

The Employment Handbook

All employers have various employment-related policies and procedures they expect their employees to follow. While some employers put these policies and procedures in writing, others fear that putting them in writing will increase their exposure to employment-related claims. There is no law that requires an employer to provide employees with a handbook. However, some federal and state laws require certain employment policies be in writing. Nevertheless, there are many good reasons, both legal and practical, to publish a handbook.

Employee handbooks can enhance the employer-employee relationship and help defend against wrongful termination, discrimination, and harassment claims. Regardless of firm size, when properly drafted and reviewed by competent legal counsel, the employee handbook can be the keystone to good employment practices.

From a non-legal perspective, an employee handbook can introduce a new employee to the firm in a positive way. A welcome statement and an account of the firm's history and mission can make a new employee feel more at home. Moreover, a handbook can promote a sense of fairness and integrity on the part of the firm that can lead to greater employee productivity and loyalty.

There are also many sound legal reasons for implementing an employee handbook. Clear written policies can provide a defense against many employment-related claims brought by employees. If these policies are merely posted on bulletin boards or conveyed to

management for dissemination to employees, there is no way for the firm to know which employees actually read them. A handbook is a means of uniform distribution of firm policies and procedures to all firm employees.

While employee handbooks may contain policies on everything from employee benefits - sick leave, vacation, holidays, and insurance - to performance and discipline policies, there are several essential exposure-limiting policies that should be included.

At-Will Employment Policy

An employee handbook should contain what is known as an "at-will" employment disclaimer. In this country, the relationship between the employer and employee has traditionally been governed by the doctrine of "employment at will." Under this doctrine, there is a presumption that an employee's relationship with his or her employer is intended to be at-will rather than contractual. This means that the employee or the firm may terminate the employment relationship at any time, without notice, for any lawful reason.

A common allegation brought by terminated employees is that the employer breached an implied contract of continued employment. A handbook disclaimer to the contrary in the employee handbook provides a defense against such allegations. It is important to make the disclaimer stand out in the handbook to improve its prospects of being read. This can be accomplished by printing it in bold uppercase letters at the beginning of the handbook. In an employment dispute, this statement may also dissuade a court from declaring the handbook itself a binding written contract between the employer and employee.

Non-Harassment Policy

Accusations of harassment, including sexual, racial, and ethnic harassment, are a very common and costly occurrence in the workplace today. Communication is the key to minimizing harassment claims. The firm should send a clear message to all firm members that harassment is illegal, will not be tolerated, and those who engage in harassment will be severely disciplined or terminated. Because there is often confusion over what constitutes harassment, especially sexual harassment, the non-harassment policy should describe and give examples of the various types of conduct that might be considered harassment.

Key Employee Handbook Policies and Procedures

- *At-Will Employment Policy*
- *Non-Harassment Policy*
- *Open-Door Policy*
- *EEO Policy*
- *Leave Policies*
- *Signed Receipt*

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The policy should include a detailed complaint process whereby employees are directed to report any claims of harassment to someone senior at the firm such as their direct supervisor, a partner, or the person in charge of human resources. Employees should be able to choose from several designees because of the possibility that one of them could be the alleged harasser. Retaliation against a person who has made a harassment allegation is illegal and the policy should state that no action will be taken against any employee in any manner for reporting or opposing any form of unlawful harassment.

Open Door Policy

Employees who work in an environment where open communication is encouraged may be less likely to go to an attorney with their complaints. An open-door policy is the perfect vehicle for encouraging employees to air their concerns before they escalate into a major problem for the firm. An open-door policy can be a simple statement that encourages employees to discuss their work-related concerns with management or the human resources department.

EEO Policy

Almost all employers are required by federal and state law to provide a workplace with equal employment opportunities for all persons. A written equal employment opportunity (EEO) policy is a way for the firm to acknowledge that it embraces the law and inform employees of its non-discrimination policy. The EEO policy should state that the firm believes that all persons are entitled to equal employment opportunity. This statement can specifically list all the protected classes – race, color, religion, sex, and so on - or indicate generally that the firm does not discriminate against employees protected under the various federal and state laws.

Leave Policies

Firms should be aware that state and federal laws require employers to provide certain types of leaves of absence for eligible employees. State laws differ and employers may be required by law to provide leaves for workers' compensation, pregnancy disability, alcohol and drug rehabilitation, military duty, jury and witness duty, voting time, and more. Many of these leave laws include specific written notice requirements.

For example, the federal Family and Medical Leave Act of 1993 (FMLA) requires employers to provide their employees up to 12 weeks of unpaid leave per year for the birth or adoption of a child, or for the serious health condition of the employee or a close family member. This seemingly simple law becomes complicated due to the detailed notice requirements on the part of the employer. Failure to comply with the law can be costly and disruptive to the firm. FMLA applies only to employers who have 50 or more full-time, part-time, or temporary employees within a 75-mile radius. However, there has been talk of legislation that would decrease the number of employees required for FMLA coverage from 50 to 25. The employee handbook is the perfect forum for disseminating notice of leave policies whether or not the law requires written notice. Consult with a labor and employment law attorney for the appropriate language to include in all leave policies.

Signed Receipt

All of the firm's efforts in implementing a handbook may be of no benefit if a dispute arises and an employee claims he or she never received the handbook. Be sure to obtain a signed receipt from each employee after they have had time to read it thoroughly. The receipt should acknowledge that the employee has received and read the handbook, understands its contents and agrees to abide by its policies and procedures. Keep the receipt in the employee's personnel file. A new receipt should be obtained from every employee each time the handbook is updated.

This article is meant to be a brief overview of the importance of implementing an employee handbook. There are countless other policies and procedures that can and should be included in a well-drafted employee handbook. Many employers fear that putting their employment policies in writing could hurt them if an employment dispute arises. It is true that an improperly drafted handbook could be deemed by a court to be an employment contract between the employer and the employee. However, these concerns are far outweighed by the inherent risks in not having these policies in writing. The firm can draft its own policy handbook or purchase a commercially prepared handbook and tailor it to the firm's specific needs. In either case, it is imperative that an attorney who specializes in labor and employment law review the handbook. Employment and labor laws change frequently, and an employee handbook should be reviewed and updated on a regular basis.



What is a third-party Employment Practices Liability (EPL) claim and how can I protect my firm against this exposure?

The primary employment practices liability exposure facing CPA firms is allegations brought by employees for such things as wrongful termination, discrimination, and harassment. However, clients, vendors, and other non-employee third-parties can also sue a firm for discrimination, sexual harassment, and sexual misconduct committed by the firm's employees. All CPA firms, regardless of size, have some degree of exposure to third-party liability claims. For example, an associate sent to a client's place of business to perform professional services could make continued unwanted sexual advances toward one of the client's employees. The client's employee could bring a sexual harassment suit against the firm even though she is not an employee of the firm. Another

source of third-party liability exposure is the Americans With Disabilities Act (ADA) of 1990. Failure to provide building access to the disabled could be perceived as discrimination and could result in claims by non-employees.

Although most firms have a commercial general liability (CGL) policy to cover liability claims brought by third-parties, coverage for discrimination and harassment is routinely excluded. Firms need to closely examine their CGL policies to see if any coverage is provided for employment-related claims. A stand-alone EPLI policy that includes coverage for third-party discrimination and harassment claims provides the most comprehensive protection for a CPA firm. More and more EPL insurance carriers are providing third-party coverage either as a part of the basic policy language or as an endorsement with an additional premium. The AICPA endorsed CPA EmployerGard Employment Practices Liability policy specifically includes third-party coverage with no additional premium charge.