

## Creating Your Flight Plan: Drafting Effective Employee Handbooks



EXPAND YOUR EXPECTATIONS™

### Employee Handbooks

- Supplement verbal explanations of company rules and policies for new employees
- Ready reference for experienced employees
- Complete, accurate and standardized information for all employees



## **Potential Problems With Handbooks**

Problems Include:

- Handbooks may create a contract that defines employee rights
- Can alter an employee's "at-will" status
- Potential liability for wrongful termination



## **What Should a Handbook Contain?**

### **Introductory material**

- Make the employee feel valued by including:
  - "Welcome"/"Open Door" policy
  - Company background and organization
  - A company mission statement

## What Should a Handbook Contain?

### **Disclaimer Regarding At-Will Status**

- Necessary to avoid creating legal obligations
- Should be (1) clear and unambiguous, and (2) conspicuous
- Place disclaimer on a separate page that the employee can sign or initial



## What Should a Handbook Contain?

### **Disclaimer Regarding At-Will Status**

- Improper handbook language **can** create a contract for employment or employee rights.
- Disclaimers should make clear that employment is "at-will."
- Include specific language in disclaimers that the handbook is not a contract

## What Should a Handbook Contain?

### **Disclaimer Regarding At-Will Status**

Reserve the right to fire an employee for reasons not stated in the handbook or for **no reason at all**

## What Should a Handbook Contain?

### **Language to avoid:**

- "Personal agreement of employment"
- "Promises and agrees to"
- "Special relationship created"
- "**Will** be" rehired, recalled, etc.
- "Guaranteed policies, practices, and procedures"



## What Should a Handbook Contain?

### **Other Information:**

- Equal Employment Opportunity Statement
- Information about immigration law compliance
- Information about employee records
- Definitions of types of employment (full-time, part-time, etc.)



## What Should a Handbook Contain?

### **Other Information:**

- Information explaining the work week, schedules, pay periods, break time, etc.
- Overtime policy
- Wage increases and promotion procedures
- Job transfer policy



## What Should a Handbook Contain?

### **FLSA Safe Harbor Provisions:**

- Sets forth situations where an employer may deduct pay from salaried-exempt employees

## What Should a Handbook Contain?

### **Employee Benefits:**

- Paid time off
- Holidays
- Insurance
- COBRA coverage



## What Should a Handbook Contain?

### **Vacation and Sick Pay:**

- Attorney General (Sick & Vacation)
- TCA 50-2-101
- Very unclear
  - Aggressive
  - Conservative
  - Apply evenly

## What Should a Handbook Contain?

### **Employee Benefits:**

- Retirement plan
- Workers compensation
- Unemployment insurance
- Other benefits (scholarships, savings plans, child care, employee discounts, etc.)



## What Should a Handbook Contain?

### **Leave Policies:**

- Family and Medical Leave Act
- Bereavement leave
- Jury duty



## What Should a Handbook Contain?

### **Leave Policies:**

- Personal leave
- Military leave
- Voting leave (Tennessee requires)



## **What Should a Handbook Contain?**

### **Tennessee Maternity Leave Act**

- Up to four months of leave
- Includes adoption
- Gender neutral (Includes Dads)
- 100 or more employees
- MUST BE INCLUDED IN ALL HANDBOOKS PUBLISHED AFTER MAY 27, 2005
- See sample in materials.



## **What Should a Handbook Contain?**

### **Workplace Policies:**

- Include a disclaimer
- Work rules can protect an employer from liability

## What Should a Handbook Contain?

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### Workplace Policies:

- Work area rules
- Safety rules
- Attendance and tardiness
- Confidential information policies
- E-mail and internet policy



## What Should a Handbook Contain?

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### Workplace Policies:

- Complaint procedures
- Harassment and discrimination policies
- Drug testing policies
- Various other rules (telephone use, visitors, access to work areas, smoking, dress, etc.)



## What Should a Handbook Contain?

### **Employee Privacy:**

- Fair and Accurate Credit Transactions Act (FACTA)



- Must take reasonable measures to protect against unauthorized access to or use of consumer information
- SS numbers, addresses, phone numbers, driver's license numbers
- Electronic or written
- Careful when changing out computers

## What Should a Handbook Contain?

### **Employee Privacy:**

- HIPAA



- Must take reasonable measures to protect against unauthorized access to or use of Personal Health Information (PHI)
- SS numbers, addresses, phone numbers, driver's license numbers
- Electronic or written

## What Should a Handbook Contain?

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### Employee Privacy:

- Tennessee Information Security Law
  - Effective July 1, 2005
  - Liability for *Information Holders* who lose the *Personal Information* of individuals
  - Notice requirements
  - Private right of action



## What Should a Handbook Contain?

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### Progressive Discipline Procedures:

1. Utilizing procedures:
  - Verbal warning
  - Written warning
  - Probation or time off
  - Termination



## What Should a Handbook Contain?

### Progressive Discipline Procedures:

2. Avoiding Contractual Obligations:
  - Do not make disciplinary scheme mandatory
  - Include phrases like “retain the right to modify”
  - Explain that progressive discipline scheme may or **may not** be used.

