

EMPLOYEE HANDBOOKS

TOP TEN PERILS OF EMPLOYMENT POLICIES

(This is the second installment of a two-part series covering common concerns in the drafting of employee handbooks. The first installment appeared in the April issue.)

No. 6: How “Progressive” Should You Be?

No, we’re not talking about political candidates. Many employers get caught in very rigid progressive discipline policies. What is a progressive discipline policy? Simply put, it’s a method of performance improvement in which the discipline meted out to employees for rule violations becomes successively harsher depending on the severity of the offense or number of infractions.

Often, the discipline begins with a verbal warning and proceeds through steps to eventual termination. Progressive discipline is, in and of itself, an admirable policy. It should, however, reserve flexibility for you to apply any step of discipline, including termination, at any time without having applied earlier steps or given previous warnings.

One hapless handbook author failed to reserve that flexibility and wrote the following in an employee discipline policy: “No employee shall be discharged for misconduct except where the conduct is continuous and irremediable.” Misconduct that is “continuous” and “irremediable”? (For those of you who need to look it up, like I did, “irremediable” means “incurable” or “can’t be remedied.”) Most of our kids don’t even manage misconduct that is “continuous” or “irremediable” – at least not very often. The moral of the story? Leave yourself flexibility when drafting disciplinary policies.

No. 7: Use Permissive Language

No, this isn’t a political or social statement along the lines of being a strict or permissive parent. Using permissive words allows your company maximum flexibility. Words such as “may”, “typically”, and “generally” are less

restrictive than words such as “will” and “must”. Permissive language is simply another tool to allow you to choose how to apply and interpret your employee handbook. While consistency in interpretation is important, you want to reserve the flexibility to make exceptions and interpret policies when appropriate.

No. 8: Ten Important Policies To Consider

There are many policies that are important to have in your handbook. Here are a few that sometimes get overlooked:

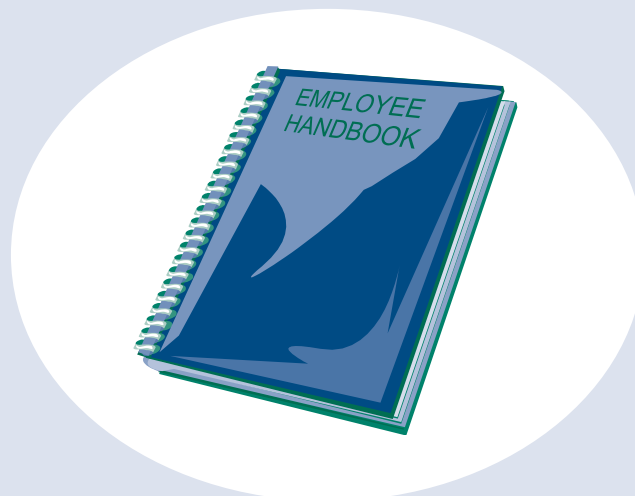
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- Attendance and Tardiness
- Hours of Work/M meal Breaks
- Rules of Conduct/Discipline



No. 9: Four Things You Can't (Or Shouldn't) Say In An Employee Handbook

Some things can get you in trouble when drafting your handbook. Here are some topics to avoid:

- (1) **Just Cause.** You don't need cause to terminate or discipline an employee in an at-will state. Why create confusion?
- (2) **Permanent Position.** Never ever refer to "regular" employment positions as "permanent". It tends to create an expectation that employment is guaranteed. It's not; it's at-will.
- (3) **Due Process.** Never promise "due process" or anything similar for disciplinary actions or grievances.
- (4) **Probationary Period.** Use the term "orientation" or "introductory" period instead. "Probationary" creates an expectation that the employee's status will change after he completes the period. It doesn't. The employee is still employed at-will.

No. 10: Mistakes Employers Make With Handbooks

There are many mistakes employers make with handbooks that you can avoid by simply reading this list and not following in their footsteps:

- **"Oops, I forgot."** You put all your work into a great handbook and then fail to distribute it to your employees. Unfortunate? Yes, but it happens.
- **"I need your John Hancock."** Distributing a handbook is no good if you don't have a record of who received it. Make sure you have a signed acknowledgement from every employee that he received and reviewed the handbook and all updates.
- **Winging it.** The first thing your lawyer will ask you when you call to ask how to handle a particularly sticky situation is, "What does your handbook say?" Yet amazingly, many employers write handbooks, distribute them, and then fail to read and follow them when making important employment decisions. Read your handbook and follow it.
- **Putting it on the shelf.** Handbooks are not like a good wine. They don't get better with age. While they don't have an expiration date on them, they should. Handbooks should be reviewed and updated at least annually for legal compliance and to ensure that you are following your own policies.

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- **I don't need any help with that, thanks.** Many employers have concluded that they are experts in all things, including handbooks. Better yet, they buy the do-it-yourself software package at the local Office Wiz store and produce a handbook. Unfortunately, those one-size-fits-all packages don't adequately reflect state law and are often poorly drafted. Having your handbook reviewed by an employment law attorney is important to having a handbook that will be a benefit and not a detriment to your overall employment-law risk management. Good luck!

