



Freedman Consulting, Inc.

— CHANGE . . . RESULTS . . . SUCCESS —

EMPLOYEE POLICY HANDBOOKS ARE ESSENTIAL AT ANY SIZE FIRM

Ellen Freedman, CLM
@2024 Freedman Consulting, Inc.

If you ask an employment attorney about whether your firm should have written employee policies, you will rarely receive a straightforward “yes” or “no” answer. The same applies if you ask whether written policies are a benefit or detriment to the firm.

That leaves a whole lot of firms in a quandary. Since doing nothing is the path of least resistance, I find an astounding number of solo to midsize firms still have no handbook.

I understand why a simple “yes” or “no” answer is not appropriate. The inescapable fact is that poorly worded policies can become a liability. The same goes for outdated policies which have not been updated to follow changes in law or procedure. Careless policy language can create unintended contracts. They can land an employer in court. Similarly, well-drafted policies which are inconsistently followed, or poorly communicated, can also land an employer in court. All lawyers know that any litigation, or even threat of litigation, can lead to unpleasant and costly outcomes.

On the other side of this sword’s edge are the acknowledgements that having well-written and followed policies is an effective way of communicating the firm’s values, expectations, and operational requirements to employees. Policies can establish the framework for fair and equal treatment of employees. They can forewarn employees of actions and behaviors which could result in termination and can reassure employees that the firm will provide opportunity to improve by counseling the employee for problem correction. And well-written and followed policies often afford the firm protection in the event of threatened or actual litigation.

Over the years I've found that the most conservative answers and actions came from the defense-side employment attorneys who have defended usually significant-size clients from outrageous claims.

The bottom line is that the more costly the defense and outcome, the more conservative the attorney becomes in future recommendations. Let's face it: When some fine-hair point turns into a multimillion dollar verdict or settlement, it's easy to change perspective going forward. One understands the exasperation when there's almost no way to make all language and actions bulletproof. I don't dispute the validity of the viewpoint. However, pragmatically speaking, the applicability of the ultra-conservative completely risk-averse put-nothing-in-writing approach for a small to midsize law firm is unwarranted. It is likely more harmful than protective.

From my experience, I can say that one of the biggest benefits of having the handbook is not having to reinvent the wheel over and over. Decide the fair way to deal with something and put it in writing. It will save time and aggravation the next time you have to deal with the same issue. And it will ensure you're not accused of favoritism.

Sometimes attorneys ask whether they are required to have written policies. Depending on what laws are in effect locally, as well as on a state or federal level, there are certain mandatory "disclosures" required. Some of this —not all— can be accomplished by putting up compliance posters in a public place, which advise employees of certain rights (overtime entitlement, for example).

More importantly, having actual written policies in some areas actually is interpreted as establishing the employer's good-faith compliance with the law. It can protect the employer from certain penalties or liabilities. This is why virtually all handbooks include language on equal employment opportunities, nondiscrimination, antiharassment, disability accommodation, family and medical leave, employment at will and so forth.

For small firms that want to easily keep the handbook up to date, it makes sense to put the basic language in the handbook, and then refer to outside materials for the most current information. For example, the section for holidays can detail how the firm handles things like holidays that fall on a part-time worker's regularly scheduled work day, or holidays that fall on a scheduled vacation day. It can then include "Each year the firm publishes a schedule of the paid holidays that will be provided in the following year." This helps keep the handbook information easily updated.

When writing about benefit plans, it is usually best to just provide a general description of the benefit and eligibility. Then refer to the provider's plan booklet for further details. A word of caution, though: sometimes plan booklets can contain sloppy language, like referring to the covered employee as "permanent" or some other word that might imply a contract. So always include a caveat in your handbook "at will" section that states that nothing in any plan booklet or anything else referenced that is not written by the firm will change the employee's working relationship from "at will."

A lot of employment attorneys charge a reasonable flat fee to produce a handbook. You want yours to be written in plain English, and it should project a welcoming, friendly tone. Don't be afraid to see a sample of their work. Note, I do recommend you leave it to an employment law specialist to produce one. Be sure to think in advance about any human resource issues you've had in the past. Review them with the attorney to be sure you have language in the handbook to keep you from dealing with the same issues again.

Most handbooks include policies referenced previously as well as:

- Pay procedures, deductions and overtime.
- Performance evaluation and promotions.
- Breaks and hours of operation.
- Time off, scheduling paid time off and leaves of absence.
- Computer use and security.
- Safety procedures, weapons and a smoking policy.
- Appropriate dress and demeanor.
- Confidentiality and handling of personal and client information.
- Disciplinary procedures.
- Alcohol and drug use and job fitness.
- Professional responsibilities and rules of professional conduct.
- Attendance, punctuality and civility.
- Termination.

There will always be firms that prefer to create their own policy handbook. If that's your style, you may want to start by reviewing the article "How to Develop an Employee Handbook," on the website of the Society for Human Resource Management (SHRM), <https://www.shrm.org/topics-tools/tools/how-to-guides/how-to-develop-employee-handbook>. PBA members can contact me for my Employee Policy Handbook Resources list, which includes the SHRM link and nine other resources.

If you don't have a policy handbook, stop kicking the can down the road. Get it done! It will provide protection to the firm. It will enable you to treat people in a fair and consistent manner. It will provide a roadmap for new employees. And, it will communicate important firm values.

A version of this article originally appeared in the August 26, 2024 issue of the Pennsylvania Bar News.

© 2024 Freedman Consulting, Inc. The contents of this article are protected by U.S. copyright. Visitors may print and download one copy of this article solely for personal and noncommercial use, provided that all hard copies contain all copyright and other applicable notices contained in the article. You may not modify, distribute, copy, broadcast, transmit, publish, transfer, or otherwise use any article or material obtained from this site in any other manner except with written permission of the author. The article is for informational use only and does not constitute legal advice or endorsement of any particular product or vendor.