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# Employee Handbooks – A Double-Edged Sword?

By William J. Woska

Many public sector employers and private sector companies have employee handbooks and/or policy manuals. Handbooks provide the employer the opportunity to communicate policies, procedures, expectations and standards of conduct, the employer's values, goals, objectives and other information to employees. Written policies and procedures assist in introducing new employees to the agency's culture and promote a fair and consistent working environment.

Employee handbooks are also used to publish an employer's policies on affirmative action, equal employment opportunity, sexual harassment, drug and alcohol, the Family and Medical Leave Act (FMLA), and related programs. There are many benefits with respect to communicating with employees concerning working conditions and establishing a good employee/employer relationship. However, there are disadvantages that may occur if an employer's practices and procedures are inconsistent with what is described in a handbook.

## Guidelines in Preparing an Employee Handbook

It is important to understand that because there are differences between employers, such as private sector vs. public sector, or services provided, that handbooks will often be different as to format and information provided. A private sector handbook will very often have an opening statement about the fact that employees serve at-will and that the handbook is not a contract of any kind. A public sector handbook will often reference the difference between at-will, probationary and permanent employees. It is therefore important when preparing a handbook to *tailor it to the organization*.

It is also necessary to *design the handbook to the employee being addressed*. In some cases an agency may find that more than one handbook may be required. For example, in a labor/management environment where the terms and conditions of employment are set forth in union contracts, an employer may determine that it is beneficial to have different handbooks for represented and non-represented employees.

The primary purpose of a handbook is communication. Therefore, *it should be written in simple and easy-to-use terms*. There is little, if any, benefit in preparing a handbook in such a manner

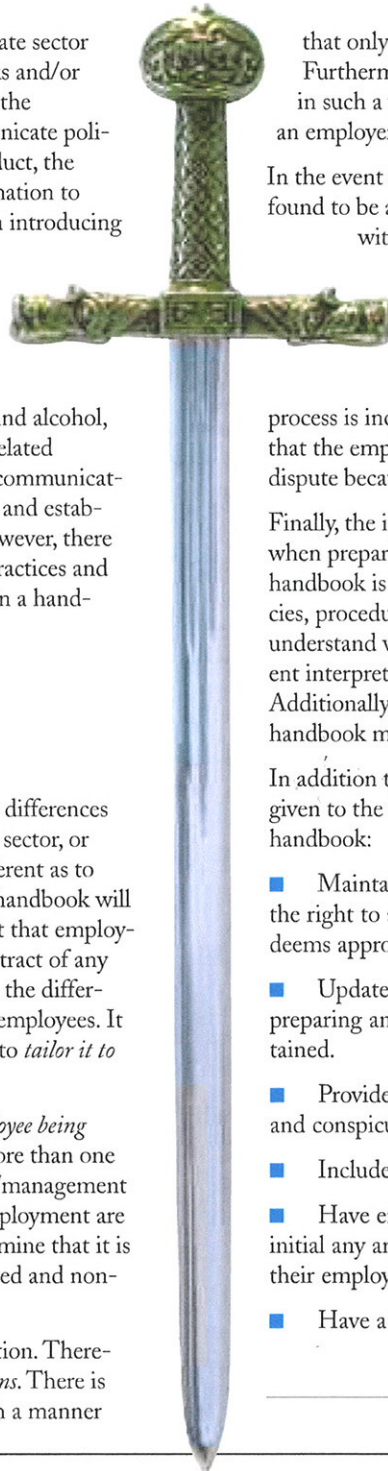
that only a small number of employees will understand. Furthermore, a handbook describing policies and procedures in such a way that they may be interpreted differently exposes an employer to risk in the event of a third-party dispute.

In the event of a third-party dispute, an employer may often be found to be at a disadvantage if the handbook is not consistent with words and the utilization of examples. For example, if the handbook makes reference to temporary or limited term employees serving at the pleasure of the employer (i.e., at-will), but subsequently makes reference to due process in the event of a workplace incident, the concept of due process is inconsistent with at-will employment. It is possible that the employer would not be successful in a third-party dispute because of the inconsistency.

Finally, the importance of *avoiding generalities or vague statements* when preparing a handbook is critical. Again, the purpose of the handbook is to communicate with the employee, explaining policies, procedures, and other information. If an employee does not understand what is being described, or if employees have different interpretations, the employee handbook has little value. Additionally, the morale and motivation that may come from a handbook may develop into anger and mistrust.

