

SCOTT WARRICK; JD; MLHR; SPHR

Human Resource Consulting; Employment Law & Training Services

1147 Matterhorn Drive ♣ Reynoldsburg; Ohio 43068

(614) 367-0842 Office ♣ (614) 738-8317 Cell

www.scottwarrick.com

DRAFTING A PROPER HANDBOOK, STANDARDS OF CONDUCT, EMPLOYMENT APPLICATION & OTHER DOCUMENTATION

Do your **POLICIES and STANDARDS OF CONDUCT...**

- Place employees on notice that all of your policies will be **SUBJECTIVELY** interpreted as **MANAGEMENT DEEMS APPROPRIATE?**
- Require **EMPLOYEES** to stay abreast of all the various changes made to Company Policy? (Having employee sign an acknowledgement every time a change in policy occurs is **RIDICULOUS.**)
- **REQUIRE EMPLOYEES TO SIGN** all Company Documentation, such as I-9 forms, Tax Forms, **WARNING FORMS**, etc.
- **REQUIRE EMPLOYEES** to **COOPERATE FULLY** in Company Investigations?
- Define **INSUBORDINATION** according to **MANAGEMENT'S INTERPRETATION** or the "Reasonable Person" off the street, which is usually an upset employee?
- Define "**REASONABLE SUSPICION**" **SUBSTANCE ABUSE TESTING** as being "**REASONABLE**" according to **MANAGEMENT?**
- Define "**WORKPLACE VIOLENCE**" to include verbal and nonverbal abuse...as interpreted by management?
- Require and define "**HONEST/RESPECTFUL COMMUNICATION**" by employees?

Does your **EMPLOYMENT APPLICATION...**

- Limit your liability from an employee's claim for "**PROMISSORY ESTOPPEL**"?
- Limit your exposure to **EMPLOYEE LAWSUITS TO 6 MONTHS?**
- Place employees on notice that all of your policies will be **SUBJECTIVELY** interpreted as **MANAGEMENT DEEMS APPROPRIATE?**
- Protect you in case your manager's give reference information?

Most handbooks and employment applications do not protect the Company, nor do they reserve such rights for employers. Why is that? Because most employers do not know why they have a handbook in the first place. As a result, most handbooks are written incorrectly.

First and foremost, a handbook is **NOT** a reservation of rights for employees. A handbook is a reservation of rights for the **EMPLOYER**. As a result, a properly written handbook places employees on notice as to what the Company's rights are and what the Company expects from its employees. A handbook is therefore a **TOOL** for management to use in running its operations as it sees fit.

This is why you hear so many CEOs say that they do not want a handbook because "all a handbook does is tie their hands." If a handbook ever ties a Company's hands, it was written incorrectly. It was probably written to reserve rights for the employees.

Employees do not need to have their rights reserved for them in a handbook. They have Congress doing that for them already.

Companies should think of retaining their rights like a big buffet. They can go to the buffet and get whatever "legal" food they want. If they want steak, they can get steak. If they want dessert, they can get dessert. However, if they do not get a certain item from the buffet table...then they will not have it to use later.

The same is true with Employee Handbooks, Policies and Employment Applications.

It an employer's choice as to how it runs its business, and as long as the employer does not **illegally discriminate** against employees, then the employer has every right to conduct itself however it chooses.

What is "illegal discrimination"? Basing employment decisions on someone's protected class status, such as age, race, religion, race, etc.

What is “legal discrimination”? Everything else, such as awarding more vacation time to employees with more seniority. **THAT** is discrimination...but it is legal.

It all depends on how you decide to run your business.

For instance, if you work at Coca-Cola and go out on your own time and drink a Pepsi ... and your boss sees you, **YOU ARE FIRED!** Fair or not, drinking Pepsi is not a protected class like age, race, sex, etc., so terminating employees for drinking a Pepsi is not illegal. Coca-Cola has reserved this right and has placed its employees on notice that such a rule exists. As a result, that is how things work at Coke. Whether or not that is fair is not a matter for the courts to decide. **THAT** is an employee relations issue.

Employers need to start thinking of their Employment Applications, Employee Handbooks, their Standards of Conduct and their Substance Abuse Policies as a reservation of **THEIR** rights...tools to use if and when the need arises.

It is a lot like going to the dentist. When a dentist starts to examine and work on your teeth, the dentist has the tools he/she needs within reach if needed. Dentists **NEVER** sit down to go to work on a patient without their tools ready to go.

Why would a Company **EVER** want to try to run its business ... try to manage the biggest part of its budget, **LABOR**, without the proper tools in place? It shouldn't...but the vast majority of companies do this on a daily basis...making Employment Law one of the fastest growing areas of the law.

