

# PUBLICATION

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## Structuring an Effective Employee Handbook

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An employee handbook is a valuable tool for employers. A handbook provides employees with clear, written notice of policies and procedures, and often can support the employer in litigation. For example, an employee handbook documenting that the employer had a reasonable sexual harassment policy, and that employees were actually notified of that policy, can be a vital part of the employer's defense in a sexual harassment case. However, any employer who issues an employee handbook or manual, or even a management policies and procedures manual, must take great care that it is not creating a contract with its employees that alters their "at will" status.

### Don't Create an Unintended Employment Contract.

In many states, employment is considered to be "at will" unless the employee and employer make a contract providing otherwise. In other words, in the absence of a contract, either party may terminate the employment without notice at any time, for any reason, no reason, or even a bad reason (as long as it is not a discriminatory reason). But the employer can unintentionally alter the at-will status of its employees through an employee handbook.

Under what circumstances can an employee manual become a binding contract?

First, the language used in the handbook must be specific enough to constitute an actual offer rather than a mere general statement of policy. Where the statements in the handbook are clear enough that an employee reading it could reasonably believe that, as long as he worked within the guidelines set out in the handbook, he would not be terminated until all procedures set out in the handbook had been followed, a contract may be created.

If the handbook provision can be construed as an offer, the next question a court will ask is whether the evidence indicates that the offer was communicated to the employees. The offer would normally be communicated by issuance of the handbook. However, it can be communicated in other ways — for example, where a management procedures manual is generally accessible and often referred to by non-management employees.

Finally, the court will determine whether the employees have accepted the offer. Acceptance is indicated by the employees continuing their employment after becoming aware of the offer.

The creation of a unilateral contract typically can be avoided if the employee manual contains an express disclaimer informing the employees that the manual does not create any contractual rights, that the employer reserves the right to deviate from the manual at its sole discretion, and that the employees are still employees at will.

# What Should An Employee Handbook Contain?

## A. Disclaimers:

- A handbook should clearly state that it does not constitute a contract between the employee and the employer, and that the "at will" status of the employment has not been altered. Employees should be required to sign an acknowledgment stating that they understand these facts.
- A handbook should reserve to the employer the right to deviate from, modify, or abolish all or any part of the policies, procedures and benefits described in the handbook at any time, without prior notice.

## B. General Policy Statements:

- A general description of the company's business, history and/or purposes.
- Any "mission" statement that the company may have adopted.

## C. Anti-Discrimination Policies:

- A statement of the company's commitment to equal employment opportunity.
- A statement defining and prohibiting harassment, and notifying employees of the company's specific procedures for reporting (remember to provide alternate reporting procedures), investigating and addressing complaints of harassment.

## D. Other Federal Law-Related Policies:

- Americans with Disabilities Act: A statement of the company's willingness to provide accommodations for qualified individuals with disabilities and information to employees wishing to request an accommodation.
- Family and Medical Leave Act: Notification of rights and responsibilities, as well as instructions concerning the company's procedures for applying FMLA leave is required if the employer is covered by the statute.

## E. Basic Personnel Policies:

- Policies concerning working hours, recording of work hours, overtime pay and payroll procedures.
- Performance review procedures.
- Disciplinary policies, including conduct rules and procedures for imposing discipline.
- Vacation, holiday, sick and personal leave policies.
- General information concerning benefits provided to employees, such as a listing of basic benefits and contact information. You may also want to include an explanation of COBRA rights with respect to health insurance.
- Drug and alcohol policies, including drug testing programs, if applicable.

## F. Use of Company Telephone, Computer and Internet Equipment and Services

- A general statement notifying employees that telephones, computers and internet services are provided to support them in performing the company's business, and that they should be used only for such purposes.
- A statement notifying employees that the employer can and will monitor their use of telephones, computers and internet services without further notice, and that they should have no expectation of privacy in their use of such equipment and services. This statement should also notify employees that by using the company's equipment and services they are consenting to any and all monitoring that the employer chooses to conduct.

- A listing of any specific policies that require employees to use the equipment and services in certain ways, such as checking email messages a minimum number of times daily, shutting down or logging off of computer equipment at the end of the workday, etc.
- A non-exclusive listing of things employees may NOT do in using the company's telephones, computers and internet services. Examples include downloading or viewing pornographic material, playing computer or internet games, using instant message programs, downloading graphic files and attachments that may contain viruses, etc.
- Any policies on blogging activities, or other computer-related conduct by employees on non-work time/property that may affect their employment.

## G. Arbitration Policy

- If the employer has adopted an arbitration policy, it should be prominently included in the handbook.

## H. Acknowledgment and Signature

- Each employee should sign a statement acknowledging that he has received a copy of the handbook, and has read and understood its contents. This signed acknowledgment should be placed in the employee's personnel file.