In addition to the guidelines provided, consideration should be given to the following factors when preparing an employee handbook:

- Maintain flexibility (a statement that the employer reserves the right to amend, supplement, or rescind any provisions, as it deems appropriate).
- Update the handbook periodically. There is no benefit in preparing an employee handbook if the handbook is not maintained.
- Provide disclaimers where appropriate; they should be clear and conspicuous.
- Include an *acknowledgement and receipt form*.
- Have employees sign, upon receipt, the handbook, and initial any amendments made to it throughout the course of their employment.
- Have a legal counsel review the handbook.



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## Pros and Cons of Having an Employee Handbook

There is no legal requirement for an employer to develop and distribute an employee handbook. Certain federal or state laws require that employee information be published based on the size of the workforce. Publication may often be found in places other than a handbook. The FMLA, for example, requires that an employer post a notice explaining an employee's rights and responsibilities under the act and provide written guidance concerning benefits. Additionally, the general notice must be included in either an employee handbook or the employer may distribute a copy of the notice to each new employee upon hiring.

Public sector employers have rules, regulations, policies and procedures set forth in manuals, labor agreements, and ordinances and resolutions adopted by elected officials that address terms and conditions of employment. Private sector employers, unless unionized, generally rely on handbooks. The larger the private sector employer, the more likely that a handbook will be available. Regardless of whether the employer is public or private sector, there are pros and cons with respect to an employee handbook.

An employee handbook provides the employer an opportunity to welcome new hires, and to provide information concerning the company, mission statement, goals and objectives, rules, regulations, policies, and state and federal laws. Also, an employer is able to recognize the value and importance of each employee and expectations with respect to each, concerning conduct, communication and other matters. The contents of a handbook may differ between employers depending upon manuals, labor agreements, and other publications available.

An employee handbook is especially valuable to the new employee during the early days of employment considering the many forms and statements that new employees must complete, pamphlets, brochures, and other information that must be read, learning a new job, and meeting new employees. The handbook provides the individual basic information about the employer, employee benefits, and related information that may not otherwise be available until an orientation program sometime in the future.

An employee handbook may also benefit an employer with respect to litigation. In order to provide protection from employee lawsuits, the welcoming comments at the beginning of a handbook should clearly state that the handbook is not intended to create a contract. Although lawsuits citing employee handbook statements are not unusual, a carefully written handbook establishing uniform, well-defined standards that are *consistently* applied will be beneficial in reducing the risk of third-party disputes.

## The Double-Edged Sword

Although benefits generally outweigh the risks in developing an employee handbook, it is important to understand that problems that subsequently develop from the issuance of a handbook are often

created by the inconsistent application of policies, procedures, and other standards set forth in the handbook. A handbook creates the presumption that policies and procedures will be uniformly applied. However, if management does not administer the document in a fair and consistent manner, problems leading to arbitration, litigation, or some other third-party forum may develop.

Another issue that may lead to employee unrest and subsequent problems are handbooks that are not carefully written. A poorly drafted document, or a document that is incomplete and does not address anti-harassment or law-related employee protections, may have a negative impact on employers in subsequent litigation.

When an employee handbook is published, an employer incurs the duty to administer and maintain the document. A handbook that is not current often results in different expectations and confusion between the employer and employees. Since local, state and federal legislation affecting the employer/employee relationship is subject to change on a continuing basis, the employer has the obligation to make amendments and additions to employee publications accordingly. The employer has the additional responsibility to ascertain that employees are apprised of and acknowledge receipt of amendments and updates to the handbook. Otherwise, the employer is exposed to considerable risk in disputes when employees claim that they were unaware of a change impacting their employment.

## Conclusion

The benefits of creating an employee handbook outweigh the risks when the handbook is carefully written and maintained. The employer has the opportunity to immediately welcome new employees and communicate the employer's goals, objectives and values. The handbook allows the employer to express the importance of a workplace environment where respect for the individual is an integral part of daily activities.

An employee handbook can also eliminate confusion or misunderstanding among employees with respect to workplace policies. A handbook may increase morale and satisfaction amongst employees and can also provide employees with information as to what they can expect in the employment relationship.

Finally, it is imperative for employers to understand that handbooks can present problems if not carefully written and maintained on a continuing basis. Employers must recognize and appreciate the serious present and continuing commitment involved when making a decision to publish an employee handbook.

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