Employee Handbooks & Personnel Policies

IMLA Personnel Section Workshop

IMLA Annual Conference
October 18, 2009



Topics

- Purpose and Use of Policies
- Legal Framework for Employee Handbooks
  - Contracts
  - Disclaimers
  - Alteration in Employment Status
- Suggestions for Contents
  - Basic Elements
  - Matters to Include
  - Matters to Exclude
- Sample Policies & Content

The Golden Rules of Personnel Policies?

- How might employees, arbitrators, judges, & the public view personnel policies?
  - **Do As I Say But Not as I Do.**
  - **I Don't Really Mean What I Say.**
  - **You Do that Voodoo that You Do So Well.**

If a handbook is risky, why have one?

If drafted, adopted and applied properly, personnel policies or employee handbooks may provide or promote:

- **Communication** (including *expectations)*
- **Dispute resolution**
- **Fairness**
- **Decision-making guidance**
- **Defense tool**
- **Acceptable/unacceptable behavior guides**
- **Teamwork**

What are the downsides of having a handbook?

- Policies may "tie an employer's hands" – loss of flexibility.
- Policies may alter the employment relationship.
- Policies may not be consistent with practice.
- Failure to follow may lead to employee dissatisfaction, grievance, litigation or liability.
- Employees may gain sense of entitlement.
- Policies may replace familiarity with formality.

Legal Framework for Employee Handbooks

- Initial Inquiry: Status of Employment
  - At-will or otherwise – affects role of policies and drafting of handbook and policies
- Generally, Handbooks should seek to avoid Alteration in Employment Status
- Considerations
  - Creation of Contract – intentionally or inadvertently
  - CBAs and Individual Employment Agreements
- Use of Disclaimers
  - Should use them, but consider if they provide illusion of protection

Suggestions for Contents

- Basic Elements
  - Purpose to Guide Management – not mandate, but also to regulate employee conduct; thus requires artful language – i.e., You're bound but we're not!
    - Non-contractual
    - Reservation of all management rights
    - Right to amend with or without notice
    - Department variations
- Matters to Include
  - Statements of compliance with law in generic form
- Matters to Exclude
  - Statements of compliance with law in specific form (makes compliance with law subject to personnel policy and perhaps dispute resolution)

Guidance in Crafting Employment Policies

Step 1. Determine Purpose of Policy

- Why Be Concerned (e.g., worker performance, safety, conflict, liability, legal requirement to have a policy – e.g. sexual harassment, drug/alcohol testing)
- Who Does Policy Cover (e.g., all employees or those delineated)
- What Does Policy Cover (e.g., type of conduct to be prohibited/regulated)

Guidance in Crafting Employment Policies

Step 2. Determine Manner in Which Policy Goal Will Be Accomplished

- Broad Policy Statement
- Specific Prohibition or Regulation of Conduct (e.g., Dress Code, Outside Employment, Hours of Work)
- Determine Manner in Which Conduct Will Be Controlled (e.g., If Policy addresses Moonlighting, will it be prohibited? Permitted only with prior notice or approval? Subject to rescission?)

Guidance in Crafting Employment Policies

Step 3. Create Language , Adopt & Implement

- Create New Language/Use a Sample or Model Policy
- Before Adoption, Think About Authority and Procedure to Amend or Repeal Policy
- Convince Agency to Consult Legal Counsel Before Finalizing
- Know How to Adopt Policy & Notify and Train Employees [& Public (?)]
- Obtain Acknowledgment of Receipt of Policy and Participation in Training, as Appropriate

Sample Policies & Content

- IMLA Personnel Section intends to create on-line sample personnel policy collection
- As with all samples, caution is key
- The collection will increase in value with contributions from members
  - That value will be enhanced if policies have been tested and include annotations, when practicable
  - But, innovative samples will be welcome, too

Installment 1 of Sample Policies

- See Doug Haney Samples included in materials
- See Additional samples in handout for this session
- Check IMLA.org for more in the future and be a contributor!

Thank You

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