

EMPLOYEE HANDBOOKS: AN ESSENTIAL TOOL FOR SMALL BUSINESSES

A well-drafted employee handbook can act as the cornerstone of a successful company. Not only can it serve to generate good will with current employees and help smooth the transition process for new employees, but it can also protect employers from legal liability for wrongful termination, discrimination, harassment and other claims.

An employee handbook helps employees understand the company's philosophy and their individual role in the company's success. The handbook informs employees about the conditions of their employment, their rights and responsibilities, and the procedures that employees are expected to follow. This keeps managers and employees on the same page with respect to workplace rules and ensures that there is no disparate treatment to any employee. All handbooks should be narrowly tailored for each specific industry and business. Notwithstanding the foregoing, there are certain issues which should be addressed in all handbooks, including, but not limited to employees' at will status, confidentiality, grievance procedures, paid and unpaid time off, discrimination policies and workplace conduct. Employers should also be sure to adequately address applicable federal and state laws such as EEOC, FMLA, HIPAA, ADA, COBRA and FLSA.

As discussed in previous client alerts, federal and state claims by employees against employers have dramatically increased in the past few years. More and more employers are facing suits for wage related complaints as well as discrimination. At the same time, federal, state and local governmental bodies are enacting stricter legislation and levying large fines against employees for employment law violations as a mechanism to protect employees and generate much needed revenue. A well drafted employee handbook can either prevent such issues from arising by codifying clear rights and policies or be used to defend employers when they do. Many courts, including the US Supreme Court, have held that maintaining an up-to-date employee handbook with clear policies serves as an affirmative defense against discrimination and harassment cases. It can also be construed as a good faith effort by the employer to comply with applicable laws, which may reduce or prohibit certain punitive damages and fines.

While a properly drafted employee handbook can aide a business in running smoothly, a carelessly drafted document may be wielded by a disgruntled employee or governmental body to impose liability on the company. Care must be taken that the handbook language does not commit the company to something it can not, or will not, enforce or otherwise tries to enforce illegal policies. Handbooks should be updated at least annually to ensure that they reflect any change or update of the applicable laws.

We have extensive experience in counseling employers in all industries and drafting comprehensive employee handbooks. If you have any questions about the matters covered in this Client Alert, or wish to schedule a private consultation, please call Terrence A. Oved, Esq. of Oved & Oved LLP by telephone at 212.226.2376 or contact by email at terry@ovedlaw.com.

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