

THE BENEFITS AND DANGERS OF EMPLOYEE HANDBOOKS: ARE THEY WORTH THE CHALLENGE?

Barbara Fitzgerald-Turner, SPHR, and Laura Drill, J.D.

Although its significance is often underappreciated, the development of an employee handbook is one of the most challenging assignments that an organization can face. Why? Because employee handbooks are

BARBARA FITZGERALD-TURNER, SPHR, is Vice President of Human Resource (HR) Consulting for the Elite Group. She has worked with national and international companies at various stages in their lifecycles and has earned a Masters' degree in HR from George Washington University, as well as lifetime certification as a Senior Professional in Human Resources (SPHR) from the Human Resource Certification Institute. Barbara has published numerous articles, and is a frequent industry speaker.

LAURA DRILL, Esq., is a Senior Human Resource Consultant with the Elite Group, and has extensive experience in employee relations, employment law, management coaching, performance management, and workforce planning. Laura, who earned her law degree from Widener University School of Law, is a member of the Pennsylvania Bar and participates annually in the Employment Law Institute sponsored by the Pennsylvania Bar Institute.

Ms. Fitzgerald-Turner and Ms. Drill can be reached at 1.888.581.2049 or bfturner@elitegrp.com or ldrill@elitegrp.com.

created to meet a wide range of objectives—some of which are conflicting. These objectives include:

- An employee handbook, if well-written and properly utilized, should provide a level of legal protection to an organization by establishing the employee-employer relationship and effectively communicating the employer's policies to help defend against various types of litigation, including wrongful termination, discrimination, and harassment claims. Also it displays a company's commitment to comply with government-mandated regulations. To support this objective, and because handbooks have been used as evidence in court cases against an employer, there may be a tendency by attorneys and employers to fill the handbook with legal disclaimers and extensive policy language that may read as "legalese" to an average employee.

- A handbook should be an easy reference tool that enables employees to obtain quick, accurate answers to policy questions versus "trial by error" or gaining misinformation via the "grapevine." This is especially true for new employees because the employee handbook is often the first formal information they receive regarding the organization's policies and expectations. A handbook gives a firm's management team the opportunity to educate employees about the company and to identify what policies are most critical to the firm's operation and success. To achieve this objective, a handbook needs to be written in "plain English" so that it is easily understandable and clearly communicates the firm's expectations for employees' behavior and performance, as well the consequences for not meeting those expectations.

- An effective handbook ought to provide managers with a tool for ensuring consistent treatment of employees across the organization by describing company policies and practices for addressing employee issues. This is important to avoid legal liability, since employees who feel they have been treated in a manner inconsistent with a firm's policies are much more likely to seek legal counsel. It is also critical since nothing undermines morale and productivity more than employees perceiving that the "rules" may vary depending on who your manager may be.
- A handbook must be a "living document" prepared in a format that can be easily updated to reflect the constant changes in labor and employment laws and in a firm's policies, procedures, employee benefits, etc. An outdated handbook that no longer represents the practices of a company can increase a company's risk of liability for employment-related litigation. Therefore, an employer must take seriously the commitment to review and update their handbook on a regular basis. A "once and done" philosophy will only subject the company to increased legal risk.
- Firms often use their employee handbooks to reinforce their mission, values and/or vision. It is essential that these statements be consistent with the handbook's policies and the everyday practices of the firm.

If there is conflict, cognitive dissonance will occur among employees as they attempt to reconcile being part of a firm that "says one thing, but does another."

So how does an organization create a balance among all of these objectives?

WHERE TO BEGIN

Once a company has decided to make the commitment to develop a handbook (or revise an existing document), it is critical to ensure that it effectively meets the each firm's specific needs and goals, understanding that "one size does not fit all." In fact, the handbook should reflect the company's unique culture and values and include policies that will direct the firm and its employees in meeting its goals and satisfying its clients' expectations. A manufacturing firm, for example, would likely focus on safety practices and processes that support product quality in its handbook, while a software company would emphasize *Electronic Communications* as well as *Non-Compete/Non-Solicit/Confidentiality* policies.

