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Employee Handbooks- *Changes You Need to Make*



Labor and Employment Law

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Do You Need a Handbook?

- **Provides supervisors with procedures to follow when managing employees**
- **Employees know what to expect and what is expected of them**
- **Establishes organization is progressive and professional**

Do You Need a Handbook?

- **Ease of Federal Compliance**
- **Strengthens Defense in Litigation**
 - **Did you have a policy?**
 - **Were employees aware of the policy?**
 - **Did you follow the policy?**
 - **Must answer YES to all 3.**

What Jurors (and Employees) Expect?

The Employer is negligent if it does not have written policies?

Yes 91%

No 9%



Format For Handbook

- **Simple Language/Spanish Version**
- **Keep Current Version On-line**
- **Critical Policies/Applications Can Be In Separate Document**
- **Calendar to Update Annually**

Implementing/Distributing Handbook

- **Distribute at Orientation**
- **Sign-off Sheet Saying Current Version is On-line or may be obtained from HR**
- **Annual Reminder/Benefits Enrollment**
- **Document Reminder**

Orientation Acknowledgment

- **Reiterate Employment at-Will Status**
- **Make Sure At-Will Language is Consistent With Application and Handbook**
- **Obligation to Read and Acknowledgment E'ee Has Read Handbook**
- **Signed and dated by the employee**
- **MUST be returned to HR– NO EXCEPTIONS**
- **Maintain in personnel file**

New Hire Checklist

Confirms employee's receipt of key documents and policies

- List of all materials distributed**
 - Completed Application**
 - Acknowledgement of Job Offer**
 - Employee Handbook**
 - All Personnel Policies**

- Acknowledgement that employee has received and reviewed all items listed**

What Should Be In Your Handbook?

**Preliminary information to protect against
litigation**

Company Procedures

Attendance Policy

Discipline Policy

Confidentiality Agreement

Essential Personnel Policies



A Word About This Handbook

- **Purpose/General Guidelines**
- **All Guidelines Followed On Case-by-Case Basis**
- **ALL Policies and Procedures Subject to Modification/Elimination/Interpretation**

Employment At-Will

- **No oral or written employment contract**
- **Employee may be terminated**
 - **At any time**
 - **For any reason**
 - **With or without notice**
 - **With or without cause**

Employment At- Will

- **Statements to the contrary are expressly disavowed**

AND

- **Not effective unless:**
 - **In writing**
 - **By a named senior company representative**

Categories of Employees

- **Newly hired employees**
 - **length of probationary period**
- **Full Time, Part Time and Temporary Employees**
 - **hours worked**
 - **eligibility for benefits**

Company Procedures

- EEO Policy
- Payday
- Holidays
- Benefits
- Leave Policies (including FMLA)

Attendance Policy

- **Mandatory call in to supervisor**
- **Give examples that will warrant discipline**
- **Advise excessive absences or tardies can result in termination**
- **Make clear approved/protected leave/absence is not counted**

Leave Policies

- **Vacation/Sick/PTO**
- **Military**
- **Jury**
- **Bereavement**
- **FMLA**
- **ADA**
- **Personal**

FMLA Policy

- **If an employer has a handbook or written guidance on personnel policies:**
- **Must include information concerning FMLA entitlements**
- **29 C.F.R. § 825.301**

FMLA Policy cont...

- **Employers also must provide employees:**
- **Written notice regarding specific**
 - **Expectations and obligations of employees**
 - **Consequences of failure to meet these obligations**
- **29 C.F.R. § 825.301**

EEO Policy

- **Purpose:**
 - **Prevent discrimination and harassment**
 - **Provide a complaint procedure**
- **Should include:**
 - **General prohibition**
 - **Specific examples of what is unlawful**
 - **Reference to ADA and FMLA**

EEO Policy

- **Complaint Procedure**
 - **Immediately**
 - **Bypass supervisor**
 - **Include more than just “harassment”**
- **No Retaliation**
- **Ensure appropriate corrective action, including discipline**

EEO Policy

Employee Complaint Form

- pin down employee's story



Non-Fraternization

- **Applies to Supervisors/Subordinates**
- **Requires Reporting**
- **“Love” Contract**

Compensation/Benefit Policy

- **Compensation can be confidential, but you cannot prohibit employees from voluntarily discussing compensation**
- **Right to modify, eliminate, change benefits**
- **Right to benefits controlled by plan documents**

