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## SETTING AND MAINTAINING TERMS AND CONDITIONS OF EMPLOYMENT

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Most larger employers communicate their terms and conditions to employees both orally and in the form of employee handbooks or manuals. There are various pros and cons in using employee handbooks. The “pros” are that handbooks are the best way of communicating the employer’s policies and regulations.

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### HANDBOOK REVIEW

If the employer now has a handbook, it (and its counsel) should review the language to eliminate ambiguity, over breadth, or policies that may violate federal or state law. The employer may also want to add certain references to minimize its exposure to lawsuits.

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### DISCLAIMER

The handbook should contain an express disclaimer to the effect that it is not a contract. This statement should appear in a prominent location, such as inside the handbook's cover. The following is a sample of such a disclaimer: This employee handbook does not, and is not intended to, create any contractual rights in favor of you or the company. The company reserves the right to change the terms of this handbook at any time.

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### OPEN-DOOR POLICY

The employer may want to include an "open-door policy," that is, a statement encouraging employees to approach management directly with work-related questions or problems. Perhaps it may also want to add a statement that it does not believe outsiders or third parties are needed to work out problems between employees and management. This conveys to employees that they should come to management with their problems rather than bring in a union.

**4****WORK RULES**

The handbook should include work rules arranged according to categories of seriousness. For the less serious work rule violations, employees should be afforded a progressive discipline system, such as a warning followed by a suspension and then discharge. The employer should be careful, however, not to state that employees can be discharged only for just cause. Should an employee later challenge his termination as unjust, such statement might be construed by a court as a binding commitment. Additionally, the handbook should state that the list of rules is not all-inclusive, but is only illustrative of the types of offenses for which an employee may be disciplined.

**5****GRIEVANCE PROCEDURE**

The handbook should contain a grievance procedure for the handling of employee complaints. There also should be a policy statement on sexual harassment, declaring that the employer does not tolerate it and setting forth a procedure for the handling of these complaints. This is an important provision to include to reduce your litigation risk for sexual harassment claims.

**6****BENEFITS**

The handbook should showcase the employer's benefits. Care should be taken, however, not to state a benefit policy that might violate a law. For example, some states have laws providing that terminating employees cannot forfeit their earned vacation pay; yet many handbooks provide that employees forfeit vacation pay upon discharge. An employer should be careful in wording its vacation pay policy to avoid these problems.

**7****NO-SOLICITATION POLICY**

If the employer has a no-solicitation policy with respect to solicitations for donations and organizations, it should be reviewed. The National Labor Relations Board requires that these rules not be worded so broadly that it would prohibit employees from soliciting for a union during their own time on the job, such as breaks or lunch periods. A no-solicitation rule, therefore, should only forbid solicitations during working time. Note

that a no solicitation during working hours rule will be found to violate the National Labor Relations Act, because the term "working hours," unlike the term "working time," is regarded as encompassing the employees' own time on the job.

**8****RECEIPT FORM**

The handbook should contain a detachable receipt form acknowledging that the employee has received the handbook and will comply with its terms. The employer should keep this signed form in the employee's personnel file. It will serve as proof in the event of litigation that the employee was on notice of the terms of the handbook. There are frequent changes in the law, of course, and therefore the handbook should be reviewed periodically by counsel to assure that it comports with legal developments.

**9****PERFORMANCE EVALUATIONS**

Another danger area in personnel practice is performance evaluations. Performance evaluations fulfill two major functions:

- (1)They afford management a means of rating its employees; and,
- (2) They serve as a motivating device for employees.

Mismanaged performance appraisals, however, are one of the most common causes of unjust dismissal and discrimination lawsuits. It is therefore of paramount importance that an employer review and periodically monitor its performance review system to ensure that it is competently serving as a means of appraising employee performance. A good performance review system can be one of the best defenses to an unjust dismissal lawsuit by affording objective documented proof of unsatisfactory performance. The following list of guidelines should help maintain an effective performance appraisal system:

- (1) The system should be as objective as possible.
- (2) Performance standards should be used that are objective or at least are not overly subjective.
- (3) Appraisal forms also should allow for comment on employee strengths and weaknesses.
- (4) Employees should be required to sign the evaluation form, attesting that they have read their evaluations.

This protects against later claims that the employee never realized his performance was deficient. Ideally, two supervisors rather than one should sign the appraisal to guard against any charge of bias against one supervisor. Supervisors should be trained in proper and uniform use of evaluation criteria. Many supervisors are very lenient and will give "good" or fair" ratings to employees who simply are not doing their jobs. This can cause enormous problems later in proving poor performance in the event of a claim. To ensure against this, supervisor appraisals of employees should be reviewed periodically. Perhaps supervisors can be prodded into adequately evaluating their subordinates by having their own progress tied to their rating abilities.