Although a handbook includes procedures and policies of an organization, it should not read like a set of rules, but rather as a roadmap or a set of guidelines for how employees and the management of the firm work together. For example, a *Problem Resolution Policy* could include language such as, "*The Company encourages an open and frank atmosphere in which any problem, complaint, suggestion, or question receives a timely response from the Company. If you disagree with Company rules, policies, or practices, you can state your concerns through the problem resolution procedure.*" Such a policy statement provides a guide

to employees for seeking a solution for a problem, while communicating the company's commitment to an open-door policy.

The handbook is also an excellent vehicle with which to communicate the company's employee relations philosophy. This can be accomplished in the first few pages via a *Letter from the President*. It is important that the philosophy presented be supported by the policies in the handbook rather than conflict with them. If, for example, the company is committed to a team concept and/or informality, the *Letter* could include statements about the expectation of cooperation and team support, and the president should sign the letter using her/his first name. In the policies, the emphasis would be on a less rigid dress policy and less formal lines of authority and titles. Authoritarian-type language and rules would then be avoided in the policy descriptions.

The information contained within the handbook must also be consistent with the reality of the company, or the credibility of the document will be compromised. For instance, if a company states in a *Performance Appraisal* policy that managers will conduct regular performance reviews with employees, and these assessments do not occur, employees will be frustrated that the firm is not living up to its commitment and promise. (This type of inconsistency may also create legal liability for the firm if it terminates an employee for performance-related issues and did not provide that employee with formal performance feedback.)

HANDBOOK STYLE

Employee handbooks should be written in a positive, clear, direct, and non-technical style, using

“plain English” and not “legalese” that could make the handbook difficult to understand and interpret. In short, a handbook balances what the company does for the benefit of each employee and what the employee is expected to do for the company. It does not need to include every detail of company practice but should instead focus on clearly stating company philosophies, expectations, and policies that employees need to know to understand their working conditions, benefits and compensation, as well as their rights and responsibilities as employees.

While ideally a handbook would not be more than 20–40 pages in length, the complexity of the modern workplace often makes that difficult. It should be presented in an easy-to-read format with lots of white space and liberal use of bold-face type and “bullets” to communicate the most critical information. In addition, the policies should be organized in a clear and logical manner to allow for ease of use by both employees and managers. Further, consideration must be given to the educational level of the majority of the workforce to ensure that the handbook is written at a level to be understood by all employees. Consideration should also be given to producing a separate version of the handbook in another language for members of the workforce whose primary language is not English.

LEGAL CONCERNS REGARDING EMPLOYEE HANDBOOKS

An employee handbook is often the key document describing the relationship between the employee and the employer. Therefore, if a company includes a policy in its handbook, it must be prepared to

act consistently with the expectations created and follow through with the consequences of the standards established. Many court cases decided against the company have centered on incidents where companies have written policies that they did not consistently follow or enforce and which led to discrimination claims. Judges and juries are harder on these companies because they have made commitments to employees that they have not honored on a uniform basis.

Although an employee handbook should not read like a law book, there is language that should be avoided, as well as legal disclaimers that should be included so as to not create unexpected contractual obligations for the company or alter the employment-at-will relationship between the employee and the employer. Disclaimers that are often recommended include, but are not limited to:

- The handbook does not alter the “at-will” nature of employees’ work relationship with the company.
- The handbook does not create a contract, expressed or implied.
- The handbook should not be considered all-inclusive, but rather a set of guidelines for governing and interpreting the relationship between the company and its employees.
- The information regarding benefit plans is only an overview; it is important to always consult the detailed plan documents before making decisions regarding benefits. The official plan documents shall serve as the final and authoritative word, and all statements

of coverage are subject to the plans’ terms and conditions.

