

# How to develop an employee handbook that avoids liability

With employment litigation rising steadily, the employee handbook has become an essential tool in the employer's arsenal to defend against liability for employment decisions. A good handbook tells employees what the rules are and how they will be enforced.

For example, an employer being sued for harassment needs to be able to show that it is committed to a harassment-free workplace and that a complaint procedure is available to employees. To establish that defense, an employer should be able to show that it had a workplace harassment policy, distributed the policy and followed it when responding to the employee's complaints. Having an employee handbook that contains a workplace harassment policy goes a long way toward winning employee lawsuits.

Many employers try to take shortcuts, adopting other companies' handbooks or using generic computer-generated templates. Don't do it! Cookie-cutter handbooks may ultimately result in legal liability and create more problems than they solve. Your handbook should specifically address the unique needs of your business. To avoid problems down the line, have an attorney look over your handbook before you distribute it.

## Handbooks 101

Your employee handbook should concisely summarize your policies and procedures in a way that reflects the culture of your business. Except where law dictates formal or specific language, write the handbook in plain language that employees can easily understand. Developing a handbook isn't a one-time project. Treat it as a dynamic, living document subject to ongoing revision.

Employers often fear that distributing a handbook will create an employment contract. It is easy to address this issue by including an express disclaimer in your job applications, handbook and handbook acknowledgment. The disclaimer should state that all employees are employed at-will and the handbook is not a contract, but merely a set of general guidelines that management can modify at its discretion. For additional protection, give the handbooks to employees only after they have begun working.

## Handbook contents

Here are 7 topics your employee handbook should address:

**Accommodation of disabilities:** Some state administrative agencies have indicated that employers "should" provide employees with notice of their rights to reasonable accommodation of disabilities, as well as procedures for requesting an accommodation. Incorporating this information into the handbook not only satisfies this potential legal obligation, but also permits the employer to designate individuals to handle requests for accommodation.

**References:** A handbook should identify who is authorized to provide references regarding current and former employees, and specify the kind of information that will be disclosed. Many employers provide only dates of

employment and positions held; this protects against claims that references were discriminatory or retaliatory.

**FMLA:** Employers with 50 or more employees must incorporate an FMLA policy into their employee handbooks. This section must address the federal regulations issued by the U.S. Labor Department.

**Sick, personal and vacation time:** In New York, employers are not legally required to pay employees for accrued but unused sick, personal and vacation time when the employment relationship ends. However, if the employer has a policy of paying employees for accrued but unused time, New York's Labor Law requires acting in accordance with that policy.

Thus, in the handbook, clearly state whether employees will be paid for accrued but unused time, as well as any conditions on such payments. You can require that only employees who give notice are entitled to such payments.

**Progressive discipline:** Your employee handbook should contain a broadly worded list of employee conduct and work rules, as well as a summary of offenses. The handbook also should provide an overview of the progressive discipline process, expressly reserving the right to modify the process when necessary.

**Email/technology:** The handbook should expressly reserve your right to monitor and intercept email, voice mail and other electronic communication. It should limit the use of the employer's technology to business purposes, and state that an employee's use of the system constitutes consent to the employer's monitoring and interception of electronic communications.

**Employee benefits:** If the handbook describes benefits provided to employees, it also should contain an express disclaimer stating that the handbook contains only a brief description of the various benefits plans.

Include language referring employees to individual benefits plans for complete descriptions of the benefits available. Reserve the right to change, amend or terminate the benefits plan or policy.

## **Distributing your handbook**

Before distributing an employee handbook—as well as any subsequent amendments—management should carefully review the materials to ensure they accurately reflect your policies. You also should have legal counsel review your handbook and amendments to ensure they comply with all applicable laws and regulations.

Have every employee who receives your employee handbook sign an acknowledgment of receipt, stating they understand that they are required to read the handbook. This acknowledgment also should contain the express contract disclaimer. Whenever you modify the handbook, distribute all amendments to all current employees and make sure they sign an acknowledgment of receipt.