

PRACTICE TIPS AND POINTERS FOR DRAFTING OR REVISING YOUR EMPLOYEE HANDBOOKS AND PERSONNEL POLICIES

I. INTRODUCTION

A township's employee handbook should be designed to familiarize new and current employees with the rules and policies of the employer. The handbook is an important and convenient method of communicating essential information to employees of the township.

Additionally, an accurate and properly distributed employee handbook will serve to protect the township from potential claims by current and former employees. However, an employee handbook will only serve the above purposes, if information contained within the handbook is accurate and complete; the handbook is properly distributed to all employees; and the township's administrators are fully aware of the provisions contained in the handbook and trained to apply these provisions consistently.

II. RECOMMENDED PROVISIONS FOR YOUR TOWNSHIP'S EMPLOYEE HANDBOOK AND PERSONNEL POLICIES

A. One Size Does Not Fit All

Townships' employee handbooks will necessarily differ depending upon the size of the township. However, at minimum the following information should be communicated to township employees through the employee handbook and contained in the following policies:

1. **Hiring Practices:** It is important that the township's hiring practices be set forth in policy.
2. **Hours of Work:** In addition to the required hours for each position covered by the handbook, the handbook should also address the township's overtime pay policies and compliance with the Fair Labor Standards Act, including whether compensatory time may be substituted for overtime.
3. **Performance Reviews:** It is important that the township specify when and how an employee will be reviewed.
4. **Personnel Files:** The township should specify how and when an employee can gain access to his or her personnel file in compliance with the Personnel Record Review Act.
5. **Family and Medical Leave:** The township must provide written information on family and medical leave pursuant to the Family and Medical Leave Act ("FMLA").

Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

6. **Other Leaves of Absence:** Other leaves of absence provisions, i.e., military, bereavement, VESSA, court leave, school visitation leaves should be set forth in the handbook.
7. **Discipline:** The handbook should, consistent with any applicable Collective Bargaining Agreement, set forth the township's policy with regard to discipline. Policies should also identify who has the authority to suspend without pay and to discharge employees.

Caution: A "Just Cause" or "Progressive Discipline" system may imply that employees will not be terminated until the progressive discipline procedure is exhausted. As such, it is important for the handbook to state that progressive discipline will not be required in the event of certain misconduct or performance.

8. **Termination:** The handbook should, where applicable, make clear that any employment is at-will and may be terminated with or without cause. Again, this provision may not apply to employees covered by a Collective Bargaining Agreement. The handbook should list examples of conduct which will result in immediate termination but state that this list is not all-inclusive.
9. **Other Benefits:** The list of other benefits will vary from township to township. The below benefits are usually described in employee handbooks.
 - a. Holidays;
 - b. Vacation;
 - c. Sick leave; and
 - d. Miscellaneous benefits.

10. **Equal Employment Opportunity Statement:** An Equal Employment Opportunity statement will inform all employees of the township's commitment to a work environment free from discrimination. This statement can also aid an employer's defense of a discrimination charge or lawsuit. The following is a sample EEO statement:

[Name of township] is an equal employment opportunity employer and does not discriminate against employees or job applicants on the basis of race, religion, color, sex, age, national origin, disability, veteran or family status, sexual orientation or any other status or condition protected by applicable state or federal laws, except where a bona fide occupational qualification applies.

[Township _____] will:

Recruit, hire, train, and promote persons in all job classifications without regard to race, religion, color, sex, age, national origin, handicap, family or veteran status, sexual orientation or any other status or condition protected by applicable state or federal laws, except where a bona fide occupational qualification applies.

If any employee has a suggestion, problem, or complaint with regard to equal employment, he or she should contact [name of township's contact person].

