

EMPLOYEE HANDBOOKS

Top 10 Potential Perils of Employment Policies

Almost every employer has them. The question is, where do they come from? They come from HR, right? But where does HR get them? They must get them from somewhere. And what if you don't have an HR Department? Then someone must have to – gasp – write them. We're talking about your employment policies and employee handbook, of course. If you don't have an HR Department, where can you go for help? Even if you're an HR professional, here are a few tips you should know to avoid common pitfalls.

No. 1: Avoid “Legalese” and Jargon

Even lawyers shouldn't write like lawyers. This is no time to impress your boss with “party of the first part” – type language. Employment policies should be written in clear, easily understandable language. Avoid jargon from your industry. Remember, the most important reader of your handbook is the new employee, who is unlikely to be familiar with acronyms or jargon. If you must use industry acronyms, explain them when they're first used or provide a definitions section. (Really, would a new employee know that “DUMB” stands for “Division of Urgent Matters and Business”?)

No. 2: Avoid Ambiguity

The interpretation of a handbook shouldn't be a multiple-choice affair. An anonymous, well-intentioned North Dakota employer recently offered the following two sentences in its handbook regarding its break policy: “If your break is interrupted, you are not entitled to pay. If your break is interrupted, you will be paid for the break time.” Run that by me again? Of course, the sentences are contradictory and only the latter one is accurate under North Dakota law.

An out-of-state employer stated in its dress code that employees were not allowed to wear “muffin tops”. When asked to describe a muffin top, the employer described it as being just like its namesake: “those shirts that don't come down far enough to meet low-waisted pants and skin oozes over the top of the pants like a muffin.”

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The lesson? Choose your language carefully. Will everyone know what you're talking about? To eliminate ambiguity and ensure clarity, proofread your handbook – then proofread it again.

**New Aquatics Law
Financial Insights
From the CEO
Online Safety**

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No. 3: Don't Overdo It

Don't attempt to make your policies so comprehensive that a court might assume they're intended to cover every conceivable situation. Your handbook will be very long (and unread) and will leave you little flexibility. A common mistake is to draft very specific policies and then disregard them. Leave yourself flexibility in your policies and procedures. For example, if your company conducts formal performance reviews every 12 to 16 months, don't include a policy stating all performance reviews will be conducted "annually" or "every 12 months." Allow some flexibility by stating that performance reviews will "typically" be conducted annually.

No. 4: Don't Underdo It

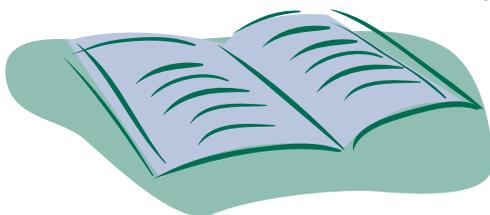
An employee handbook is your opportunity to communicate critical information to employees about their legal rights under the Fair Labor Standards Act, the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, and other important terms and conditions of employment. A carefully crafted handbook can be an important part of your defense against alleged statutory violations. A poorly drafted handbook – one that omits explanations of employee rights or includes poor or incorrect explanations – might be used as "Exhibit A" against you.

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No. 5: Make Sure You Don't Have "Contracts To Sign"

Remember the old adage, you have "places to go, people to meet, and contracts to sign?" The last thing you want is to be contractually bound by an employee handbook. An employee handbook is a tool to communicate with employees, not a contract. Besides, employment is presumed to be "at will" in North Dakota unless you, as the employer, do something to mess it up. Make sure you have a prominent disclaimer, stating that the handbook is not a contract and making it clear that all employment with your company is at will.

But wait a minute. What about things you want to contractually bind employees to, such as confidentiality agreements, intellectual property agreements, and the like? You want those to be binding. Those topics aren't good candidates for employee handbooks and should be the subject of separate signed agreements. Check with your attorney for assistance.



(This is the first installment of a two-part series covering common concerns in the drafting of employee handbooks. Look for part two in the August issue).

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PRESIDENT INKS NEW AQUATICS LAW

In an unprecedented move, President George W. Bush signed a new law concerning the swimming pool, spa and hot tub industry.

The Virginia Graeme Baker Pool and Spa Safety Act was passed as an amendment to a comprehensive energy bill. Virginia Graeme Baker was the granddaughter of former Secretary of State James “Jim” Baker. She died after becoming entrapped by the suction of a spa drain, thus drowning her. The new law takes effect December 19, 2008.

