

HANDBOOKS AND EMPLOYMENT POLICIES

This short paper will not attempt to show how to write an entire personnel policy manual. It will explain the most important basic legal issues behind policies and why good written policies that are properly followed help employers run things smoothly in the workplace, keep good employees, and defend against unemployment claims and other forms of post-termination problems, such as EEOC claims and employment-related lawsuits.

All significant policies and procedures should be included in the handbook. If a rule or standard is important to employees' conduct in the workplace, it should be in the handbook. Every aspect of the employment relationship should be addressed. These areas can be divided into categories such as:

- Employer expectations - attendance, leave, job requirements, and substance abuse policies
- Employee expectations - compensation, benefits, grievance procedures, equal employment opportunity, a non-hostile working environment, and the right to privacy
- Administrative issues - changes to the handbook, representations, and disclaimers

Following the general outline of personnel policy issues, the rest of this paper outlines some of the major topics that should be covered in an employee handbook. A checklist is provided for some of the topics. In addition, many topic sections include one or more sample policies in order to illustrate what a typical policy in that area of employee relations looks like. Finally, the Appendix for this paper includes some additional sample policies and certain forms that are sometimes important for employees to sign.¹

¹ This paper contains references to and quotes from material found in various topics in the *Texas Guidebook for Employers*, a publication authored by the presenter, William T. (Tommy) Simmons, and made available to the public through the Texas Workforce Commission (TWC) on its website at <https://efte.twc.texas.gov/>. Portions of that book appearing herein are reproduced here with the permission of TWC and may be republished in other media with appropriate attribution as to the source.

Important Caution!

While this paper attempts to outline the most important basic issues for company policies and employee handbooks, it cannot serve as a substitute for individual legal advice from a competent and experienced employment law attorney licensed in Texas or in other state(s) of operation. Any sample policies and forms included with this paper are not meant to be taken "as is" and incorporated directly into an employee handbook. Rather, they are meant to help illustrate what typical policies covering various aspects of company operations and workplace conduct look like. Further, they are intended to reflect myriad legal guidelines from federal and Texas government agencies that limit how far a company can go in regulating employee relations and workplace conduct. Finally, Texas employment laws differ markedly from those of many other states in the United States. Generally, Texas laws offer employers more flexibility and discretion in how to handle workplace issues than is the case in other states. Accordingly, employers with multistate operations must consult with local employment law counsel in those other states in order to ensure that their policies meet all of the necessary legal requirements.

Basic Legal Issues

Policies are generally up to the employer to define and enforce. The employment at will doctrine in Texas gives employers the right to set policies and change them at will depending upon the needs of the business.

With only few exceptions, employers may adopt any policies that suit the needs of the business. The few exceptions are so well-established that most employers do not even consider them to be policy areas:

- pay (minimum wage and overtime restrictions);
- no illegally discriminatory hiring, personnel, or termination practices;
- safety (OSHA and Texas workers' compensation regulations); and

- other areas, such as how benefit plans are communicated, modified, and administered (ERISA and COBRA).

Policies can be oral or written or a combination of both, but ideally, all important policies should be in writing. Employers can generally change policies with no prior notice. Of course, it is generally advisable to give as much clear advance notice as possible of any important changes in the terms and conditions of employment, including workplace policies. In Texas, policies are not regarded as binding employment contracts in at-will employment situations.²

Preparing an Employee Policy Manual

1. Decide what the company is all about and what kind of culture the company is trying to have within the workplace. Communicate those goals and culture in the policies.
2. Assemble all previous policies and procedures, whether written or unwritten. The company will need to determine what will be continued or changed in the new policies.
3. Talk with employees and managers about their concerns in the area of employee policies.
4. Draft a preliminary document.
5. Have key company personnel review the draft, incorporate any needed changes, and have the final version reviewed by an employment law attorney.
6. Give every employee a copy of the policy handbook and have each employee sign and date a form acknowledging receipt. The acknowledgment of receipt form should have each employee affirm that they have received a copy, have had an opportunity to ask questions about the handbook, and that they agree to comply with the company's policies. Have a company representative witness the employee's signature and sign and date the same form.

² *Fed. Exp. Corp. v. Dutschmann*, 846 S.W.2d 282, 283, 36 Tex. Sup. Ct. J. 530 (Tex. 1993); *Stephens v. Dallas Area Rapid Transit*, 50 S.W.3d 621, 635 (Tex. App.-Dallas 2001, *pet. denied*); *Williams v. First Tenn. Nat'l Corp.*, 97 S.W.3d 798, 802-803 (Tex. App.-Dallas 2003).

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