

# EMPLOYEE HANDBOOKS

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## REPORT FROM COUNSEL

### AN IMPORTANT STEP IN PROTECTING EMPLOYERS FROM COSTLY LITIGATION

Employers often forego one of the most simple, effective and cheapest measures in protecting themselves from future costly litigation, creating an employee handbook or manual. An employee handbook allows employers to clearly and precisely communicate their policies and procedures to employees in a uniform manner. This helps protect an employer from costly litigation, such as discrimination lawsuits by evidencing that the employer has adopted uniform policies and procedures applicable to all employees.

Employee handbooks typically cover a vast range of employment practices, including, but not limited to, the following:

- Compensation, including required tax deductions
- Anti-Discrimination Policies
- Employee benefit programs
- Probationary periods for new hires
- Vacation, sick days and leave
- Reporting absences from work
- Drug-free workplace requirements, including random drug testing requirements
- Dress codes
- Workers compensation
- Compliance with federal statutes, such as COBRA
- Non-disclosure and confidentiality
- Medical relations
- Computer and Technology

An in depth understanding of the employment issues that can lead to litigation is crucial to understanding how to properly draft a handbook to codify your employment policies and procedures. Discussed below are areas of employment concerns that handbooks should clearly address to offer employers protection from costly employment litigation:

1. Protection from Sexual Harassment Lawsuits

Employers should outline that sexual harassment is not tolerated in the work place and implement policies requiring employees who witness harassment to immediately report such occurrences and provide a method for victims to report harassment to others not in their immediate chain of command. This is crucial since employers can be held vicariously liable for the sexual harassment by their employees if they do not have a proper reporting procedure in place to properly investigate matters and take any and all corrective measures required.

2. Protection from Title VII Lawsuits

The Civil Rights Act (“Title VII”) protects employees from discrimination on the basis of race, color, national origin, religion and/or sex. Employers should clearly state they are equal opportunity employers in their employee handbook and terms and conditions of employment including all hiring and promotions are based on non-discriminatory criteria, such as experience and merit.

3. Uniform Disciplinary Policies and Procedures

If employers draft and provide uniform policies for tardiness, absences, and corrective or disciplinary action for inappropriate behavior not resulting in immediate termination, then employers are providing supervisors with guidelines on how matters should be handled so all employees are treated in a consistent matter. Employers should provide a non-exhaustive list of behaviors that result in disciplinary action to notify employees of unacceptable behavior (e.g. theft, falsification of timekeeping records, disruptive activity, and violation of health or safety rules), and whether such actions are a basis for immediate termination. Such uniform policies further lower the chance of a Title VII violation.

4. Notice Privacy and Data Security Policies

In today’s society it is extremely important for employers to consider and implement uniform data privacy and security policies. This should clearly alert employees to the allowable uses for phone and internet and whether they may be used, in a limited fashion, for personal matters. Courts have found that although employers have a legitimate business interest in monitoring employees to make sure they are not distracted from completing their jobs satisfactorily this may not give employers a *carte blanche* to invade employee’s privacy and access the specific content of personal messages. It is important to make sure your policies are updated and compliant with the most current laws in this

ever changing field of internet privacy.

5. Compliance with State and Federal Laws

When recognizing the need for an employee handbook, employers should not simply turn to template handbooks but should take the time and care to outline the specific policies and procedures of their business to comply with federal and state laws. For example, not all employees are covered under the Family Medical Leave Act (“FMLA”), a federal act allowing for absence from work due to illness of an employee or their immediate family. It is important to determine if your employees are eligible for benefits under the FMLA, in which case they must be notified of the FMLA’s benefits and reporting procedures.

6. Maintaining “at-will” Employment Status

An extremely important consideration when drafting an employee handbook is whether the employees are considered “at-will” employees. Pennsylvania is an “at-will” employment state; this means without an employment contract guaranteeing employment, employees may be terminated without a specific reason or cause. However, if an employee handbook is improperly drafted, the Pennsylvania courts may interpret it to grant employment rights beyond “at-will” employment by implying that certain disciplinary procedures will take place prior to termination and that the employee may only be terminated for “just cause”. Thus, the handbook must be clear that certain possible disciplinary actions do not alter the employee’s status beyond that of an at-will employee.