FLSA – Time Cards

- **Policy is to pay for time worked**
- **Tampering card is disciplinary offense**
- **Using time card other than your own is disciplinary offense**
- **Overtime must be approved**
- **Fluctuating Hour Workweek**
- **Complaint procedure for unlawful deductions or other unlawful pay practices**

FLSA Overtime and “Safe Harbor” Policy

- **State that employer complies with FLSA regarding minimum wage and overtime issues**
- **Overtime**
 - **Clarify that overtime may be required**
 - **All overtime must be approved in advance**
 - **Non-exempt employees will be paid rate of time and one-half their regular rate for hours worked over 40 in a week**
 - **Only actual hours worked per week count toward overtime**
 - **Exempt employees do not receive overtime**



Union Free Status

- **Company Can State Preference for Union Free Workplace**
- **Cannot Threaten, Interrogate, Promise, Spy (TIPS)**
- **Can State Fact, Opinion, Example (FOE)**

Solicitation and Distribution

- **Solicitation**
 - Prohibited if either employee is on work time
 - Prohibited by all non-employees
- **Distribution**
 - Prohibit in all work areas
- **Cover Off duty and visitors**
- **Modern Application**
 - Internet
 - Bulletin Boards

Discipline Policy

- **Inform employees that violation of standards of conduct will result in discipline**
- **Advise types of discipline used**
 - **verbal warning**
 - **written warning**
 - **suspension**
 - **discharge**

Discipline Policy

- **Reinforce NO obligation to follow progressive discipline**
 - **one type of discipline need not precede another**
- **List examples of conduct that can result in discipline or discharge**
 - **emphasize that can be disciplined for other conduct not listed**

Conduct Policies cont...

- **Violations may result in discipline or term**
 - **Insubordination**
 - **Excessive absenteeism**
 - **Violation of substance abuse policy**
 - **Violation of violence policy**
 - **Unsatisfactory performance**
 - **Suspicion of theft or dishonesty**
 - **Disclosing confidential information**
 - **Other misconduct, as defined**
 - **Violation of Company policies**

Confidentiality Agreement

- **Purpose:**
 - Prevents former employees from disclosing valuable company information to new employers/competitors
- **Confidential Information Includes**
 - trade secrets
 - customer lists
 - personnel data
 - business models & methods of operation

Confidentiality Agreement

- **“Confidential” Information must be:**
 - **property of employer**
 - **peculiar to employer’s business**
 - **disclosure would cause injury**
 - **element of secrecy to the employer, not the trade**

Confidentiality Agreement

- **Must Include:**
 - **Reasonable time limit (typically 2 years)**
 - **Remedies available to employer for breach**
 - **Signature of Employee and Company Rep**

Sarbanes Oxley: Code of Ethical Business Conduct

– Sarbanes-Oxley Compliance

- If company has securities registered under Section 12 of Securities & Exchange Act of 1932 or files reports under Section 15(d)
- Company does not have to be listed on stock exchange

– Sarbanes-Oxley protects employees who:

- Raise allegations of fraud to a federal agency or any other person with authority to investigate allegations
- File, testify or participate in, or otherwise assist in a proceeding relating to the underlying misconduct

Sarbanes Oxley: Code of Ethical Business Conduct

– Complaint Procedures Must:

- Be in writing**
- Communicated to all employees**
- Allow for confidential/anonymous complaints**
- Provide assurances of non-retaliation**
- Be voluntary (reporting cannot be required)**

– Recordkeeping Obligations

- Maintain a Code of Ethics for Senior Financial Officers**
- Document receipt of Code of Ethical Conduct**
- Document training on the Code**
- Maintain records during any investigation into a complaint**

Federal Acquisition Regulations : Business Ethics

- **FAR Regulations Apply To Companies With:**
 - **Contract with a federal agency of \$5 million that requires at least 120 days to perform**
 - **Agents and subcontractors providing services under the affected contracts**
- **FAR Business Ethics Requirements**
 - **30 days after entering into federal contract**
 - **Adoption of a written code of business ethics and conduct**
 - **Provision of code to each employee engaged in contract work**
 - **90 days after entering into federal contract**
 - **Provision of ongoing training on code of business ethics**
 - **Establishment of internal control program aimed at timely discovery of improper conduct**

Search/Inspection Policy

- **Everything is Company Policy**
- **No assurance of privacy or security**
- **Reserve Right to Search Everything**
- **Reserve Right to listen and video**
- **Exception: Ga Business Security and Employee Privacy Act**