11. **Anti-Harassment Policies:** Employers should have their policies prohibiting sexual and other forms of harassment in their employee handbooks. The United States Supreme Court in *Faragher v. City of Boca Raton* and *Burlington Industries v. Ellertin*, set forth the law by which an employer can assert an “affirmative defense” to a sexual harassment claim. This defense; however, requires proof that an employer has a written anti-harassment policy which was disseminated to all employees.
12. **Drug and Alcohol Free Workplace:** It is important to clarify that drugs and alcohol will not be permitted in the workplace and that employees may not be under the influence of illegal or illegally obtained drugs or alcohol during the workday or while on the township's premises or in any vehicle or equipment owned by the township. All procedures regarding drug and alcohol testing should also be set-forth in policy and the handbook.
13. **New Employees Probationary Period:** Some townships will have a probationary policy which requires a new employee to complete satisfactorily, a 60 or 90 day probation period. We recommend caution in the use of “probationary period” language. Employees often argue that their continued employment beyond the “probationary period” indicates that they are no longer an “at-will” employee. (See the next section for more discussion of “at-will” employment.) If a probationary period is part of the township's employee handbook it is important that the employee handbook state that use of this term and completion of the probationary period does not change the employment status of an “at-will” employee.
14. **Ethics and Gift Ban:** Townships are required to adopt an ethics and gift ban ordinance or policy.
15. **Travel Regulations and Expenses:** Townships are subject to the recently enacted Travel Expense Control Act.
16. **Use of the Township's Network and Social Media Policies:** Townships should establish parameters for the use of its technology and network equipment, including hardware, such as computers. If townships want to regulate its employees' use of social media, they should have clear and express policies and handbook provisions related to same.

B. The Handbook Disclaimer Provision

Employment relationships are generally “at-will,” meaning that either the employee or employer may terminate the employment relationship at any time, for any reason or for no reason at all.

Some courts have ruled that employee handbooks can create a contract between an employee and employer that changes or limits the “at-will” relationship. As such it is important that your employee handbook include a prominent disclaimer, at the beginning, that the handbook is not a contract, that employees are employed at-will and that the township can terminate their employment or change employee benefits at any time and for any reasons.

The disclaimer should be:

1. Consistent with the language contained in the handbook;
2. Clear and easy to read;
3. Noticeable: Written in large and bold font in the front of the handbook.

Below is a sample disclaimer provision commonly used in employee handbooks:

The contents of this handbook are presented as a matter of information only. The plan, policies, and procedures described are not conditions of employment. [Employer] reserves the right to modify, revoke, suspend, terminate, or change any or all such plans, policies, or procedures, in whole or in part, at any time with or without notice. The language in this booklet is not intended to create, nor is it to be construed to constitute, a contract between [employer] and any one or all of its employees. That is, employment can be terminated at any time at the will of either the employer or the employee.

Illinois courts have recognized an employee handbook as a contract, if the “traditional requirements” for the contract termination are present. *McHenry v. Charter Golf, Inc.*, 176 Ill. 2d 482 (1997).

These requirements include:

1. The language of the handbook contains a clear offer;
2. The handbook is disseminated to the employee so that the employee is aware of the offer; and
3. The employee must accept the offer by starting or continuing to work. *Green v. Trinity Intern. University*, 344 Ill. App. 3d 1079 (2003).

However, courts have also made clear that if an employment handbook contains an express disclaimer stating that it was not to be construed as an employment contract, the handbook was not a contract altering the employee's "at-will" status. *Hogge v. Champion Laboratories, Inc.*, 190 Ill. App. 3d 620 (1989).

At least one federal district court held that, while not necessarily constituting a contract, the handbook did create an "agreement" under the Illinois Wage Payment and Collection Act, so caution should be used in setting out provisions related to wages. *Wharton v. Comcast Corp.*, 12 C 1157 (N.D.Ill. 2012).

III. DISSEMINATION AND ACKNOWLEDGMENT OF THE EMPLOYEE HANDBOOK

An employment handbook only achieves the objectives of the township if it is properly distributed to all of its covered employees. In order to accomplish this task, we recommend the following distribution method:

1. Employees should be provided the handbook during an informational session, one-on-one, a small group or a township wide in-service. The policies in the handbook should be reviewed and explained and employees should be given an opportunity to ask questions.
2. Employees should be directed to read the handbook and provided with sufficient time to review before signing the acknowledgment of receipt. Below is a sample acknowledgment form:

Employee's acknowledgment. I have received my copy of the employee handbook and I understand that it is my responsibility to read and comply with the policies contained in this handbook and any revisions to it. I also acknowledge that this handbook is not a contract of employment and that either the company or I may terminate my employment at any time with or without cause and with or without notice.

