



What You Should Know About Personnel Policy Manuals and Employee Handbooks

by Kathryn M. Vanden Berk

SCENARIO

An employee quits work to go elsewhere, receives a final paycheck and his personnel file is closed. Six weeks later, you are sued for damages for unpaid sick leave. The employee claims his supervisor promised that accrued sick leave would be paid out as final wages. You deny. You go to court, bringing your human resources director as your witness. The trial opens. The employee gives his story to the judge and steps down. You call your HR director to the stand.

"Did this employee receive a copy of your employee handbook?" you ask.

"Yes" is the answer.

"And is this handbook similar to the one that he received?" You wave a small, bound booklet that contains summaries of all pertinent personnel policies.

"Yes, it is" is the reply.

"I see that this book has a signature page for the employee to date and sign. Did the plaintiff sign this page of the book?"

"He did. Here is the page, signed and dated, that we found in his personnel file."

"What does this handbook have to say about sick leave?"

The HR director flips to a page in the book. "It says," she reads, "that sick leave must be taken in days off from work and unused sick leave is not paid out at termination."

The judge looks over her reading glasses at the plaintiff and asks: "Sir, did you receive this handbook when you were an employee?" He is embarrassed but nods yes. She looks again at the passage and then, after a moment, pounds her gavel, "I find that the employer did not offer to pay for accrued sick leave. It's right here in the book. There is no promise. Case dismissed."

Personnel policies govern the most critical relationship in your organization—the relationship you have with your employees.

How you hire and train them, introduce them to their coworkers, organize their workspace, supervise their efforts, administer their compensation and benefits, provide for their illnesses, and recognize their good work greatly influences their job satisfaction, productivity, and morale. I have been fortunate to learn about personnel management from some very skilled practitioners, and would like to pass on information about one of the most valuable resources available to you as an administrator: personnel policies.

Why should every Alliance member have written personnel policies? There are a number of reasons. First, if you have more than 15 employees, the size of your workforce triggers a number of state and federal discrimination laws that gives employees specific rights. Your policies will address them proactively. Second, if your agency is accredited by the Council on Accreditation for Children and Family Services (COA) (or it is seeking accreditation), personnel policies are required.

EMPLOYEE HANDBOOK
Sample Page

Agency-Provided Automobiles

We provide vehicles for business use and/or we reimburse employees for business use of personal vehicles. Employees who drive a vehicle on agency business must, in addition to meeting approval criteria, exercise due diligence to drive safely and maintain the security of the vehicle and its contents. Drivers who use their own cars must make sure that the vehicle meets any agency or legal standards for insurance, maintenance, and safety.

Employees are responsible for any driving infractions or fines that result from their driving and must report them to their supervisors. Employees are not permitted, under any circumstances, to operate an agency vehicle, or a personal vehicle for agency business, when any physical or mental impairment causes the employee to be unable to drive safely.

Business Expense Reimbursement

We will reimburse employees for business travel that we approve in advance, so long as all criteria for reimbursement are met. Typical expenses that are approved may be airline travel, hotel, meals, and necessary taxis. At the agency's sole discretion, you may be offered the use of a company credit card for your convenience, or you may be given a cash advance. Approved expenditures must be properly documented and the documentation submitted to the business office in a timely fashion. If you fail to follow agency guidelines, reimbursement may be denied and/or any advance payments or credit card charges may be treated as income to you.

We will reimburse certain non-travel business expenses if they are (1) a condition of employment and (2) for the convenience of the agency rather than for your own. The agency has complete discretion as to what expenses it will reimburse and to what extent. Please check with your supervisor or the business office for details.

Educational Reimbursement

We may provide educational assistance to eligible employees who have regular full-time status and at least one year of service with the agency. Employees may be reimbursed only for courses of study that we consider directly related to the employee's present job or that will enhance the employee's potential for advancement to a position to which the individual has a reasonable expectation of advancing.

Factors to be considered in determining whether or not an educational program is to be sponsored include the nature and purpose of the course of study; benefits to be derived by the employee and the agency; the employee's level of responsibility and length of service; the estimated cost; and any potential lost time or productivity while the employee participates in the program.