7. Required Arbitration of Disputes

Employers may want to create certain limited contractual provisions in employee handbooks, such as a requirement to use an alternative dispute resolution forum such as arbitration

to resolve any and all disputes. The purpose is to avoid a sympathetic jury. A poorly constructed handbook will not achieve this goal and may contradict the “at will” employment status. To be effective, the employer must be able to show the employee received and fully understood the materials in the handbook for the employee to be bound by the terms contained in the handbook. This may be achieved by having employees freely and knowingly sign an acknowledgement that they have received, read, understood and agree to be bound by the terms of the employee handbook.

#### 8. Media Relations

Employers may require that all requests from reporters or the media be handled by a single, professional point person. No company needs misrepresentation to the public.

#### 9. Language Considerations and Translation

If employees are not primarily English speaking then it may be necessary for the employer to provide translations of the employee handbook to employees so they can fully understand and accept its terms.

It is important to have your employee handbook reviewed for legal compliance with federal and state employment laws and to make sure no unintentional contractual rights are created by a poorly drafted employee handbook. If you are interested in drafting or updating an employee handbook, feel free to contact this office to obtain legal guidance to achieve and implement the proper employment policies and procedures for your business.

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JOSEPH R. POZZUOLO, ESQUIRE AND JEFFREY S. POZZUOLO, ESQUIRE WILL BE PRESENTING: ***“THE BASICS OF ESTATE TAX PLANNING FOR ATTORNEYS, CPA’S AND GENERAL AND NEW PRACTITIONERS INCLUDING ETHICS”*** A CONTINUING LEGAL EDUCATION/CONTINUING PROFESSIONAL EDUCATION (CLE/CPA) SEMINAR FOR ATTORNEYS AND CERTIFIED PUBLIC ACCOUNTANTS ON FRIDAY, NOVEMBER 5, 2010 AT NEUMANN UNIVERSITY.

JOSEPH R. POZZUOLO, ESQUIRE WILL BE PRESENTING: ***“THE FUNDAMENTALS OF ESTATE ADMINISTRATION INCLUDING A STEP BY STEP PREPARATION OF THE FEDERAL ESTATE TAX & PA INHERITANCE TAX RETURNS FOR THE SUBURBAN GENERAL PRACTITIONER AND CPA 2010”*** A CONTINUING LEGAL EDUCATION/ CONTINUING PROFESSIONAL EDUCATION (CLE/CPA) SEMINAR FOR ATTORNEYS AND CERTIFIED PUBLIC ACCOUNTANTS ON FRIDAY, DECEMBER 3, 2010 AT NEUMANN UNIVERSITY.

JUDITH P. RODDEN, ESQUIRE WILL BE PRESENTING: ***“COMMERCIAL AND RESIDENTIAL REAL ESTATE PRACTICES TODAY: FROM AGREEMENT OF SALE TO CLOSING, WITH ETHICS”*** A CONTINUING LEGAL EDUCATION/CONTINUING PROFESSIONAL EDUCATION (CLE/CPA) SEMINAR FOR ATTORNEYS AND CERTIFIED PUBLIC ACCOUNTANTS ON THURSDAY DECEMBER 9, 2010 AT NEUMANN UNIVERSITY.

### Publications

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: <http://pozzuolo.com/PubsArticles.shtml>

#### Corporate/Tax

Design Buy-Sell Agreements For Maximum Utility

Deferred Compensation Rewards And Retains Key Employees

How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool

Protecting A Client's Business From Unfair Competition Using Restrictive Covenants

Money Purchase Pension Plan Falls Out Of Favor

Why An Employment Contract Is Mandatory

What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs

Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend

Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business

How To Look, Act And Sound Like A Professional Corporation

How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

How to Structure a Suitable Buy-Sell Agreement

### Estate Planning

The Limited Liability Company -A Sophisticated Tool For Estate Planning

Diversify Strategies For An Effective Estate Plan

Use Wills To Maximize Family Protection And Minimize Tax

Six Proven Estate Planning Techniques

Divorce Raises The Need For Performing An Estate Planning Review

Divorce and Estate Planning

Remarriage Situations Can Raise Special Estate Planning Considerations

College Funding Tool Offers Estate Planning Advantage

Drafting The Durable Power Of Attorney For Wealth Protection Purposes

Why Living Wills Advance Directives Are An Essential Part Of Estate Planning

Special Needs Trust - An Estate Planning Tool For The Disabled

Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples

***Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.***

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