Date

Signature

3. All employees should be required to sign the acknowledgment or receipt of the handbook and the acknowledgment form maintained in their personnel file.

IV. REVISIONS OR CHANGES TO THE EMPLOYEE HANDBOOK

Although an employer may unilaterally change its own policies, some courts have ruled that modifications to the terms and provisions of an employee handbook cannot apply to existing employees in the absence of "consideration." A handbook revision, therefore, must satisfy three elements to be effective:

1. Clarity – the revision must be clear and the nature on the change spelled out for all employees to understand;

2. Communication – the change must be communicated to the affected employees; and
3. Consideration – there must be something given up or promised as consideration for the modification.

Some courts have held the consideration can be simply continuing to work under the revised handbook while others have stated that something more is required. See *Hanna v. Marshall Field and Co.*, 279 Ill. App. 3d 784 (1996) and *Doyle v. Holy Cross Hosp.*, 186 Ill. 2d 104 (1999).

V. SUMMARY

Employee handbooks should be drafted with care. The following tips will help to minimize any concerns or challenge raised with regard to your township's employee handbook:

1. Draft the appropriate handbook for the targeted group of employees. You may need different handbooks for different groups of employees. Remember that if the handbook is addressing employees covered by a collective bargaining agreement, the handbook language cannot contradict the terms of the collective bargaining agreement.
2. Use clear and easy to understand language.
3. Make sure that the policies set forth in the handbook are enforced uniformly and consistently by your township's administrators and supervisors. Make sure that management is provided training on the handbook provisions.
4. Review and eliminate any reference to an initial "probationary period" for new employees. If a probationary period is a part of your handbook make sure there is clear language stating that the probationary period does not eliminate the employee's "at-will" status.
5. Eliminate language which could be interpreted to require progressive discipline of employees in all situations.
6. Ensure the proper distribution of the handbook to all covered employees and that employees are requested to read the handbook and sign an acknowledgment receipt.
7. Ensure that the first page of your handbook contains a disclaimer in bold print and large font, that the handbook does not constitute a contract for employment and that the covered employees are employed "at-will."

Robbins Schwartz

Practice Tips and Pointers for Drafting or Revising Your Employee Handbooks and Personnel Policies

Tuesday, November 13, 2018
Presented By: Dennis L. Weedman

INTRODUCTION

» A township's employee handbook should be designed to familiarize new and current employees with the rules and policies of the employer. The handbook is an important and convenient method of communicating essential information to employees of the township.

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RECOMMENDED PROVISIONS FOR YOUR TOWNSHIP'S EMPLOYEE HANDBOOK AND PERSONNEL POLICIES

- » One Size Does Not Fit All
- › Townships' employee handbooks will necessarily differ depending upon the size of the township. However, at minimum the following information should be communicated to township employees through the employee handbook and contained in the following policies:
 - Hiring Practices
 - Hours of Work
 - Performance Reviews
 - Personnel Files
 - Family and Medical Leave
 - Other Leaves of Absence
 - Discipline
 - Caution: "Just Cause" or "Progressive Discipline"
 - Termination
 - Other Benefits

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**RECOMMENDED PROVISIONS FOR YOUR TOWNSHIP'S
EMPLOYEE HANDBOOK AND PERSONNEL POLICIES**

» Equal Employment Opportunity Statement

- › The following is a sample EEO statement:
 - [Name of township] is an equal employment opportunity employer and does not discriminate against employees or job applicants on the basis of race, religion, color, sex, age, national origin, disability, veteran or family status, sexual orientation or any other status or condition protected by applicable state or federal laws, except where a bona fide occupational qualification applies.

 - [Township _____] will:
 - Recruit, hire, train, and promote persons in all job classifications without regard to race, religion, color, sex, age, national origin, handicap, family or veteran status, sexual orientation or any other status or condition protected by applicable state or federal laws, except where a bona fide occupational qualification applies.

 - If any employee has a suggestion, problem, or complaint with regard to equal employment, he or she should contact [name of township's contact person].