Third, since personnel administration is a hot area of the law, your liability insurance premiums for "employment practices" coverage may be increased if you do not have clearly spelled-out personnel policies, or you may not be able to get insurance at all. Finally, written personnel policies send a crisp and clear message to employees that you take employment matters seriously and will use best practices in resolving them.

**POLICY MANUALS AND HANDBOOKS—
WHAT'S THE DIFFERENCE?**

Personnel policy manuals are usually three-ring binders that contain detailed policies and the procedures that implement them. They are distributed only to supervisory staff. They serve two main functions: (1) they are a set of board-approved statements of general policy as to how you intend to treat your employees, and (2) they are a set of instructions to inform supervisors about how the policies are to be

applied. Personnel policy manuals are management tools, and they should be available only to those having personnel management functions. Those who possess a manual should be oriented to its contents and trained in its use. Direct-care staff should not be given access to these manuals, as they could misunderstand their use, misinterpret their provisions, or overlook important disclaimers intended to protect your agency.

Employee handbooks are distributed to each employee and provide employees with general information about such policies and procedures as salary and compensation, benefits, work hours, rules of conduct, and so forth. They are educational and informative summaries of personnel policies (and procedures), but they are not the policies themselves. If a handbook provision conflicts with a personnel policy, the policy itself should prevail. Each handbook should have a tear-out page that the employee signs and dates to

document his or her receipt of the book. This page becomes part of the employee's personnel file.

The accompanying illustration shows two sample pages: one from a personnel policy manual and the other from an employee handbook. You can see how the former offers the approved policy along with highly specific instructions as to how it is implemented, while the other contains highlights that are important for each employee to know.

**DO POLICY MANUALS OR HANDBOOKS
CREATE A CONTRACT WITH THE EMPLOYEE?**

States vary in their rulings as to whether personnel policy manuals or employee handbooks create a contract. Most states now hold that they do create a contract unless the employer clearly and consistently states its intention not to do so. The language used by the employer is key: Where a policy manual or handbook uses mandatory language about what processes will be used or what benefits will be conferred, it creates an expectation and therefore generally constitutes a promise. Where a policy manual or handbook uses permissive language with disclaimers against interpreting it as a promise or contract, courts generally will find that no contract has been formed. In other words, drafters should always use terms such as "may" rather than "shall," "usually" rather than "always," and "typically" rather than "must" to avoid turning a handbook into a contract.

WHAT ABOUT COA ACCREDITATION?

COA accreditation standards require an accredited agency to have up-to-date personnel policies that are available to each employee. An entire chapter of the COA accreditation standards is dedicated to managing human resources. That chapter specifically details such personnel policies as recruitment, equal employment opportunity, harassment, evaluation and promotion policies, record keeping, etc. Your personnel policy manual and employee handbooks are evidence that you know and use best practices.

**WHAT KINDS OF ISSUES DO PERSONNEL
POLICIES ADDRESS?**

Most employment disputes center around hiring and termination decisions, compensation and benefits, and rules of the

PERSONNEL POLICY MANUAL

Alliance Member, NFP

Policy: Business Travel
Policy No.: Expenses 4.01
Date Approved: July 3, 2002
Amended:

Policy:

It is the policy of the Alliance Member, NFP that business travel must be approved in advance and should be engaged in and reimbursed according to the guidelines set forth below.

