

EMPLOYEE HANDBOOKS:

INITIAL CONSIDERATIONS

By: Andrew J. Turro, Esq. & Richard J. Polsinello



Employee handbooks, when carefully and thoughtfully prepared, have the potential to provide immense benefits to the employer while also providing the employee with important information concerning employment policies, protocols and benefits. An effective, well-prepared employee handbook will, among other things, clearly define the relationship between the employer and employee, identify important employee rights and obligations, and provide the employee with a clear understanding of critical employment policies and protocols. While the specific employment workplace issues covered in a particular handbook vary from one to the next, below are ten important subject-matter areas that every employer should seriously consider addressing in its handbook:

Employment At-Will

Many employee handbooks explicitly inform employees that absent an express agreement to the contrary, they are “at will” employees whose employment and compensation can be terminated with or without cause, and with or without notice, at any time, at the option of either the employer or the employee. An employee handbook should also make clear any exceptions to this general rule and, if applicable, identify those specific representatives of the employer who have authority to make agreements to the contrary. It is further recommended that any such employment agreement be required to be reduced to writing and signed on behalf of all parties. On a related note, every employee handbook should also include “disclaimer” language that makes clear that (1) the employee handbook itself is not to be construed to form an employment contract of any kind between the employer and its employees; and (2) the policies and procedures in the employee handbook can be changed or modified by the employer without notice at any time.

Equal Employment Opportunity and Anti-Harassment Policies

Every employee handbook should contain an Equal Employment Opportunity statement that the employer will not engage in any form of illegal discrimination in connection with employment along with an anti-harassment policy that clearly informs the employees of a policy not to engage in any illegal discrimination or harassment of any kind. This policy should include specific reporting procedures for victims and/or witnesses of any such illegal conduct and should identify a variety of individuals to whom such conduct may be reported. As a practical matter, this should include male and female supervisors (to afford employees the choice should there be a gender of preference) as well as a supervisory individual outside the direct line of supervision (such as a human resources representative) in the event that a complaint is directed towards one or more direct managerial supervisors. These provisions should also expressly provide that all employees who report harassment or other discrimination pursuant to the policy shall be protected from any form of retaliation. Finally, every employer must make sure that these policies are conveyed to all employees and a copy of such policy should be posted at specified public areas frequented by employees (such as an employee bulletin board).

Employee Classifications

An employee handbook should also inform employees of the various classifications of employees and explain, where applicable, the differences between workers classified as full-time and part-time employees. It should also explain the difference between exempt and non-exempt employees which should emphasize that non-exempt employees are those required to be paid on an hourly basis (*and not on a salary basis*) and also who are entitled to overtime pay at a rate of one and one-half times their regular pay for all hours worked beyond 40 hours in a one week work period. These provisions should also alert employees of the impact of their classification status upon their eligibility to participate in specified benefit programs where applicable (such as an employer's paid time off policies for vacation, sick leave and holiday pay or other employer benefit programs).

Overtime

An employee handbook should explain the employer's overtime procedures and protocol. Such a handbook provision should clearly define the precise work week for each employee (and for overtime purposes) and further set forth any specific procedures for overtime approval (such as requiring advance approval by an employee's supervisor or manager). Both Federal Law and New York State Labor Law require that time worked in excess of 40 hours in one week be paid at a rate of one and one-half the employee's straight hourly rate.

Time Records

In view of an employer's increasing recordkeeping obligations imposed under the law, the employee handbook should ensure that every employee is fully aware of the procedures s/he is required to follow in recording daily arrival, departure and relevant break times on the employer's timekeeping records. Employees specifically should be reminded that they are required to take their allotted meal breaks whether or not they leave the building and that employees may not alter their own time records or those of a fellow employee. Every employer should be mindful that under New York Labor Laws, all time records must be accurate and maintained for a minimum of six years.