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**RECOMMENDED PROVISIONS FOR YOUR TOWNSHIP'S
EMPLOYEE HANDBOOK AND PERSONNEL POLICIES**

» One Size Does Not Fit All

- › Townships' employee handbooks will necessarily differ depending upon the size of the township. However, at minimum the following information should be communicated to township employees through the employee handbook and contained in the following policies: *cont.*
 - Anti-Harassment Policies
 - Drug and Alcohol Free Workplace
 - New Employees Probationary Period
 - Ethics and Gift Ban
 - Travel Regulations and Expenses
 - Use of the Township's Network and Social Media Policies

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**RECOMMENDED PROVISIONS FOR YOUR TOWNSHIP'S
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» The Handbook Disclaimer Provision

- › Employment relationships are generally "at-will," meaning that either the employee or employer may terminate the employment relationship at any time, for any reason or for no reason at all.

- › The disclaimer should be:
 - Consistent with the language contained in the handbook;
 - Clear and easy to read;
 - Noticeable: Written in large and bold font in the front of the handbook.

Robbins Schwartz

**RECOMMENDED PROVISIONS FOR YOUR TOWNSHIP'S
EMPLOYEE HANDBOOK AND PERSONNEL POLICIES**

» Below is a sample disclaimer provision commonly used in employee handbooks:

› The contents of this handbook are presented as a matter of information only. The plan, policies, and procedures described are not conditions of employment. [Employer] reserves the right to modify, revoke, suspend, terminate, or change any or all such plans, policies, or procedures, in whole or in part, at any time with or without notice. The language in this booklet is not intended to create, nor is it to be construed to constitute, a contract between [employer] and any one or all of its employees. That is, employment can be terminated at any time at the will of either the employer or the employee.

› Illinois courts have recognized an employee handbook as a contract, if the "traditional requirements" for the contract termination are present. *McHenry v. Charter Golf, Inc.*, 176 Ill. 2d 482 (1997).

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**RECOMMENDED PROVISIONS FOR YOUR TOWNSHIP'S
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» These Requirements Include:

- › The language of the handbook contains a clear offer;
- › The handbook is disseminated to the employee so that the employee is aware of the offer; and
- › The employee must accept the offer by starting or continuing to work. *Green v. Trinity Intern. University*, 344 Ill. App. 3d 1079 (2003).

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**DISSEMINATION AND ACKNOWLEDGMENT OF THE
EMPLOYEE HANDBOOK**

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- › Employees should be provided the handbook during an informational session, one-on-one, a small group or a township wide in-service.
- › Employees should be directed to read the handbook and provided with sufficient time to review before signing the acknowledgment of receipt.
- › All employees should be required to sign the acknowledgment or receipt of the handbook and the acknowledgment form maintained in their personnel file.

› Below is a sample acknowledgment form:

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DISSEMINATION AND ACKNOWLEDGMENT OF THE EMPLOYEE HANDBOOK

Employee's acknowledgment. I have received my copy of the employee handbook and I understand that it is my responsibility to read and comply with the policies contained in this handbook and any revisions to it. I also acknowledge that this handbook is not a contract of employment and that either the company or I may terminate my employment at any time with or without cause and with or without notice.

Date

Signature

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REVISIONS OR CHANGES TO THE EMPLOYEE HANDBOOK

- » A handbook revision, therefore, must satisfy three elements to be effective:
 - › Clarity
 - › Communication
 - › Consideration

- » Some courts have held the consideration can be simply continuing to work under the revised handbook while others have stated that something more is required

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SUMMARY

- » Employee handbooks should be drafted with care. The following tips will help to minimize any concerns or challenge raised with regard to your township's employee handbook:
 - › Draft the appropriate handbook for the targeted group of employees.
 - › Use clear and easy to understand language.
 - › Make sure that the policies set forth in the handbook are enforced uniformly and consistently by your township's administrators and supervisors.
 - › Review and eliminate any reference to an initial "probationary period" for new employees.
 - › Eliminate language which could be interpreted to require progressive discipline of employees in all situations.
 - › Ensure the proper distribution of the handbook to all covered employees.
 - › Ensure that the first page of your handbook contains a disclaimer.

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QUESTIONS?

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