following suggestions and guidelines should be followed when preparing an employee handbook.

1. Provisions should be drafted using clear and unambiguous language meant to be read and understood by lay people. Try not to use “legalese.”
2. Avoid using terms such as “just cause” that have a specific legal significance.
3. The tenor of the handbook should be cooperative and accommodating.
4. The handbook should harmonize with any collective bargaining agreements or other employment contracts that the company may be a party to.
5. Review the handbook on an annual basis to ensure it is kept current with changing law.

IV. What Policies Should be Included?

The following is a list of topics which should be in every handbook. In fact, even if you don't have a handbook, you should draft and distribute policies regarding the following:

1. A statement regarding the company's non-discrimination policy.
2. Policy prohibiting sexual and other forms of harassment and explaining what to do in the event that sexual or some other form of harassment occurs.
3. A disclaimer provision indicating that the handbook is not a contract and the employees are employees-at-will.
4. An "Acknowledgment of Receipt" form to be signed by the employee.
5. Grievance Procedures (See Exhibit A)
6. Other Policies (See Exhibit B)