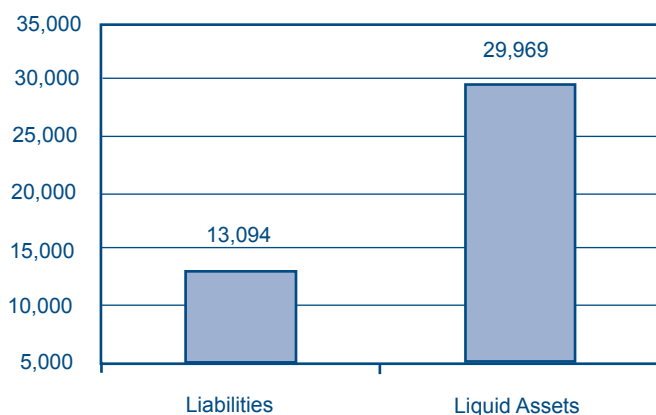
Bottom Line

A handbook can be a valuable tool for your business, or it can be a source of confusion (and even litigation). Treat your handbook with the respect that it deserves as a vital communication link to your employees. Spend time developing it, update it periodically, and have it reviewed by experts. If you do, you're much more likely to have the type of handbook that reduces your risk instead of increasing it!

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FINANCIAL INSIGHTS

Liabilities to Liquid Assets Ratio (000 omitted) As of June 30, 2008 Ratio = 44%



This ratio is a measure of a company's ability to pay its financial obligations. The ratio is calculated by dividing liabilities (primarily loss reserves) by liquid assets (cash and marketable investments). A ratio less than 105% is desirable. As this graph indicates, NDIRF, with a 44% ratio, is in a very strong position, with liquid assets more than twice as large as liabilities. ■

FROM THE CEO

Well, it's August and once again summer is jumping to its conclusion faster than a political pundit and certainly more quickly than most of us would like – I say “most” because I actually prefer autumn but realize that is a minority view in North Dakota (and pretty much everywhere else).

In addition to the cooler weather and advent of bird seasons, another reason I enjoy the fall is that it's a time to renew acquaintances at the statewide association annual conferences. Over the years, I have gotten to know many of you through our mutual attendance at these events and look forward to seeing you again this year – and to meeting those who may be making the trip your first time. The conferences are an excellent means by which to stay current on the issues faced by local officials and discuss solutions to common problems.

As you have heard from me and others at NDIRF many times, appropriate training is a very important factor in keeping our liability costs under control. In my estimation, a fundamental gateway to providing that training for others is the exposure elected decision-makers receive to these opportunities at the state conferences. I hope to see you there! ■

RISK SERVICES

BE INFORMED

Communities throughout North Dakota are blessed with citizens that strive to provide for the betterment and promotion of their community. Many organizations are easily identified; the American Legion, VFW, Lions Club, Elks, Eagles, or Moose Clubs, or local community clubs. Some individuals organize as non-profit corporations to further promote the community in general or specific community events. At times, individuals may join together to organize a specific community project or event.

The community activity of these organizations, whether a nonprofit organization or a group of individuals, may take many forms. Booster clubs raise funds to promote specific school district activities. Citizen groups may raise funds for park district playing fields or playgrounds. Individuals have organized centennial festivities in their community or school class reunions for cities or school districts that no longer exist.

If these types of organizations or individuals are involved with a city, school district, county, county fair association or other NDIRF member entity, it is incumbent that all parties involved understand their liabilities. As a NDIRF member, your employees, officials, and authorized volunteers are provided liability coverage. Other organizations, nonprofit corporations and individuals **ARE NOT** provided coverage. When other entities or individuals want to provide your organization with some function or service, you should determine how this relationship will affect your entity's liability. If these other entities or individuals do not have liability insurance, any resulting injury from their activity can have a detrimental affect on your entity's liability experience. Because your entity has liability coverage, it may become the "deep pocket" plaintiff attorneys are looking for.

So, what can be done? Once you become aware that a local group is working to provide a product, service, or fundraising activity for your entity, get involved. By being involved at an early point, your entity can be well informed and able to address potential areas of concern. This will also allow for a thorough review of the liabilities attendant to the activity.

Please contact your local agent or Ross Warner at the NDIRF office with any questions you have on this subject. ■

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Mark Your CALENDAR

- Sept
04: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck
23-25: ND Recreation and Parks Assoc.
Annual Conference,
Holiday Inn & Ramada Inn, Grand Forks
25-27: ND League of Cities
Annual Conference,
Holiday Inn, Fargo
- Oct
12-15: ND Association of Counties
Annual Conference & Expo,
Ramkota Inn, Bismarck
- Nov
14-15: ND School Board Association
Annual Convention,
Ramkota Inn, Bismarck

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