

The Nuts and Bolts of an Employment Manual

By Maureen E. Carr, Esq.
Rees Broome, PC

As a threshold matter, why should an employer have an employment manual? First, a manual establishes the standard operating procedures for employees. Second, a well-drafted manual creates a benchmark for how employees should expect to be treated by the employer. Finally, and perhaps most importantly, a manual can help an employer comply with legal requirements (although employers are not required to have a manual) and, in many cases, serves as a first line of defense against claims by employees.

The following are the essential (though not exhaustive) elements of most employment manuals:

(1) **Disclaimers.** First and foremost, an employment manual should contain the following disclaimers: employment is at-will, meaning that it can be terminated at any time, with or without notice, and with or without cause; the manual does not create a contract or guarantee of employment for any period of time; the manual supersedes all prior policies; and the policies in the manual can be modified, amended or rescinded by the employer at any time.

(2) **Equal employment opportunity/non-discrimination.** A manual should clearly state that the employer does not discriminate against applicants or employees based upon any characteristic protected by applicable law (which may vary based on the location and size of the employer).

(3) **Prohibition on sexual and other harassment.** The manual should explicitly prohibit harassment on any basis protected by law, including but not limited to sexual harassment. This type of policy frequently defines prohibited harassment, provides examples of unacceptable conduct, and sets forth a complaint procedure.

(4) **Drug and alcohol/workplace violence policies.** A manual typically prohibits violence and the use of drugs and alcohol in connection with an employee's employment and establishes consequences for the violation of such policies (including drug/alcohol testing).

(5) **Use of technology.** In the modern era, it is essential that all manuals contain a technology policy that establishes the parameters for an employee's use of technology provided by the employer and reserves the employer's right to monitor such use. In addition, it is prudent to include a social media/networking policy.

(6) **Performance evaluations.** Typically, a manual establishes a 60 to 90 day introductory period for new employees, after which continued employment will be evaluated. In addition, a manual generally provides for regular performance evaluations of employees.

(7) **Discipline.** A manual should address what employee conduct is unacceptable and how the employer will handle discipline. Many manuals include a progressive discipline policy

(i.e. verbal warning → written warning → suspension → dismissal), but all discipline policies should reserve for the employer the right to vary from the progressive approach in its sole discretion.

(8) Employment classifications. A manual should identify and define the various ways that an employee may be classified – i.e. exempt (salaried) v. non-exempt (hourly); introductory v. permanent v. temporary; full-time v. part-time.

(9) Compensation. The compensation section of an employment manual should define the applicable pay period, explain how non-exempt employees are compensated for overtime, identify proper deductions from the salary of exempt employees, and explain how final paychecks will be issued upon termination of employment.

(10) Benefits. This section should identify the various benefits offered by the employer, such as health insurance (and continuation coverage under federal or state law, depending on the size of the employer), life insurance, long-term disability, short-term disability, and 401k plans. Perhaps most importantly, the manual should clearly state that the benefits offered by the employer can be modified or canceled by the employer at any time.

(11) Leave policy. This section should explain the various forms of leave available to employees, such as vacation leave, sick leave, paid time off, family and medical leave and/or other flexible leave (depending on federal or state law and size of employer), bereavement leave, holiday leave, and military leave.

(12) General operating policies. This section should provide employees with an overview of the general operating procedure of the employer. These policies should be specific to the needs of the employer, but may include working hours, absenteeism, dress code, solicitation and distribution of literature at workplace, inclement weather, smoking, lactation, and telecommuting.

(13) Acknowledgement form. Perhaps the most important part of the employment manual is the acknowledgement form that will be signed by each employee acknowledging that he/she read the manual and understands its contents. The acknowledgement form should also specifically list the disclaimers identified in ¶ 1 above.

Some potential (but common) pitfalls that can turn an employment manual into a problem for employers include the following:

(a) Use of mandatory language. Employers should be careful not to use mandatory language that imposes an undue burden on the employer. For example, the discipline policy should not state, “Employer *shall* follow each progressive steps prior to terminating employment,” because such language would limit the employer’s discretion to terminate employment.

(b) Guarantees/promises. A manual should not contain any language that could be construed to guarantee certain rights, such as continued employment, employment for a definite period of time, certain forms of compensation (i.e. bonus), and/or benefits.

(c) Too much detail. When a manual contains too much detail about, for example, how the employer will address a harassment claim, it can impose an undue burden on the employer to adhere strictly to such details. The manual should contain enough detail to establish employee expectations, but not so much detail that it hinders the employer's ability to manage the employment relationship.

(d) Failure to periodically update. All too often, employers devote significant time and effort to the initial drafting and implementation of a manual, but then neglect to review and update the manual. Manuals should be periodically reviewed by the employer to ensure that policies remain applicable/appropriate and by the employer's attorney to ensure compliance with ever-changing employment laws.

Maureen E. Carr, Esq. is an employment and litigation attorney at Rees Broome, PC in Tysons, Virginia. For more information, please contact Maureen at mcarr@reesbroome.com or 703-790-1911.

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