

Writing an Employee Manual

by Quenda Behler Story

If you're like most business owners, you already have more than enough paperwork to do. Why should you spend valuable time writing an employee manual? Sorry, but if you have more than one or two employees, you need one. You need it for the same reasons you need written contracts with customers: so you and your employees will know what's expected from each side, what the rules are, and most important, what happens when something goes wrong. As in your customer-contractor relationships, you need predictability in your employee-employer relationship.

An employee manual can head off the kind of misunderstandings that get you into trouble. It can protect you in court if your employee decides to sue you, or if some third party tries to sue you for something related to the behavior of one of your employees.

To do this, the manual has to describe your employment terms, job-site policies, performance standards, and termination procedures for employees who don't meet those standards, which helps a lot when a wrongful discharge lawsuit or an unjustified unemployment claim is filed.

Before you write your handbook, you need to decide what your policies are for things like fighting, theft, job-site safety, use of company tools, rudeness to customers, alcohol and drug use, smoking, and job cleanup.

What to Put in It

The manual should establish how you set vacations, pay increases, and other benefit rights. Putting it in writing assures employees that you're telling all of them the same thing. You might think that you're already doing this, but the fact is what you say and what people

hear can be two different things.

You should include serious language about how important safety is to you and what your safety procedures are. It should also say that employees who don't adhere to your safety standards can be fired immediately if the incident is serious. You need to *enforce* these policies on the job; otherwise, you can be held responsible for accidents that happen because someone breaks the rules.

The handbook should also state that it is against the rules to harass or discriminate against anyone on the basis of sex, religion, race, or national origin. You can't stop employees from being prejudiced, but you need to prevent them from behaving that way on your job.

Be sure to describe your list of unacceptable behaviors as "not inclusive," just in case someone decides to do something so ridiculous that it doesn't even occur to you. I know of a situation where an employee thought it would be really funny to put duct tape over a coworker's eyes.

Avoid language that suggests that employees are entitled to a job as long as they follow all your rules. Don't write anything that could be interpreted as a promise to give a raise or bonus in exchange for behaving or performing in a certain manner. Especially in an econ-

omy like this one, you don't know if you'll have the money.

A Contractual Relationship

If this makes you think you'd be better off without a manual, think again. Even without a manual or a written contract, every employer-employee relationship is an implied employment contract. In the absence of a written policy, the courts will look at your past and present activities to determine what your policies are. Since an implied contract already exists, writing things down in a manual allows you to establish the terms of that contract.

For practical purposes, your manual is an employment contract, so you're buying trouble for yourself if you don't abide by its terms. If you wind up in court, you'll discover that the procedures you actually use will trump the procedures that are written in your manual. For example, your employee manual may allow you to fire Joe for breaking the rules and smoking inside a client's house. But Joe may have a case against you if he can prove that you knew other employees smoked in customers' houses and you didn't fire them.

Because a handbook is a legal document, the wording matters. A good example of this has to do with vacation time. Say you want to give

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employees 12 paid days off per year. The right way to do it is to say employees accrue vacation time at the rate of one day *per month*. You don't want to say they get 12 days *per year* because employees who quit or get fired partway into the year could successfully claim that they were owed the entire 12 days. You can avoid such pitfalls by consulting with a human resources expert before you distribute your manual.

Termination Policies

You should include two kinds of termination procedures in your manual, one for ordinary terminations and another for terminations for cause (see *Legal Advisor*, 11/01). The ordinary termination procedure is for behaviors that could have been improved by giving an employee a warning and a second chance. Examples include showing up late for work or pinning back the

guard on the circular saw.


Termination for cause is for behaviors that create a serious liability or safety hazard. If you discover an employee drinking on the job or clowning around with a nail gun, you need to get rid of him as soon as possible. The same goes for such offenses as fighting, threatening people, and stealing from clients; people who do these things are unlikely to change their behavior on the basis of warnings.

When you write your manual, reserve for yourself the right to determine which termination procedure applies to what offense. That will make it easier for you to prevail in a wrongful discharge suit and to fight unjustified unemployment claims. If you have to use your emergency firing policy, document the incident carefully and keep the records for at least the next six years.

It's rare in construction companies,

but some employees have written employment contracts. Most employees are *employees at will*, which means that you can legally terminate them without cause. Your handbook should include language that says the people who work for you are employees at will unless otherwise specified.

Employees

You should require employees to read the manual, keep a copy of it, and sign a paper stating that they received it, read it, and understood it. If there's a language or reading issue, go over the manual with the employee page by page and keep a record that you did this in that employee's personnel file. 

Quenda Behler Story has practiced and taught law for over 25 years and is the author of The Contractor's Plain-English Legal Guide (www.craftsman-book.com).