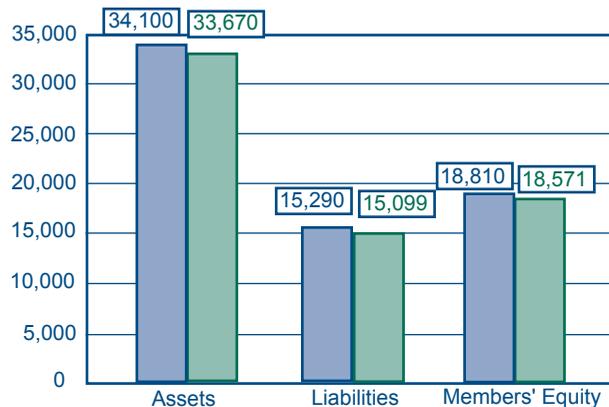
Pools and spas must have entrapment-proof drain covers. Existing non-compliant drains and pools must be retrofitted to comply with the new law. Main drains must comply with *ASME/ANSI A112.19.8*. Public pools with a single main drain (other than the unblockable kind) also will need a system designed to prevent suction entrapment. This would include a safety vacuum release, gravity drainage system, suction-limiting vent system, automatic pump shut-off system, and drain disablement system or other system determined to be effective. The Consumer Product Safety Commission (CPSC) is involved with the new legislation. The comment period to the CPSC closed on March 28, 2008. However, their 4-page interpretation drafts of compliant equipment is still available online at <http://www.cpsc.gov/pssa.html>.

There is also a grant program that will be established for those states that pass laws addressing drowning and entrapment prevention. The CPSC is the governing agency responsible for determining qualifying legislation.

Numerous states have their own laws (North Dakota has virtually none) that regulate pools, spas and hot tubs. Many cities also have their own local ordinances that regulate these. We suggest that entities owning a pool, spa and/or hot tub carefully examine their equipment for compliance using the CPSC drafts as a guide. ■

FINANCIAL INSIGHTS

**Balance Sheet (in thousands)
December 31, 2007 & December 31, 2006**



As of December 31, 2007, NDIRF remains in a strong financial position with members' equity of \$18.8 million. The 2007 assets consist mainly of NDIRF's investment portfolio (\$32.0 million) while the liabilities are primarily loss reserves (\$8.2 million) and the conferment payable in April, 2008 (\$3.8million). ■

FROM THE CEO

As the old tune goes, “April showers bring the flowers that bloom in May...” Another bad news to good news, April / May segue might be April 15 (IRS Day) to May 14 (the NDIRF Annual Meeting) – not nearly so lyrical but it does get us to an important day for NDIRF members.

This is the last issue of the Participator to precede the 2008 NDIRF Annual Meeting, so I'd like to use this space as a “commercial” and encourage NDIRF members to attend. As always, Fund members will receive important information regarding the financial nuts and bolts that, when assembled, provide a clear picture of the NDIRF's strong foundation and structure. In addition, this year, I'm also pleased to announce that North Dakota Insurance Commissioner Adam Hamm will be in attendance to visit with the membership regarding matters of importance to all of us folks who are interested in risk management and insurance issues.

Please take a moment to review the 2008 NDIRF Annual Meeting packet that was mailed to Fund members last month and use the means provided in it to let us know if you can join us on May 14th (and stay for lunch!). Thanks – see you there. ■

REPORT SPAM TO HELP STOP IT

If you are receiving unwanted e-mail, you can take action. Nothing can be done about spammers if their activities are not reported. If you report a spammer's activity to the proper authorities, there is a chance the spammer's account will be closed. You also will probably be helping a lot of other people, by protecting them from receiving the spammer's e-mails.

The Federal Trade Commission needs your help in identifying spammers' accounts and any "unsubscribe links" that are deceptive. Send copies of your unwanted e-mails and those with deceptive unsubscribe links to spam@uce.gov. Make sure you include the header information in the e-mail you

send. To fill out a complaint form, go to www.ftc.gov/spam.

You can also report unwanted e-mail or defective unsubscribe links to either your or the spammer's Internet Service Provider.

LINKS TO ONLINE SAFETY

Here are some links to help you stay safe online.

- www.uschamber.com/sb/security
- www.staysafe.org
- www.staysafeonline.info
- www.onguardonline.gov
- www.netsmartz.org
- www.isafe.org
- www.aarp.org/netsafe ■



Mark Your CALENDAR

April 2008

- 15: ND League of Cities Regional Meetings, NC Region, Bottineau
- 16: NW Region, Tioga
- 17: SW Region, Beulah
- 22: NE Region, McVillie
- 23: SE Region, Ellendale
- 24: SC Region, Harvey

May 2008

- 14: NDIRF Annual Meeting Ramkota Inn, Bismarck
- 14: NDIRF Board of Directors Meeting NDIRF offices, Bismarck

North Dakota Insurance Reserve Fund Board of Directors

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