



GRAY REED

GRAY REED & MCGRAW, P.C.

Employee Handbooks

Who, What, Why . . .

Who does it apply to: It is up to you. A business with two employees might benefit from an employee handbook. A business with 100 might function fine without one. There are no legal rules about when a handbook must be created.

Can I do it myself: Yes, certainly, but there are many pitfalls and many things to consider. Whatever an employer does, they must be careful to make policies that are consistent with their practices, and, of course, the law. Nothing is worse than downloading something off the internet that might follow the laws of another state and which is inconsistent with your goals and practices.

What policies should I include: That also is up to you, but I would consider these the most important:

- *Discrimination, Harassment, Disability, and EEO.* The most legally significant issue a small business can address is the prohibition of discrimination among employees. Some of the discrimination laws don't kick in until an employer has 15 or 20 employees, but at least one kicks in with just one employee. The policy needs to address both the prohibition and reporting.
- *Holidays, Vacation, Sick, or PTO.* This issue is not as legally significant as it is practically important. The first couple of employees may be handled one way, but after a while, many businesses seem to struggle with consistency.
- *Family Medical Leave.* This topic is only third because it doesn't apply to a business with under 50 employees. Family medical leave is complicated to get right, and a written policy is the first step toward doing so.
- *Employee Dating.* This is always a hot topic. I generally recommend employees not be permitted to fraternize and insist that supervisors, at least, not be permitted to date subordinates.
- *Employment At-will.* If you employ people on an at-will basis (see the EH edition on this topic) it is important to confirm that nothing in the handbook creates a contract of employment

for a period of time and that all employees are still at-will unless otherwise notified in writing.

- *Performance and Discipline.* Consistency in these areas is important to protect against discrimination claims. Employers should lay out their disciplinary policy so there are no questions about the employer's rights to terminate. I recommend leaving yourself the right to terminate for any issue if you feel it is important rather than using a regimented progressive policy.
- *Privacy.* Make sure employees know that you can install video cameras, and search anywhere you like, including their desks, phones, and company email accounts.
- *Worker's Comp.* Whether you are a subscriber or not, consider addressing what employees need to do if they are injured on the job. You have legal obligations to report injuries within a certain period whether you are covered by the act or not.
- *Exceptions and Revisions.* Always reserve the right to make changes without warning and clarify that there may be policies of the business which are not covered by the handbook – otherwise it would be as thick as a phone book.
- *Wage Deductions.* Clarify in advance what deductions may be made from pay so the employees cannot cry foul. Examples include uniforms, damage to company property, theft, and repayment of loans.

What else should I address: Beyond these key topics the second tier policies are:

- *Military Leave.* It is important to let employees know you follow the law regarding time off for deployment or for National Guard or Reserve duty.
- *Benefits.* Provide an explanation of the types of benefits you offer employees including insurance and 401(k).
- *Bereavement.* Let employees know what they can expect if they lose a relative. Who are they entitled to take time off for and what time do they get.

- *Jury Duty and Voting.* Employees are legally granted the right to participate in both without losing their job. Define your policy and whether the employee's time away from work for either is paid.
- *Accidents Involving Employees and Others.* Cover what employees should do if they, a co-worker, or a third-party are injured in the workplace or while working.
- *Tracking Hours, Lunches, and Breaks.* Let employees know when they are expected to be at work, when they get breaks, and how to keep track of their hours so that you stay out of overtime trouble.

Is a full handbook necessary: No. In fact, I imagine the first employee handbooks were collections of policies that someone decided to organize into a book. A business can get along with individual key policies set out in a way that all employees can find them.

Do I need employees to sign that they read it: It is a good idea to have employees sign a document acknowledging receipt of the handbook and confirming they have read it. This will help in the event the employee makes a claim about something covered by the handbook.

Are paper copies necessary: I advise clients that an electronic copy handbook is preferred. Store the handbook on an intranet

or send a copy out to every employee by email. Using an electronic handbook makes editing the handbook much easier – no need to print a whole new copy for everyone or send out an addendum.

What should I do:

Good: Create policies that are important until you feel a handbook is necessary. Cover the basics.

Better: Build an employee handbook that meets your needs and reflects your actual practices. A handbook that reflects your ideal workplace (as opposed to how you actually do business) may be more hurtful if you find yourself in a dispute with a former employee.

Best: All of the above and go beyond a basic acknowledgement of receipt. Have the employees confirm their agreement to searches of their space, drug testing, employment-at-will, patent rights, their worker's compensation election, and wage deductions. It may also be a good document to use for getting an agreement for periodic driving record checks and release of liability for references.



Michael Kelsheimer focuses his practice on the employment law needs of Texas businesses and executive employees. He recognizes that the cost and expense of litigation make resolving employment disputes challenging. To help avoid these concerns, he utilizes his experience in and out of the courtroom to prevent or quickly resolve employment disputes through proactive employer planning and timely advice. When a dispute cannot be avoided, Michael relies upon his prior experience as a briefing attorney for the United States District Court and his extensive experience in employment and commercial lawsuits to secure favorable resolutions for his clients.

This guide is one in a series. For more information, or to receive the entire collection contact Michael Kelsheimer by email at mkelsheimer@grayreed.com or by phone at **469.320.6063**