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Woska Associates
Employment Law Group

Employment Law Forum

Employee Handbooks

Employers generally find that employee handbooks are a valuable tool in communicating policies and procedures to the workforce. Some employers distribute different handbooks to managers and supervisors than those provided to employees in order to identify differences in benefits and/or responsibilities inherent in higher level positions. An employee handbook that is carefully prepared can be beneficial to the employer in litigation. Conversely, a handbook that is put together in a negligent manner, or not regularly updated, may become a liability when a lawsuit is filed.

There is not a standard format in preparation of a handbook. Handbooks should be tailored to the needs of the employer. Although most handbooks are hard copies and distributed upon employment, large diversified employers with offices in different locations often put handbooks on the company's intranet system. The intranet provides flexibility, immediate communication when amendments occur, and when properly maintained, are current as opposed to the redistribution of amended handbooks or insertion of amendments in hard copies.

Some employers avoid preparation of employee handbooks because of concerns that a handbook will limit an employer's flexibility or will create a contract. An employee handbook may be found to be contractual in nature and may have an impact upon management in the manner that it addresses employee issues.¹ However, the overall benefits of a well-drafted employee handbook far outweigh the drawbacks.

The advantages of distributing an employee handbook are many. Every employee receives the same information about the rules, regulations, policies and procedures within the workplace. Employees are informed about the company's expectations and standards of conduct including employee responsibilities and obligations. In addition to improving communications and establishing workplace standards, handbooks promote consistency and when fairly administered have a positive impact on employee morale. Handbooks may also limit employer liability with respect to wage disputes, discrimination and harassment claims, and other employee grievances.

General Contents

Although the contents of handbooks vary from employer to employer, the following information will often be found:

- Welcoming message - acknowledging the new employee and describing the company's history and business philosophy.
- General employment practices and policies – covering equal employment opportunity, drug-free workplace, unlawful harassment, conflicts of interest, employment status, safety regulations, and other workplace rules.
- Supplemental benefits – summary description of benefits provided by the employer including leaves of absence, health and welfare, vacation, holidays, retirement, and related.
- Employee compensation – pay days, payroll deductions, hours of work, attendance, time reporting, compensation policies, reimbursement of expenses, etc.
- Employee Acknowledgement Form – a statement that the employee has received a copy of the handbook, has had an opportunity to review and ask questions concerning the contents, the employee “knowingly” waives any statutory or other rights subject to arbitration that may be found within, and agrees to be bound by the rules, regulations, policies, and other provisions of the handbook, and signed by the employee.

Disclaimers

It is not unusual for a court of law to find that a handbook has created a contract.² The employer must be careful when preparing a handbook to prominently place disclaimers. Disclaimers should appear conspicuously on the page, set apart from the general text.³ This may be done by using bold print, using brackets, underlining, capitalizing, etc. The disclaimer should “jump out” to the reader. Disclaimers should be written so that an employee could not reasonably say that “I didn’t see it” or “I didn’t understand it.”

A disclaimer often found in handbooks include an employment “at-will” provision providing that the employee may be terminated by either the employer or the employee at any time.⁴ Additionally, disclaimers include statements that the handbook does not create a contract or any other type of binding obligation, that the rules, policies and other provisions of the handbook may change at any time, with or without prior notice, and similar comments protecting the employer’s flexibility and right to unilateral action.⁵

Some employers are using “stand alone agreements” during the new employee orientation process. These agreements address issues including arbitration, at-will employment, confidentiality and trade secret stipulations, and are individually signed by new employees. The separate agreements provide the employer additional protection in

the event a court finds that a disclaimer, or the employment acknowledgement statement, is not binding.⁶

If an employer presents for the first time a stand alone agreement to existing employees, it is advisable to consider some type of consideration to avoid claims that employees were coerced into signing for the fear of losing their jobs. The value of an improved benefit in exchange for consent to the separate agreement may prove to be beneficial to the employer in the event of a subsequent lawsuit.

Fair Credit Reporting Act (FCRA) Amendment – Impact on Handbooks

The FCRA has been amended eliminating a sensitive and burdensome requirement that employer's notify the alleged wrongdoer when conducting workplace investigations into employee misconduct when using third party (non-employee) investigators.⁷ The Fair and Accurate Credit Transactions Act (FACTA) that amends the FCRA was signed by President Bush on December 4, 2003, and is effective March 31, 2004 with respect to workplace investigations.⁸

FACTA excludes from the definition of “consumer report” communications made to public or private employers in connection with an investigation of (1) suspected misconduct relating to employment, and (2) compliance with federal, state or local laws and regulations, the rules of a self-regulatory organization, *or any pre-existing written policies of the employer.*⁹ Employers that use employee handbooks to address workplace rules are advised, in light of the new legislation, to ascertain that workplace rules and policies are sufficiently covered within the document. If not covered the FACTA disclosures exclusions may not apply. Employers using employee handbooks to communicate workplace rules and policies are encouraged to contact counsel concerning the impact of the FCRA amendment regarding workplace investigations.

Conclusion

More information is provided concerning employee handbooks in the article entitled “Employee Handbooks: A Double Edged Sword?” published in the July 2010 edition of *HR News*. [The article may be found under the “Publications” link of this website.](#)

¹ *Guz v. Bechtel Nat Inc.*, 24 Cal.4th 317 (1995); *Wheeler v. Phoenix Co. of Chicago*, 658 N.E.2d 532 (1995).

² *Perman v. Arc Ventures*, 554 N.E.2d 982 (1990).

³ *Wheeler v. The Phoenix Company of Chicago*, *IL Appl.Ct*

⁴ California Labor Code Section 2922.

⁵ *Orback v. Hewlett Packard Company*, 909 F.Supp. 808 (1995).

⁶ *Nelson v. Cyprus Bagdad Copper Corp.*, 9th Cir., No. 95-17083.

⁷ 15 USC 1601.

⁸ See *Workplace Investigations – Relaxed Disclosure Requirements in 2004*, *Woska Associates Employment Law Forum*/

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