Leave Issues

The employee handbook should address all employee leave issues. It should identify available types of leave (such as paid time off, sick leave, vacation leave, jury leave, bereavement leave and/or military leave) and clearly define the qualifying requirements for each type of leave. These provisions should include explanations of how specific leaves are accrued and/or carried over from year to year (if at all) and how the leave is to be paid out at termination (if at all). This last point is very important because where an employer fails to have a clear policy concerning accrual of leave, "unused" leave may potentially be deemed "earned wages" payable at termination. On a related note, a qualifying employer must set forth its policy for family medical leave under the Family and Medical Leave Act. Such policies should also address whether this leave is to be unpaid, how (if at all) an employee's accrued paid leave shall be applied against the time off during FMLA leave and clearly state how other leave is to be accrued (if at all) by an employee while out on family medical leave.

Computer, Email and Internet Policies

The employee handbook should include an express waiver by every employee of any right to privacy with respect to all emails, sent or received through the employer's computer network, and further inform that all such transmissions are the property of the employer. Employers may also retain the right to review and monitor at random any such internal/external transmissions that are sent or received over its network and may access emails without the permission of the individual users. An effective employee handbook may also be used to emphasize that the employer's computer programs are not to be used for non-business purposes and provide, among other things, restrictions on internet access (i.e., accessing the internet during work hours for personal reasons and entertainment).

Social Media Use Policy

Over the past several years, an increasing number of employee handbooks have specifically addressed its employees' use of social media. Typically, these provisions include a warning to employees that unless specifically authorized by the employer, an employee may not speak on behalf of the employer. Additionally, handbook provisions addressing social media use are used to caution employees that they should have no expectation of privacy while using company equipment or facilities for any purpose and should further warn that employees may not use social media sites to harass employees or anyone associated or doing business with the employer.

Attendance Policies

Employee handbooks are also useful to instruct employees of the appropriate procedures to follow with respect to attendance issues. These policies usually require employees to notify specific employer representatives (often an immediate supervisor or manager) in a timely manner of any anticipated absence or late arrivals. These policies also often address internal procedures to address chronic or unexcused absences and/or lateness. For example, typical provisions request employees to advise immediate supervisors of an absence or a delay 24 hours in advance wherever possible.

Employee Acknowledgement Form

Every employee handbook should include an employee acknowledgement form in which the employee acknowledges in writing not only the receipt of the handbook, but also that the employee has read and agreed to abide by the rules, policies and standards set forth in the handbook. In these forms, the employee should be required to specifically confirm the employee's understanding of the "at-will" nature of the employment relationship as well as any other critical policy that the employer wishes the employee to specifically acknowledge. The employee acknowledgement form should appear on the last page of the Handbook and be signed and dated by the employee, and every employer should be sure to collect and maintain in its personnel files a copy of the acknowledgment form executed by each employee.

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While the items addressed above are hardly an exhaustive list of issues that should be considered by employers in preparing an employee handbook, they provide an important starting point for every employer who faces the prospect and challenges of negotiating its way through today's business world. Moreover, any employer considering preparing or updating an employee handbook should do so with the assistance of competent counsel and/or labor professional who is familiar with the particular state and federal laws applicable to a specific business. At its best, an employee handbook can provide critical information to employees and potentially afford important protection to the employer. As such, it is a document that merits serious consideration and attention to all employers throughout the state.

About the Authors

Andrew J. Turro, Esq. is a member of Meyer, Suozzi, English & Klein, P.C., which provides legal counsel and advice to various business entities. As a member of the firm's Employment Law Practice, Mr. Turro represents clients in a variety of employment-related matters. Mr. Turro also provides advice to clients in connection with employment contracts and severance agreements.

Richard J. Polsinello has been the President of RJP Labor Consultants, LLC for the past 10 years. Prior to Labor Consulting, Mr. Polsinello had a distinguished 36-year career at New York State's Department of Labor and retired as its Director of the Division of Labor Standards which is responsible for the administration and enforcement of all labor laws, including those regulating work hours, minimum wage, wage payments and supplements, pay equity, child labor and migrant farm labor.