1. Condition of Employment. Employees holding jobs that require extensive travel are expected to travel as a condition of employment. For all other positions, travel is considered only an incidental function of the position, but may be required by Alliance Member at its sole discretion.
2. Advance Approval. Supervisors must approve any employee travel in advance. Under normal circumstances, employees should make all travel arrangements for transportation and lodging using the travel agency specified by Alliance Member. All mileage and other usage credits awarded by transportation, credit card, and other travel service companies are to be assigned to Alliance Member.
3. Criteria for Reimbursement. Under normal circumstances, employees should use the most appropriate form of transportation available, book the least expensive fares, and stay in and eat at moderately priced establishments. Key employees who travel together should attempt to schedule transportation separately to minimize risks from accidents.
4. Itinerary. Employees should provide their supervisor with a copy of their itinerary before leaving on business travel.
5. Documentation. Employee expenses for approved travel will be paid or reimbursed when properly documented by the employee and approved by the supervisor. Examples of expenses normally paid or reimbursed include transportation, meals, lodging, and limited incidental expenses. Employees who know or anticipate that they will have a special request for travel expense reimbursement should ask for approval from their supervisor before incurring the expense. Any travel expenses considered unreasonable under the circumstances will not be paid or reimbursed and are the employee's personal responsibility.
6. Expenses of Spouse. Employees will be reimbursed for the travel expenses of their spouse only if management determines that the spouse's presence serves a bona fide business purpose.
7. Cash Advances and Credit Cards. Employees may obtain a cash advance for approved business travel by submitting a written request to the accounting department. Employees whose jobs are designated as requiring extensive travel will be issued Alliance Member credit cards for payment of business expenses. Cash advances and company credit cards are company property and their use must be properly documented and approved.
8. Failure to Comply. Failure to comply with timely submission of expense documentation may result in disapproval of the expenses themselves and treatment of any advances as wages subject to withholding and payment of employment taxes.
9. Conduct During Business Travel. Employees traveling on company business are representatives of Alliance Member and are expected to maintain a high level of professionalism and to follow all company policies and rules.

Attest:

Secretary's Signature

Secretary, Alliance Member, NFP

workplace. Personnel policies are critical evidence in harassment suits, ADA claims, FLSA classification suits and wage claims, worker's compensation claims, and FMLA claims and benefits disputes.

I recently catalogued the laws that I saw as most relevant to nonprofit organizations and I listed some 29 federal laws and 15 state laws. There are others that will affect human resource issues in your organization, either directly or indirectly. If you have personnel policies or if you issue employee handbooks, they will be relevant to claims that arise under these laws and statutes. Please note that the Illi-

nois laws provided are examples from a specific state and that the laws in your state may differ significantly, so you need to make sure that you are familiar with the laws in your state.

WHAT IS "AT-WILL" EMPLOYMENT AND HOW IS IT AFFECTED BY PERSONNEL POLICIES?

In common law, employers are allowed to hire and fire employees "at will," that is, without cause and without due process. Any employer who wishes to retain the right to hire and fire at-will must explicitly and consistently state its intention to be an "at-will"

employer. Without a written personnel policy on the subject, whether or not an employer is at-will must be proven by the evidence: letters of employment, verbal communications, hiring and promotion practices, etc. With a properly worded written personnel policy on the subject, most employers will be considered at-will. This is a tremendously important matter to the organization, because it allows you to manage employees with a higher degree of flexibility, it prevents the establishment of long-term contracts, and it offers "wiggle room" where a situation cannot be clearly identified as requiring one response over another.

HOW OFTEN SHOULD POLICY MANUALS OR HANDBOOKS BE REVISED?

Policy manuals and handbooks should be revised regularly. Employment law is a rapidly changing landscape. I receive monthly updates from a personnel policy service and daily notices of employment-related cases throughout the United States. Since personnel policy manuals are most often distributed as loose-leaf binders, they can be updated as needed as important cases come along or laws and interpretive rules or regulations change. I suggest that your human resources or personnel department hold quarterly meetings of all supervisory personnel to introduce revisions, refresh memories about key personnel practices, and answer questions. Employee handbooks should be updated every 12 to 24 months and (as noted in the scenario) every employee should sign a tear-out sheet that proves he or she received the updated document.

WHAT IF NEW POLICIES PROVIDE LESSER BENEFITS?

Some policy changes may restrict or limit benefits or rights that had been granted under earlier versions. When a contract is modified, common law principles require there to be "consideration" in order for a new contract to be valid and enforceable. That is, a contract cannot be amended unilaterally. Therefore, if a new personnel policy or version of your employee handbook restricts or limits benefits received in earlier versions, you generally must give your employees something (other than the right to continue work) as consideration for their acceptance of these new (lesser) terms.

IS THERE A DOWNSIDE TO PERSONNEL POLICY MANUALS OR EMPLOYEE HANDBOOKS?

Properly used, personnel policy manuals and employee handbooks are a tremendous asset to your administration. Unskillfully used, they are just the opposite. Why? Because when you establish a standard and then you violate it, courts will hold you responsible for what is, essentially, a breach of contract. A terrific-looking manual or handbook can be a dangerous piece of evidence if the claimant can prove that you espoused a particular policy and then didn't deliver. Therefore, if you publish policy manuals or handbooks, you must understand their contents, use them properly, and keep them up to date. Be certain of your intentions and your ability to carry them out before you publish these important human resource tools.

