

EMPLOYMENT NOTES

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EMPLOYEE HANDBOOKS

A Review of the Basics

Most large businesses have comprehensive employee handbooks. Small and medium size businesses may or may not have one. Generally, the smaller the business, the less detailed information is included in the handbook.

Should A Business have a Handbook?

Handbooks provide a framework for providing information to employees about a range of topics. The principles and ethics of the organization, basic rules for attendance, employee benefits, substance abuse, safety and specific policies like travel and educational reimbursement are included in most employee handbooks. Employers can protect the organization by being specific in areas like attendance. For instance, the handbook might include a specific statement like: "Employees who are absent for three or more days without calling in

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Thoughts from the

Editor



Employers need to be mindful of the legislative and regulatory environment. A number of proposals have been made during this last

year of the current administration in Washington. Most of these proposals are an attempt to shore up the image of the current administration.

However, the Republican Congress, which would normally be expected to block any such attempts, has not been as aggressive in fighting these proposals due to a widely promulgated view that they are in danger of losing control of the House of Representatives. During the next few months, expect an attempt to raise the minimum wage, lower the FMLA standard from 50 to 25 employees and to make FMLA leave paid leave. The administration is trying to make unemployment available to employees on FMLA leave without any legislative activity.

Regulations can also obstruct employer operations. The well-publicized announcement that employers would be responsible for the safety of home workplaces caused such a furor that it was withdrawn promptly. Many other regulatory actions slip by without notice until the policies are already in place and being enforced against some unsuspecting business. Vigilance is part of being a successful business.

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Happy Spring!



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or providing a medical excuse will be considered to have voluntarily abandoned their job." This statement is also known as an Absent without Leave policy, "AWOL." This type of language helps an employer when attempting to avoid paying unemployment benefits to an employee terminated under such a policy. Generally, the unemployment tribunal will want to know if the employee had notice of such a policy. This provides the basis for the recommendation that all employees sign a receipt for their copy of the employee handbook. Most state unemployment programs presume that an employee is familiar with the contents of any document where the employee has signed a written acknowledgment.

By being specific about certain work rules in the handbook, employers can also support discipline decisions when confronted by other administrative agencies. For this approach to work, the employer must be able to show that the rules set forth have been consistently followed. More on that subject, below.

Employees also appreciate knowing about their benefits, insured and non-insured. Many work rules, not only about attendance, but also dress code, phone use, and so forth, give employees who want to comply an opportunity to do so.

Handbook Disadvantages

The principal objection business executives express about handbooks is that they will tie them to a set of rules. The theory is that businesses, especially small ones, need flexibility with their employees. It is true that employees will expect employers to follow their own handbooks. However, very few policies expressed in a handbook would deny the business the opportunity to be responsive to a special situation. In general, the handbook policies follow common business rules and will rarely need to have special exceptions created. The AWOL language above is a good example. Many businesses have found that a firm rule on AWOL is very helpful. In extremely rare cases, an employee may have a situation that justifies the exception. For instance, while on vacation

out of the country, the employee has an epileptic seizure and is hospitalized for several days without the ability to call in. When the rare exception is made, the reason for the exception should be well documented in case there is a challenge based on inconsistent administration in the future.



The bottom line is that businesses, with very rare exception, gain a great deal more in consistency and smooth administration of employment matters than they surrender in terms of flexibility. The reason that large businesses have comprehensive handbooks is

that they have discovered that the larger the organization, the more useful the handbook becomes. At the same time, if a business operates by the "seat of its pants," and really does not intend to follow any set pattern of work rules, a handbook is definitely a bad idea and will hurt, not help.

Handbooks as Employment Contracts

Another common concern about employee handbooks is that they can be interpreted as contracts of employment. First, this author has previously written in *Employment Notes* that the day of the totally "at will" employee is fading rapidly. Early in this century, comprehensive employment agreements, especially containing mandatory dispute resolution provisions, will become the standard. Employees today are protected by such a wide range of employment laws that very few are not protected by one of more laws.

The position that any employee handbook is an employment contract is very state specific. Many state courts have followed the concept that an employee handbook that contain a statement in obvious and certain terms that it is "Not a Contract of Employment" will not be considered an employment contract.

CMG has recommended that employee handbooks not contain extensive detail on

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insured employee benefits plans. The availability of the insured benefits, and certain general details can be included. However, because businesses change their insurers from time to time, and this often changes the specific procedures and coverages, it is better to create a more generic format in the handbook. However, CMG also recommends that handbooks be provided in binders, and that the binders include copies of the Summary Plan Descriptions (SPDs). As the plans change, the new SPDs can be distributed to employees to include in their employee handbook binder. While in a virtual office, handbooks can also be available on line, it is still recommended that hard copy handbooks be distributed and receipts obtained.

ACTION PLAN:

1. Handbooks are not evergreen. Have your handbook reviewed by your human resources function and employment attorney on a regular basis. Does your handbook include a policy on e-mail or the use of computers and software, for instance?
2. If your business has developed without a handbook, the starting point is to assemble all policies, or items that could be interpreted as policies, as well as all information on employee benefits.
3. There are many software packages and other "kits" available to help businesses develop an employee handbook. CMG provides consulting services to businesses that wish to either revise or develop an employee handbook. An outside consultant should not be selling a handbook. You can obtain that from a software package. The outside consultant should be providing information on what other businesses are doing ("benchmarking") and helping a business to decide what policies are best to include or exclude in the handbook.

Translation into key languages of the employees may be appropriate if there are a large number of employees who do not speak English. While somewhat expensive, this step is helpful should an employee admit that they received a

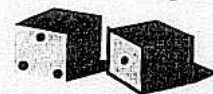
handbook, but could not understand it. The state unemployment commissions are more inclined to support the employer where a translation has been provided. Where you have a very small representation, you may want to determine if it would be appropriate to have a person read the handbook to a new employee, which is not as effective, but may be less expensive.

COBRA Caution Flag

Businesses with a group health plan and employing at least 20 employees are covered by the Consolidated Omnibus Budget Reconciliation Act, "COBRA." While some insurance companies provide assistance to employers during the COBRA conversion, many businesses find themselves faced with compliance issues on their own. The ultimate responsibility for COBRA compliance is with the employer. Businesses may be found responsible for the loss of health coverage by a former employee or spouse, if the business does not handle COBRA correctly. Some firms are now offering external COBRA administration to businesses with a large number of employees. For smaller businesses, caution is the best guide. The trend is to provide COBRA information by Certified Mail – Return Receipt so that a former employee cannot complain that they did not receive the crucial notice in a timely fashion.

AMONG THE NEON LIGHTS

Dave Schein was a featured speaker at a meeting of the Plumbing, Heating and Cooling Contractors Association at the spectacular Bellagio Hotel, Las Vegas in March. He presented "*Managing Your Employees So You Both Can Win*" to a large and receptive group. The presentation and extended question and answer period covered hot issues in employment, including sexual harassment, age discrimination, compliance with the Americans with Disabilities Act, good employment practices and employee discipline.



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