

HANDBOOKS – How Much is Too Much?

When the owner of a small distributorship sent his new employee handbook to me for review, I wished he had been texting me so I could have responded, “OMG.” His request, as an association member, was to seek my opinion of work prepared by his lawyers, who had taken the template I provided, and expanded it to assure it meets the needs of his company. He described his discomfort that it may not be complete and he wanted my approval. I appreciate his confidence in our decade of association, but he actually provided me with a valuable reminder that I must be proactive to remind the members to be extremely careful to assure that any printed documents supplied to employees will not become a weapon that a disgruntled person can use to extract untold damages later.

Buffeted by twenty-five years of experience writing handbooks, it was obvious this small business owner paid a lot of money for this monstrosity. Monstrosity? Thumbing through the printed copy, I found that I was looking at 72 pages of legalese for a company with four employees. That’s right – FOUR employees! Thinking I could write a handbook for four employees in a dinner napkin, I began on page two where I found a manually created Table of Contents, which means that every time any change is made to this book and the page numbers change, someone has to manually change the page numbers in this entire Table of Contents. Microsoft 101 teaches how to create an electronic Table of Contents by marking the headings. What a waste of time!

I dreaded what I was about to see, but the member need pushed me to move to page three, where the “*Employee Admonishments*” began. After a warm and kind welcoming letter, signed by the President, employees were warned that they had better not try to call this book a contract, change it, try to collect any benefits they are not entitled to, or read into the copy any other unreasonable conclusion.

Next page brought new and curt directives. The company is “*at-will*” and can fire anybody they want to fire and employees must agree to ARBITRATION. Is this a joke? Whoever wrote this handbook did not get the memo. We do not even suggest arbitration in companies where there is no union. Not only is it unlawful in some states, there is a much more important reason why we think only mediation works. Unions require arbitration.

In fact, those who have spent their lives working in HR will tell you quickly that if you write an employee handbook that looks and reads like a union contract, you will get one in a heartbeat. It will not be difficult to unionize four people. At this point, I am thinking this must be the work of a labor lawyer, but the labor lawyers I work with would advise a handbook that is much more limited than anything that looks like volume three of an encyclopedia.

A few pages later, I was less convinced this book was the work of a labor lawyer who would have known when to quit writing. The at-will employment relationship was greatly expanded and the “*Arbitration Clause*” was expanded to a full page, complete with references to the Federal Arbitration Code. Who would have thought the following page was a formal written agreement, to be signed by the employee and stated that the cost of any arbitration would be split between the employee and the company. What? (That is what a union contract states.) Does this translate into an agreement that if I am an employee at that company and I complain, I have to pay somebody to solve my problem? If I do, it will be the Teamsters! At this point, I wanted to start packing and go to this distributor and beg him not to distribute this book, but I cannot. I decided instead that this business owner chose the equivalent of having his broken wrist set by a pharmacist. Pharmacists are skilled people, but setting broken bones is not their specialty. The cast will be pretty but the healed bones will be crooked.

After a few more pages of what employees are required to do to work there, came the motherload of reasons why employees would be fired. At the front of the book, the company has already told the employee that they can be fired for any reason or no reason, so why do they need to remind them at the beginning of this paragraph and then list thirty-one specific reasons for firing employees for rule violations? I do not know. Best practices in HR suggest that we never put an exhaustive list of “rules” in the employee handbook.

I also learned from fifteen years of work in the newspaper industry that there is nothing easier to scrutinize than the printed word. If you write it down, expect to see it later in a setting that you could regret. As an expert witness, I have watched those uber-talented lawyers in wrongful termination cases grill a company representative to explain why the reason for terminating their client was NOT on the rules list. The obvious answer is to say, *“We cannot possibly think of everything,”* which will bring an immediate question from the lawyer, *“If it was so serious to result in termination, don’t you think it needed to be on the list?”* Case closed; checkbook opened.

Doesn’t it make sense to simply say, *“If you engage in conduct that brings discredit to you or to the company, you can expect us to address this unacceptable behavior and take corrective action?”* As they say in the NFL, *“Come on, man!”*

Reviewing the benefits section reminded me that the writer of this book was unaware of or insensitive to using such terms as *“accrued”* in leave plans. Those who comply with the rulings from the Department of Labor know we cannot withhold any pay for accrued leave when the employee quits. The Department of Labor has been steadfast in their opinion that any “accrued” leave time is actually deferred compensation and must be paid as wages. When the employee leaves, those deferred wages must be included in final pay. While holding pay by stating that employees will forfeit it if they fail to give notice is contrary to the ruling of the DOL, it may actually completely negate the at-will agreement. Just to be sure the employee understands how important it is to leave in good standing, this book again specifically mentioned it in the section entitled “Former Employees.” To be rehired, you must leave in good standing. Just another potential consequence to make sure the at-will privilege is compromised.