- The handbook supersedes any previous handbook, written policies, or oral representations/statements made by managers of the company and can only be changed in writing by the president of the company or his/her designee.
- The handbook and any policies or benefits described in it can be changed by the company unilaterally at any time without prior notice.
- Regardless of the date of hire, employees are subject to any amendments, deletions or changes in the handbook. (However, there are some decisions where the courts found that the earlier handbooks created contractual obligations, and that to overcome contractual rights, the employer must give these employees some sort of additional “consideration” to make the changes of the new handbook apply to them. This can occur when the original handbook did not contain legal disclaimers and therefore created contractual obligations between employers and employees. For instance, in *Doyle v. Holy Cross Hospital*,¹ the court found that an employer could not unilaterally change a policy that created contractual obligations by subsequent additions of disclaimer language to a revised handbook. The employer would be required to provide sufficient consideration and obtain the affected employees’ consent to make

the revisions enforceable. Conversely, in *Hogue v. Cecil I. Walker Machine Co.*,² the court found that an employer can modify or eliminate policies that create contractual rights, as long as the employees are given notice. Legal counsel should be consulted to determine the law in each jurisdiction.)

These legal disclaimers, to be effective, must be clearly stated and prominently displayed. Some courts go even further to require that the disclaimers be highlighted or underlined and in a conspicuous place, such as on the first page of the handbook.³ Many employers object to having this type of legal language as the first information that an employee reads when opening an employee handbook because they feel that it creates a negative tone and diminishes the “Welcome” language to follow. However, the legal consequences of an improper placement of the disclaimers or the softening of the disclaimer language to make it “sound better” must be seriously considered.

Also, language that erodes the at-will relationship by contradicting the legal disclaimers should be avoided. For example, avoid terms such as “cause” or “just cause” when identifying reasons for termination of employment. For instance, in *United States ex rel Yesudian v. Howard Univ.*,⁴ the court found that a handbook created an implied contract by stating that employees would only be discharged for “cause” even though the handbook also contained a disclaimer. Similarly, extensive and rigid disciplinary procedures should not be created, but instead the handbook should provide for a

general progressive disciplinary procedure, which allows for employer discretion and flexibility. In *Dillion v. Champion Jogbra, Inc.*,⁵ the court allowed a wrongful termination claim from a terminated employee, finding that the handbook sent mixed messages to the employee about her status. In this case, the handbook contained an elaborate discipline and discharge procedure in contrast to the disclaimer that employees could be terminated “at-will.”

Terms such as “normally” or “generally” should be used rather than “always” when making commitments regarding performance reviews’ timing. Further, instead of “permanent” employee, use the term “regular,” and use the term “introductory period,” instead of “probationary period.”

To document that employees have received, read, and understand the handbook, each employee should sign an *Acknowledgment of Receipt of Employee Handbook*, which is then placed in their personnel files. It is recommended that the legal disclaimers included in the handbook be restated on this acknowledgment form to emphasize the company’s position and provide further legal protection. Also, to reinforce its significance, the employee handbook should be labeled “Company Confidential,” and if “hard” versus electronic copies of the handbook are distributed, each employee should be assigned a numbered copy that must be returned to the company upon termination of employment.

Finally, experts recommend having an attorney review the final draft of a handbook before releasing it to employees to ensure it is in compliance with the current local, state, and federal laws, as well as case law at any jurisdictional level.

INTRODUCING A NEW OR REVISED HANDBOOK

Prior to general distribution, it is recommended that a “representative sample” group of employees and managers review the final draft of the handbook. This review will help ensure that the document is “user friendly” and identify areas of potential confusion or employee relations concerns. Depending on the structure of the organization, representatives of different departments and at different levels can and should be solicited for their input. These are the people who represent the “customers” for the handbook.

Too often, handbooks are distributed and “put on the shelf” for occasional employee reference. Therefore, a new (or significantly revised) handbook should be launched with a formal company-wide presentation. Not only does this provide management with an opportunity to emphasize essential points, but it also underlines the importance of the handbook as a vital source of information. In larger companies, it may be useful to hold question-and-answer sessions on a departmental basis. A handbook “launch” is an important and welcome forum for the top executive or business owner and the human resource professional to lead.

With the technology that exists today, it has become far easier for firms to distribute their employee handbooks. Posting a handbook in electronic format on the company’s intranet or via a Web portal, allows employees and managers access to the firm’s policies 24/7. This is particularly valuable for organizations with employees in widespread geographic locations or who work different shifts. This same technology has also dramatically increased the

ease and timeliness with which updates can be made to a handbook. Instead of having to distribute entirely new handbooks or individual pages containing changes, the company can notify employees by e-mail that a change has been made.

