

## TALES FROM THE FRONTLINE

---

### “ESSENTIAL COMPONENTS OF AN EMPLOYEE MANUAL”

*By: Barbara Cotter and Mark E. Ellis, Murphy, Pearson, Bradley & Feeney - April 2002*

Our last column, , featured in the December 2001 *Collector's Ink*, addressed the role of an “open door policy”<sup>1</sup> in preventing employment-related claims. This column addresses another critical tool employers should utilize to reduce the risks of litigation: the employee manual.

#### **Employee Manuals Protect Employers and Educate Employees**

No law requires employers to maintain a written manual. Nonetheless, a written manual places the employer and employee alike on notice of the company's rules and practices. This is important, if for no other reason than, to ensure that no employee can later claim surprise or unfairness when such written rules are enforced. For example, an employee advised, by the employee manual, that the employer has access to all computer-generated files cannot credibly claim invasion of privacy when the employer later audits or downloads those files. Similarly, an employee on written notice that his or her employment is “at-will” (subject to termination at any time) cannot credibly claim that he or she was “really” promised a job until retirement.

#### **What a Well Drafted Manual Should Include**

The size, scope and style of employee handbooks vary from workplace to workplace. Some include long discussions of the company's mission and philosophy. Others spare the details and simply supply wage and benefit information. Of course, a sparse manual is easier to digest and more likely to be read from cover to cover. However, the length of the manual is probably unimportant. What is important, in terms of securing maximum protection, is the inclusion of certain key provisions regarding:

- (1) the nature of the employment relationship, and
- (2) compliance with equal opportunity and discrimination laws.

**Every manual**, regardless of its size or scope, should discuss those issues.

When discussing the nature of the employment relationship, employers should make clear whether their employees are “at will,” meaning subject to discharge at any time and for any reason.

---

<sup>1</sup> M. Ellis & B. Cotter, **Tales From The Frontline: Promote An “Open Door Policy” At Work To Discourage Employment-Related Claims**, *Collector's Ink*, Vol. XLVI, No. 10 (Dec. 2001).

In California, pursuant to Labor Code section 2922, employment is presumed to be “at-will”. However, written or oral promises of continued employment and/or implied statements of long-term employment can rebut that presumption.

Terminated employees sometimes rely on statements, such as such as “if you work hard you will receive a promotion every year”, as evidence that the company “effectively” created, and later breached a “*de facto*” employment agreement for permanent employment. Likewise, employees sometimes use oral statements to claim they could only be terminated for “good cause”. Accordingly, it is imperative that employers state in writing that employment is ***not*** permanent, but rather is subject to termination at any time for any reason, or for **no reason**, at the will of the employer.

Typically, the manual should state language to the effect that:

Employment at the Company is “at-will,” which means that the Company can terminate your employment at any time for any reason, with or without notice. Likewise, you are free to resign at any time, for any reason, with or without notice. This provision may be modified only in writing, signed by an officer of the company.

A good manual should further spell out that all company property, including computers, computer files, desks, workstations, and the like remain under the control of the company and can be subject to inspection at any time. Employees need to know that private information should be kept out of the workplace. Employers who fail to make this policy clear -- in writing -- expose themselves to invasion of privacy claims when they take steps to inspect company property.

When discussing equal opportunity or discrimination laws, a good manual will state specifically that the company is an equal opportunity employer and that it does not discriminate in hiring or in the terms and conditions of employment on any illegal basis, including the gender, religion, age, race, nationality, disability, medical condition, or sexual orientation of its employees. A good policy manual should further provide a detailed discussion of the company’s anti-harassment policy. That policy should expressly prohibit derogatory, insulting and/or offensive comments about any of these protected categories. The list of prohibited conduct should include racial slurs and insulting stereotypes.

Employees aware of prohibited conduct or discrimination should be encouraged, if not required, by the manual to report such conduct immediately to management. The procedure should be set forth and explained . The employee should be assured in the manual that the company will

not retaliate in any way against those who complain. The manual should designate the specific managers or others responsible for the intake and processing of these complaints.

In conjunction with these provisions, employers may want to include a reminder of the company's "open-door communication policy" pursuant to which the company seeks to maintain a productive workplace. And towards that end, the manual should encourage, and even require, all employees with complaints to bring them to management's attention promptly.

### **Mandatory Provisions**

California law requires that, whenever employers disseminate employee manuals, such manuals ***must*** include notification of California's family care and pregnancy leave rights. For employers of more than five employees, the notice should state that pregnant employees are entitled to up to four months of unpaid pregnancy disability leave. **Cal. Gov. Code Section 12945(b)(2)**. For employers with more than 50 employees, the notice should additionally advise eligible employees (those with more than 12 months service and more than 1,250 hours worked in the prior year) that they may be entitled to up to 12 weeks unpaid family care or medical leave. **Cal. Gov. Code Section 12945.2(a)**.

### **Optional Provisions**

In terms of optional provisions, employers may want to include sections on safety, the company's code of conduct, termination procedures, and benefits. The company may also want to include an arbitration provision requiring employees to litigate any claims in private arbitration, rather than in court. Any such provision must be carefully drafted to ensure its enforceability. (Our next article on this topic will address the pros and cons of such arbitration provisions and how to draft them.)

Finally, in our opinion, the manual should ***always*** include an acknowledgement page signed and dated by each employee. The "acknowledgment" should be kept by management in the employee's personnel file. The acknowledgement should state that the employee has read the manual, has had an opportunity to ask questions about it, understands his or her employment is at will and will comply with the company's reporting, anti-discrimination, and other provisions. Acknowledgements should also be provided as to any substantive update or revision of the manual.

### **Conclusion**

A well-drafted employee manual will help employees and management understand the company's policies and procedures and the consequences of violating them. It protects the

company by discouraging breach of contract and wrongful termination litigation, or other claims, such as that the employer failed to prevent illegal harassment. On the other hand, it helps employees understand their rights, and such knowledge may promote a more harmonious and less litigious workplace. For these reasons, we believe all employers should utilize an employee manual and ensure a copy is distributed to all employees.

---

**THIS INFORMATION IS NOT INTENDED AS LEGAL ADVICE AND MAY NOT BE USED AS LEGAL ADVICE. IT SHOULD NOT BE USED TO REPLACE THE ADVICE OF YOU OWN LEGAL COUNSEL ANY INFORMATION CONTAINED IN THIS MATERIAL IS BASED ON CURRENT RESEARCH INTO THE SPECIFIC ISSUES AND ON THE SPECIFIC FACTS INVOLVED HEREIN OF WHICH WE HAVE BEEN INFORMED.**

---