

## Do We Really Need an Employee Handbook?

*By Olivia Goodkin, Esq.*

Most companies of at least 10 employees have employee handbooks, but are they necessary? There are definitely advantages to having a handbook, such as promoting even-handedness in the treatment of all employees, however, the advantages disappear if the employer does not follow its own rules and regulations as set forth in the employee manual. Below I have listed some suggestions for handbooks, in no particular order, that can greatly assist an employer in maintaining a safe, legally compliant and well-run environment.

### 1. The "At Will" Policy

Although it is presumed under California law that all employment is at will, there are exceptions. The employee handbook should address the "implied contract" exception. Under the implied contract theory, if an employee has been with the company for a long time and continues to do well, gets promotions and raises, and is promised a future at the company, he or she can claim, upon termination, that the employer breached an implied contract that the employee would be terminated only for "cause." However, if the employee has signed an acknowledgment of the employee handbook that clearly states the employment is at will, the acknowledgment trumps any implied contract argument.

There are numerous places in the handbook that I typically like to repeat the at will policy, including near the beginning of the manual, and in the sections discussing discipline, prohibited conduct, promotions and layoffs. In fact, wherever the handbook states that an employee may be terminated, it is important to repeat that nothing stated in the handbook supersedes the at will policy.

### 2. Harassment Laws

The employee handbook should include a detailed section incorporating the legal definition of harassment, the remedies for the victim and the consequences for the perpetrator. California employers are required to provide this information in writing, so the handbook is a good vehicle to repeat the information.

### 3. Privacy Issues

It is crucial to discuss whether the company considers voice mails, emails and other electronic communications to be private. Employees are entitled to a reasonable expectation of privacy. If they are permitted to create passwords that are kept secret and not revealed to any other person, they may have an expectation that their computers and telephones are private. Most companies need access, from time to time, to the employee's data; it is a rare situation where a workstation should be considered entirely off limits to the employer, so the handbook should make it clear that there may be occasions when management needs to have access to the employee's



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computer or telephone.

In addition to clarifying that electronic information belongs to the company, you may consider a policy allowing the search of desks and lockers as needed.

#### **4. Safety Laws**

Many employers have become lax in including the required statements regarding workplace safety. All California employers must have a separate Injury and Illness Prevention Program manual. The employee handbook should reference the IIPP manual and include a contact person for all safety and security issues.

#### **5. Leaves of Absences**

As most employers know, the interaction of numerous laws concerning medical and other leaves of absences is confusing. Having these policies spelled out is enormously helpful for all parties. In addition, do not forget that California law requires employers to provide information on the relatively new Paid Family Leave Act. California law also requires that employers disperse information about pregnancy leave rights. This part of the employee manual must be translated into the primary language of 10% or more of the employees.

#### **6. Immigration Laws and EEOC Statement**

All handbooks should state that the employer is an equal employment opportunity company. I also suggest that you include in a separate section that all offers of employment are conditioned on receipt of adequate evidence of the right to work in the United States.

#### **7. Other Forms for the Employee to Sign**

The employee should sign an Acknowledgment Form, indicating that she or he has read and understood the employee handbook, including its at will provision. If the employer desires to have all disputes resolved by mediation and/or arbitration, a separate form outlining the process should be presented for signature. Finally, most companies own proprietary or confidential information. Employees should sign separate Confidentiality Agreements to acknowledge their agreement to keep the company's trade secrets confidential.

By having a complete but straightforward employee handbook, an employer can promote fairness and consistency in the workplace and minimize the risk of the kind of arbitrary conduct that leads to lawsuits.