How so? Under at-will, the employee can quit without consequences and the employer can terminate without consequences. If the employer imposes a consequence for employees who fail to give notice, then the at-will agreement is broken. Although there is an easy way to fix that, it is imperative to make certain that employees are not punished when they decide to leave. Sprinkling a generous portion of the word ACCRUED throughout the paid time off section will bring scrutiny when the employee challenges and the challenge to “at-will” will soon follow.

I offered a critique to this distributor that this book is an example of overkill, and sent him a money-handling policy and social medial policies, which he needed and were missing. I wanted him to throw that book into a nearby sewer and start again, but I am certain it was an expensive undertaking and I never put myself between a company and its lawyers. When that employer is dragged into court, it is that lawyer who will defend him, not me. The experience reminded me that I need to be vigorously proactive and reinforce some important points to all members.

When planning your employee handbook, there are a few basics that will prevent this debacle. Just answer some questions.

1. What do we want this Handbook to communicate?
2. What topics are important for our employees to have information about?
3. How strongly do we want this message to be delivered?
4. How detailed do we want to be?

5. How easily do we want this handbook to be updated?
6. Who may be the best source of input to read the draft before we distribute it? Try for two people who know your company.
- 7.

The employee handbook should communicate information about the company, how it is operated, and what is required to be employed there. Yes, it should say the relationship is voluntary and can end at any time, but you do not need to say it nine different ways on six different pages.

There should be a brief review of the benefits and information about where more extensive information about benefits can be found. Be sure to include information about how and when employees are paid because employees want to know that. Next, you will want to include information about what is expected from employees, including workplace behavior and safe work practices. The safety information will vary based on the type of business you operate. In a distribution center, it may be important to require closed-toed shoes, safety glasses, hearing protection, and head protection, based on what is received, stored, and shipped. The behavior requirements are universal and include no drugs/alcohol, no violence, no bullying, no sexual harassment, no falsifying records, no abuse of social media, and no weapons. It will take a few pages to explain these requirements, but they are essential.

Finally, you want to put a page in the back where the employee acknowledges that he/she promises to read the handbook and agrees to work under these conditions. The tone of the book should sound like the management of the company. Most companies talk in terms of “we” and “us.” They talk about the “team” and the “associates.” They write in first and second person, not in impersonal third person. They reject any third person language that includes, *“the Company shall, and the Employee shall,”* reserved for union contracts. The rule for writing is this: - if you do not say it, don’t write it. It sounds cold.

The entire document should be prepared in electronic format using a word processing program, such as Microsoft Word. The copy should be marked with headings that allow the finished work to have an electronic *Table of Contents* that is updated with the click of the mouse. A new millennial generation member reminded me that a manual Table of Contents is the work of the traditional generation, who do not understand computers. Enough said.

Just a few *don’ts*:

- *Don’t* make your handbook look or sound like a contract. It is an employee guide and that is how it should appear and sound.
- *Don’t* try to cover every detail to the extent it becomes a policy and procedure manual rather than a handbook. It is a guide, not a rulebook.
- *Don’t* try to write a handbook that complies with all laws in all states. It is impossible to do that in any format useful to employees. It is better to include only those topics that are generally universal than to try to cover everything in one document. We often write universal handbooks with local inserts to cover the individual locations. If the book is stored on a shared drive with employee access, it is easy to use this format.
- *Don’t* try to write your handbook in such a way that it is a crutch for managers to say, *“I don’t care, but the Handbook says no.”* The handbook is a resource, not an excuse.
- *Don’t* confuse your employees by shifting the tone from warm and concerned on page two to stern executioner on page three. Keep the same writing style throughout your book.
- *Don’t* forget to include the mandatory notifications employees should receive and be sure to place a strong emphasis on workplace safety. EEO, COBRA, FLSA, OSHA, and USERRA have mandatory notifications.

- *Don't* ignore the importance of requiring every employee to sign the handbook acknowledgement and then storing that document away in a secure manual or electronic employee file. It could be invaluable later.

Nancye Combs is a nationally respected management consultant, executive coach, expert witness, and university instructor. She has more than 40 years of practical experience in human resources. Some of the most successful companies in the world give her credit for her sage guidance to solve extremely serious internal management issues. This advisory does not replace the services of a competent legal advisor and is not specific to the laws of any specific state. Nancye is the endorsed consultant for six major trade associations and works with hundreds of businesses on four continents.

Nancye M. Combs, AEP•SPHR
HR Enterprise, Inc.
P.O. Box 6507 • Louisville, KY 40206-0507
(502) 896-0503 • FAX (502) 896-0033
www.HREnterprise.com
e-mail: nancyecombs@aol.com