Workplace Violence Policy

- **Purpose**
 - **Maintain safe environment for employees**
 - **Applies to everyone**
- **General prohibition against:**
 - **Any type of physical violence**
 - **Threats of violence**
 - **Intimidation and harassment**
 - **Surveillance and Stalking**
 - **Firearms**

Georgia's Business Security And Employee Privacy Act

- Employees have a limited right to keep firearms in their vehicles while at work
- Cannot prohibit an individual with a valid concealed weapon license from carrying and storing their firearm in their vehicle, as long as the firearm is out of sight within a trunk, glove box, or other compartment within the vehicle
- Restriction on Search Policy

When Can You Search Vehicles and Prohibit Firearms:

- **Secure parking area that restricts the general public from entering, such as a gate or security guard and the policy is applied on a “uniform and frequent basis”**
- **Vehicle is owned or leased by the Company**
- **Reasonable belief that accessing the locked vehicle is necessary to prevent an immediate threat to human health, life or safety**
- **Parking lot is for temporary use only**
- **Employee consents for the purpose of a loss prevention investigation**
- **Company is associated with electric generation owned or operated by a public utility**
- **Parking lot is next to a natural gas, liquid petroleum, or water storage supply facility**
- **Transport of the firearm is prohibited by state or federal law**



Workplace Violence Policy

- **Explanation that violation of policy will result in disciplinary action, including termination**
- **EEO complaint Procedure**

Electronic Communication and Email Policy

- **Purpose:**
 - prevent use of resources for non-work-related matters
 - prevent transmittal of offensive messages and images that violate EEO policy
 - prevent lawsuits for invasion of privacy
- **Can monitor:**
 - telephone calls
 - voice mail
 - email

Electronic Communication and Email Policy

Telephone calls and voice mail:

- **may be liable for monitoring unless:**

- **employee gives prior consent**

OR

- **employer monitors using equipment that is regular component of business phone system (switchboard or intercom)**

Electronic Communications and Email Policy

Email:

- **May be liable for intercepting unless:**
 - **employee is given notice that employer may monitor**

AND

- **employer monitors for business purposes**

Electronic Communications and Email Policy

Stored Communications:

- **Employer may access any communications stored on equipment that it provides to employees**
- **allows employer to access employee email on company computer**

Electronic Communications and Email Policy

- **Employee Consent Policy:**
- **Require employees to sign consent form:**
 - **at the beginning of employment**
 - **as a condition of employment**
 - **clearly state that the policy applies to ALL employees (including supervisors)**

Social Media/Blogging Policy

- **Public vs. private employers**
 - Consider policy that employee may respectfully disagree with Company actions, but may not personally attack employees, customers, etc.
- **Downloading**
 - Limit ability to download programs, including games, screen savers, music software, etc.
 - Productivity and security
- **Violations should be reported through EEO complaint procedure**

Cell Phones

Option 1:

- Use When Car is not moving
- Never use in heavy traffic or bad weather
- Use hands free
- No stressful conversations
- Don't look up phone numbers/speed dialing

Option 2:

- Use common sense

Job Reference Policy

- **Purpose: to prevent state tort liability for defamation**
- **Appoint a specific person to provide reference information**
- **Prohibit employees from providing reference information**
- **Reference information should be limited to:**
 - **Dates of employment**
 - **Positions held**

Exit Interviews

1. Was your decision to leave influenced by any of the following?

- Leaving the city
- Returning to school
- Health reasons conditions
- Family circumstances
- Retirement
- Found a better job
- Dissatisfied with:
- Type of work
- Working
- Income
- Supervision
- Other (Please explain

2. Rate the following in your former job or department?

Cooperation within the department:

Cooperation with other departments:

How well you were oriented to the job:

Adequacy of on-going training:

Communication within the department:

Workload:

Exit Interviews

3. What is your opinion of the following?

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>
Your wage/salary:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Opportunity for advancement:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transfer procedures:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Performance Appraisals:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Physical working conditions:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Equipment provided:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paid holidays:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paid vacations:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paid sick days:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Life Insurance:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Medical Benefits:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. How would you rate your Supervisor/Manager on the following points?

	<u>Excellent</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>
Demonstrates fair & equal treatment:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolves complaints & grievances:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consistently follows & enforces all policies & procedures:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Informs employees of matters that directly relate to their job:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Encourages feedback & welcomes suggestions:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Acknowledges employee's accomplishments:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exhibits willingness to admit & correct mistakes:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Express instructions clearly:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Develops cooperation:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