WHAT'S THE UPSIDE?

When personnel issues are handled well, you can avoid costly employee lawsuits, bring excessive overtime and/or employee turnover under control, and minimize your recruitment and training expenses. Supervisors will be able to knowledgeably walk that fine line between management requirements and direct care staff needs and wants. Your employees will think twice about asserting frivolous workers compensation or unemployment compensation claims. In short, good policies pay for themselves, and your attention to this critical function will have a beneficial bottom-line result. ■

ENDNOTES

- 1 The Illinois Supreme Court reviewed many states before deciding that Illinois would consider employee handbooks to be contracts between the employer and employee. It said: "The contractual status of employee handbooks has been the subject of a great deal of litigation in recent years. Several courts have rejected the notion that an employee handbook or manual can ever create binding contractual obligations. However, the overwhelming majority of courts considering the issue have held that an employee handbook may, under proper circumstances, be contractually binding." *Duldulao v. St. Mary of Nazareth Hospital Center*, 115 Ill. 2d 482 (1987).
- 2 In *Thomas v. Pearle Vision*, 251 F.3d 1132 (7th Cir. 2001), the Seventh Circuit Court of Appeals found an express promise to provide FMLA benefits where a summary plan description stated: "If you have worked for Pearle for at least one year, and have worked 1,250 hours or more during the 12-month period prior to requesting leave, you are eligible for Family and Medical Leave." The Court found that the contractual promise overrode the law itself, which would not have provided Family and Medical Leave Act (FMLA) benefits because there were not enough employees at the specific worksite.
- 3 PERSONNEL POLICIES AND PROCEDURES - G4.2 Written policies and procedures specify the responsibilities of personnel and the organization. G4.2.01 The organization

both provides to all new and existing personnel, and requires signed, written acknowledgment of receipt of a manual, handbook, or other document that outlines the organization's current policies and procedures regarding:

- a. working conditions;
 - b. wage policy and benefits;
 - c. promotions;
 - d. conditions and procedures for layoffs and retrenchment;
 - e. insurance protections including unemployment, disability, medical care, and malpractice liability;
 - f. the use of the organization's premises, motor vehicles, and/or other equipment, as appropriate; and
 - g. personnel training and development opportunities.
- Interpretation (G4.2.01): Computer access to the manual, rather than distribution of a hard copy, is acceptable. Also, in some large organizations, this manual may be a subset of a larger policies and procedures document. Updates to the manual must be distributed to personnel as they occur.
- 4 Two 1998 U.S. Supreme Court cases established the law on sexual harassment claims. In *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) and *Burlington Industries, Inc. v. Ellerth* 524 U.S. 742 (1998), the Court established that (1) employers must clearly be on record as prohibiting sexually harassing behavior in the workplace, and (2) employers must offer "employee-friendly" ways for their employees to report suspected harassment. Policy manuals can do both of these things.
 - 5 In *Toyota Motor Mfg., Ky., Inc. v. Williams*, 00-1089 January 8, 2002), the U.S. Supreme Court considered a case of alleged discrimination based upon physical impairment that arose when a worker's poor attendance caused her to be terminated. The Court found no violation of the Americans with Disabilities Act (ADA).
 - 6 In *Takacs v. Hahn Auto. Corp.* 246 F.3d 776 (6th Cir. 2000), the Federal Court of Appeals for the 6th Circuit decided that a personnel policy that allowed exempt employees to be docked for disciplinary infractions is evidence that they were actually nonexempt under the Fair Labor Standards Act.
 - 7 In a typical case, the Illinois Supreme Court held that worker's compensation benefits would not be allowed for an employee who was hurt while riding a forklift in a way that was specifically prohibited in his employer's written personnel policies. In *Saunders v. Industrial Comm'n (Beloit Corp.)*, 189 Ill. 2d 623 (2000), the Court said: "At the time of his injury, Saunders was traveling from the shipping department to the office to retrieve his lunch. Instead of traveling by foot (which unquestionably was allowed) or by riding single on a forklift (which may have been allowed), [he] chose a means of travel expressly forbidden by [his employer's] safety rules. By riding double on a forklift, [he] engaged in a hazardous method of travel, the sole purpose of which was [his] personal convenience. All of the witnesses, including Saunders, knew of the safety rule prohibiting riding double. Indeed, Beloit Corp. published the rule in its employee handbook and regularly communicated the rule to its employees through training sessions and monthly safety "contacts."
 - 8 In *Hatchett v. Philander Smith College*, 251 F.3d 670 (8th Cir. 2001), an business office manager disabled by a head injury was found to be not eligible under ADA to be hired as dean of administrative services and granted intermittent FMLA since she was unable (due to her injury) to perform the essential functions of the job she sought.
 - 9 **Federal laws include:** Age Discrimination in Employment Act, Americans with Disabilities Act, Bankruptcy Act, Civil Rights Acts of 1866, 1964 and 1991, Consolidated Omnibus Budget Reconciliation Act of 1985, Consumer Credit Protection Act, Drug-Free Workplace Act, Economic Growth and Tax Relief Reconciliation Act of 2001, Employee Polygraph Protection Act, Employee Retirement Income Security Act, Equal Pay Act, Executive Order No. 11246, Fair Credit Reporting Act, Fair Labor Standards Act, Family and Medical Leave Act, Federal Arbitration Act, the Federal Election Campaign Act, Federal Unemployment Tax Act (FUTA), Higher Education Act, the Immigration Reform and Control Act of 1986, National Labor Relations Act, Occupational Safety and Health Act, Pregnancy Discrimination Act of 1978, Protection of Jurors' Employment, Rehabilitation Act of 1973, Uniformed Services Employment and Reemployment Rights Act, Vietnam Era Veterans' Readjustment Assistance Act, Whistleblower Claims, and Worker Adjustment and Retraining Notification Act. **Illinois Laws include:** Child Labor Law, Dislo-