However, with this new technology also comes additional legal risks—in particular, how to create the necessary documentation to prove that an employee has received the electronic copy of the handbook or revised policy. Because the law regarding the electronic distribution of communication materials to employees is still developing, legal experts recommend that employers take the necessary precautions to ensure there is sufficient access to these policies. First, the employer should ensure that all employees have notice of and access to the new handbook or the revisions. (It is recommended that detailed instructions be provided to employees on how to access the electronic copy.) The employer should also notify all employees by e-mail of the content and effect of a new or revised handbook or policy and create a electronic tracking system to monitor receipt of each e-mail and any links or attachments.

In addition, the employer should consider a meeting with all employees to inform them of the new handbook or policy revisions and use a sign-in sheet to document attendance. (In *Mannix v. County of Monroe*,⁶ the court found that the county gave sufficient notice to its employees about revised employment policies by posting

the revision on the internal database, sending an e-mail notice to all employees and holding employee meetings on the revisions. Also in *Campbell v. General Dynamics Government Systems Corp.*,⁷ the court found that e-mail notification of a revised policy was insufficient because the e-mail failed to accurately describe the effect of the policy and no tracking system was created to ensure receipt by employees.) Due to the “newness” of this area of the law, it is still recommended that the *Acknowledgment of Receipt of Employee Handbook or Policy Revision*, which contains notice of all legal disclaimers, remain in paper form to be printed out, signed by the employee, and maintained in each employee’s personnel file.

Further, employers should have several “hard” copies of the handbook (placed in loose-leaf notebooks to facilitate update) available in each department of the company, as well as in the human resources department, with the understanding that employees may access the hard copy at any time.

CONCLUSION

A comprehensive handbook, properly implemented, offers employees an understanding of the company for which they work. handbooks do not replace the very real need for face-to-face contact with their managers, but they can and do provide a valuable resource for employees and complement the manager-employee relationship. They also serve the important purpose of establishing guidelines

for the working relationship between an employer and its employees.

While no employee handbook will ever meet all of the needs of an organization, through careful consideration of the key information employees need in order to be effective in an organization; through balancing legalese with “plain English”; through staying consistent with the firm’s declared mission/values/vision; and through using technology to distribute and update the handbook, it can become a critical part of a company’s employee communications strategy. Not an easy task, but the development of an effective employee handbook is certainly worth the challenge.



NOTES:

1. *Doyle v. Holy Cross Hosp.*, 186 Ill. 2d 104, 237 Ill. Dec. 100, 708 N.E.2d 1140, 15 I.E.R. Cas. (BNA) 164, 137 Lab. Cas. (CCH) P 58564, 1999 WL 77557 (1999).
2. *Hogue v. Cecil I. Walker Machinery Co.*, 189 W. Va. 348, 431 S.E.2d 687, 8 I.E.R. Cas. (BNA) 1037, 1993 WL 199254 (1993).
3. See *Nicosia v. Wakefern Food Corp.*, 136 N.J. 401, 643 A.2d 554, 9 I.E.R. Cas. (BNA) 1338, 130 Lab. Cas. (CCH) P 57870, 1994 WL 314051 (1994).
4. *U.S. ex rel. Yesudian v. Howard University*, 332 U.S. App. D.C. 56, 153 F.3d 731, 128 Ed. Law Rep. 1030, 14 I.E.R. Cas. (BNA) 545, 136 Lab. Cas. (CCH) P 10232, 1998 WL 549457 (D.C. Cir. 1998).
5. *Dillon v. Champion Jogbra, Inc.*, 175 Vt. 1, 819 A.2d 703, 2002 WL 31875528 (2002).
6. *Mannix v. County of Monroe*, 348 F.3d 526, 20 I.E.R. Cas. (BNA) 945, 149 Lab. Cas. (CCH) P 59799, 2003 FED App. 0390P, 2003 WL 22470142 (6th Cir. 2003).
7. *Campbell v. General Dynamics Government Systems Corp.*, 407 F.3d 546, 16 A.D. Cas. (BNA) 1361, 151 Lab. Cas. (CCH) P 60002, 30 Nat’l Disability Law Rep. P 135, 2005 WL 1208136 (1st Cir. 2005).