



What's in Your Employee Handbook?

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Employers should always have an employee handbook. Generally, where a company does not have a handbook, it risks increased litigation, especially since both the FMLA and COBRA require policies detailing an employee rights under those acts. Further, some states (e.g. New York) require employers to have policies concerning leave or workplace smoking.

There are many advantages to drafting an employee handbook. Most importantly, your handbook may be able to limit your company's liability through the policies it establishes. Moreover, a handbook helps regulate the office on benefit/leave issues, and makes clear that all employees will be treated differently because no one employee will have the appearance of being treated differently from another as their rights are clearly expressed in the handbook.

To minimize liability a disclaimer should be carefully drafted to ensure that the company's employees know that the document does not constitute a contract between the employee and the employer. See *Bendeck v. NYU Hospitals Center*, 2008 NY Slip Op 32051 (N.Y. Sup.Ct., 2008) (holding that "routinely issued employee manuals, handbooks, and policy statements should not lightly be converted into binding employment agreements," especially where the employee knows that they hold an at-will status). For example, when drafting an employee handbook you should consider adding language similar to the following:

"This handbook does not constitute a contract, express or implied, or assurance of employment for a specific duration."

Including language along these lines expresses the employer's intent to not make the language of the contract binding upon either party. See *Baron v Port Auth. of New York and New Jersey*, 271 F.3d 81, 88 (2d. Cir. 2001) (holding that "where a sufficiently unambiguous disclaimer, conspicuously placed in the employee handbook such that the employee reasonably could be expected to read it is at issue, the totality of the circumstances inquiry is unnecessary; the implied contract claim may be dismissed as a matter of law."). Additionally, here are some general policies that all employee handbooks should contain:

- Sexual harassment policy;
- Family and Medical Leave Act;
- Internet/Email Policy;
- Workplace Search/Violence Policy;
- Statement of Equal Employment Policy;

- Progressive or Immediate Discipline Policy;
- Complaint-filing process.

You may also consider including the following policies and provisions in your employee handbook:

- Welcoming statement;
- Statement about the company history;
- Policy regarding the use of gender pronouns;
- Work hour policies;
- Compensation policies – classification of employees (e.g. full-time vs. part-time employees);
- Salary/performance review;
- Time-off/leave benefits, including medical, personal, and military leave;
- Bereavement leave;
- Jury/witness duty leave;
- Vacations, including holidays, personal days, sick days, and salary continuation;
- Benefit programs, including descriptions of the hospitalization/medical, dental, life insurance, short/long term disability, workers compensation, 401(k) plan, retirement plans, employee assistance, educational assistance, and severance pay;
- Employee conduct policies, including personal appearance/demeanor-clothing code, absenteeism/tardiness, appropriate office conduct, access to personal records, confidentiality of information (HIPAA), bulletin board usage, smoking, drug/alcohol free workplace, safety/health, parking, gift policy, use of company property/vehicles/materials, and a visitor policy.

The more detailed your employee handbook, the easier it is to refer to in times of controversy. A detailed handbook is the most important communication tool between the employer and its employees, as it sets forth the employer's expectations for its employees, and describes what they can expect from the company.