## What Should a Handbook Contain?

### Acknowledgement Form



Employee should:

- Acknowledge receipt of handbook
- Agree that handbook is not a contract



## **What Should a Handbook Contain?**

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### **Acknowledgement Form**

Form should state that:

- Policies may be changed or revised
- Only designated representatives can change handbook policies
- Company is not legally obligated to follow the handbook

## **What the Handbook Should Not Contain**

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- Frequently changing information
- Marriage leave policy
- Language implying that termination will be “for cause”
- Limited number of reasons for termination
- References to Probationary Periods



## **Training of Management**

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- Train managers and supervisors in handbook policies.
- Enforce rules and policies consistently and evenly.
- Managers should **not** attempt to interpret the policy.
- Employee questions should be referred to appropriate company officials.

## **Reviewing and Updating Existing Handbooks**

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- Employment law is constantly changing.
- Outdated handbooks can create liability.
  - Key employer considerations:
    - Have current policies affected morale?
    - Are new policies needed due to business change?
    - Have current policies generated lawsuits?
    - Do the policies comply with current law?

## QUESTIONS

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TITLE 4. STATE GOVERNMENT  
CHAPTER 21. HUMAN RIGHTS  
PART 4. EMPLOYMENT-RELATED DISCRIMINATION

Tenn. Code Ann. § 4-21-408

4-21-408. Leave for adoption, pregnancy, childbirth and nursing an infant

(a) Employees who have been employed by the same employer for at least twelve (12) consecutive months as full-time employees, as determined by the employer at the job site or location, may be absent from such employment for a period not to exceed four (4) months for adoption, pregnancy, childbirth and nursing an infant, where applicable, referred to as "leave" in this section. With regard to adoption, the four-month period shall begin at the time an employee receives custody of the child.

(b) (1) Employees who give at least three (3) months' advance notice to their employer of their anticipated date of departure for such leave, their length of leave, and their intention to return to full-time employment after leave, shall be restored to their previous or similar positions with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of their leave.

(2) Employees who are prevented from giving three (3) months' advance notice because of a medical emergency that necessitates that leave begin earlier than originally anticipated shall not forfeit their rights and benefits under this section solely because of their failure to give three (3) months' advance notice.

(3) Employees who are prevented from giving three (3) months' advance notice because the notice of adoption was received less than three (3) months in advance shall not forfeit their rights and benefits under this section solely because of their failure to give three (3) month's advance notice.

(c) (1) Leave may be with or without pay at the discretion of the employer. Such leave shall not affect the employees' right to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which the employees were eligible at the date of their leave, and any other benefits or rights of their employment incident to the employees' employment position; provided, that the employer need not provide for the cost of any benefits, plans or programs during the period of such leave, unless such employer so provides for all employees on leaves of absence.

(2) If an employee's job position is so unique that the employer cannot, after reasonable efforts, fill that position temporarily, then the employer shall not be liable under this section for failure to reinstate the employee at the end of the leave period.

(3) The purpose of this section is to provide leave time to employees for adoption,

pregnancy, childbirth and nursing the infant, where applicable; therefore, if an employer finds that the employee has utilized the period of leave to actively pursue other employment opportunities or if the employer finds that the employee has worked part time or full time for another employer during the period of leave, then the employer shall not be liable under this section for failure to reinstate the employee at the end of the leave.

(4) Whenever the employer shall determine that the employee will not be reinstated at the end of the leave because the employee's position cannot be filled temporarily or because the employee has used the leave to pursue employment opportunities or to work for another employer, the employer shall so notify the employee.

(d) Nothing contained within the provisions of this section shall be construed to:

(1) Affect any bargaining agreement or company policy that provides for greater or additional benefits than those required under this section;

(2) Apply to any employer who employs fewer than one hundred (100) full-time employees on a permanent basis at the job site or location; or

(3) Diminish or restrict the rights of teachers to leave pursuant to title 49, chapter 5, part 7, or to return or to be reinstated after leave.

(e) The provisions of this section shall be included in the next employee handbook published by the employer after May 27, 2005.