sure of Offenses Against Children Act, Equal Wage Act, Illinois Human Rights Act, Illinois Uniform Conviction Information Act, Medical Examination of Employees Act, Minimum Wage and Overtime Law, One Day Rest in Seven Act/Eight Hour Work Day Act, Personnel Record Review Act, Right to Privacy in the Workplace Act, School Visitation Rights Act, Unemployment Insurance Act, Wage Payment and Collection Act, Whistleblower Claims, Workers' Compensation Act.

10 Local Laws include:

Cook County and City of Chicago Ordinances.
In *Mayers v. Wash. Adventist Hosp.*, 131 F. Supp. 2d 743 (Md. 2001), the Maryland Supreme Court stated: "At the outset of her employment, Plaintiff signed an acknowledgment card that accompanied the employee handbook which stated, in pertinent part,

"The information in this handbook is subject to change without notice by action of Adventist HealthCare's president. This handbook is not a contract or legal document. Publishing of the basic benefits or policies in it does not infer any rights or privileges for me or entitle me to remain employed. I understand that Adventist Healthcare follows the employment 'at will' doctrine. Accordingly, either Adventist Healthcare or I can terminate the employment relationship at any time, with or without cause or notice." Maryland courts have found such language sufficient to disclaim liability. After receiving the above information, the Court finds that Plaintiff could not have justifiably relied on the expressed personnel policies as serving the basis of an employment contract."

11 In *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104 (1999), the Illinois Supreme Court stated that "after an employer is contractually bound to the provisions of an employee handbook, unilateral modification of its terms by the employer to an employee's disadvantage fails for lack of consideration."

12 J. Stuart Garbutt and Josh M. Friedman, "Modifying Contract Disclaimers in Employee Handbooks After *Doyle v. Holy Cross Hospital*," *Illinois State Bar Journal*, Nov. 1999. The authors noted: "Employers wishing to amend their existing employee handbooks to add contract disclaimers and at-will clauses still can do so; they only need to make sure that existing employees are given something of value—consideration—in exchange for the clauses. And this something does not have to be much. Under Illinois law, courts generally do not inquire into the adequacy of consideration. Thus, employers can give employees, in exchange for modifications to their handbooks, benefits like a small cash payment, extra vacation time, or other items of value. Indeed, if employees receive discretionary raises, employers can time the handbook amendments to coincide with these raises."



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