Reserving a Company's rights is where managing the biggest part of the employer's budget begins.

EMPLOYEE HANDBOOK OUTLINE

I. EMPLOYMENT

- A. Equal Employment Opportunity Policy**
- B. Employee Orientation Period**
- C. Employment of Minors**
- D. Employment Categories**
 - 1. Exempt and Non-exempt Employees**
 - 2. Full time Regular Employee**
 - 3. Part time Regular Employee**
 - 4. Temporary Employee**
 - 5. Pay Only Employee [Health Care Benefit Ineligible]**
- E. Immigration and Employment Eligibility**
- F. Resignation**

II. PROMOTIONS AND TRANSFERS

III. CONDUCT AND CONFLICT OF INTEREST ISSUES

- A. Conflict Of Interest With Other Organizations**
- B. Outside Employment**
- C. Personal Conduct and Honest Respectful Communication**
- D. Hiring Relatives**

IV. RECORDS

- A. Licensing Requirements**
- B. Performance Reviews**
- C. Personnel Information**

V. PAY ISSUES

- A. Call Time**
- B. Payday**
- C. Direct Deposit**
- D. Payroll Deductions**
- E. Overtime**
- F. Shift Differentials**
- G. Time-Keeping for Payroll**
- H. Workweek**
- I. Pay Advances**
- J. Hours of Work**
- K. Money Owed During Employment**
- L. Money Owed at Termination**
- M. Referral Bonuses**

VI. FRATERNIZATION AND HARASSMENT

- A. Fraternization**
- B. Prohibited Harassment**
 - 1. Harassment in General**
 - 2. Sexual Harassment**
 - 3. Reporting Illegal Harassment**
 - Retaliation**

VII. LEAVE OF ABSENCES ALLOWED

- A. Leave of Absence In General**
- B. Who is Eligible?**
- C. Requesting and Certifying Need For Leave**
- D. How Much Leave Is Available?**
- E. Use of Accrued Paid Leave**
- F. Benefits During Leave**
- G. Return to Position**
- H. Failure to Return to Work**
- I. Fit To Return To Work Certificates**
- J. Working While On Leave**
- K. Notice of Return to Work**

VIII. WORKERS' COMPENSATION LEAVE

IX. FMLA LEAVE POLICY

- A. Family and Medical Leave Act of 1993**
 - 1. General FMLA Coverage Information**
 - 2. Notice and Certification**
 - 3. Light Duty**
 - 4. Paid or Unpaid Leave**
 - 5. Restoration to Position**
 - 6. Temporary Transfers**
 - 7. Maintenance of Health Benefits**

- 8. Requests for Family and Medical Leave**
- 9. Coordination With Other Leaves**
- 10. Notice of Return to Work**
- 11. Failure to Return to Work**
- 12. Key Employees**

X. MILITARY LEAVE

- A. Uniformed Services Employment and Reemployment Rights Act (USERRA)**

XI. TIME OFF

- A. Absenteeism**
- B. Tardiness**
- C. Supervisor Notification**
- D. Bereavement Leave**
- E. Emergency Closings**
- F. Fit to Return to Work Certificates**
- G. Holiday Policy**
- H. Floating Holidays**
- I. Jury Duty**
- J. Medical and Dental Appointments**
- K. Sick Time**
- L. Vacation Benefits**
- M. Voting Time**
- N. Witness Duty**

XII. INSURANCE PROGRAMS

- A. Alteration of Company Sponsored Benefit Programs**
- B. Change In Family Status: 30-Day Notice Period for Changing Benefits**
- C. Group Insurance Benefits In General**
- D. Disability Insurance**
- E. Employee Assistance Program**
- F. Group Life Insurance Benefits**
- G. Optional Benefits**
- H. Section 125 “Cafeteria” Based Plans**
- I. Social Security**
- J. Unemployment Insurance**

XIII. EMPLOYEE TRAINING AND DEVELOPMENT

- A. Educational Assistance**
- B. Testing Out of a Class**
- C. Continuing Education Courses**

XIV. COMPANY EQUIPMENT

- A. Company and Personal Property, Equipment, Tools and Uniforms**
- B. Data Systems Policy**
 - 1. Monitoring Employee Data Electronic Messages Are Never Deleted**
 - 2. Access To Data Systems and Passwords**
 - 3. Data Confidentiality**
 - 4. Equipment**

- 5. Proper Use of Data Systems**
- 6. E-Mail**
- 7. Telephone Use**
- 8. No “Spoofing” Allowed**
- 9. No “Spamming” Allowed**
- 10. Internet Use**
- 11. Trade Secrets and Confidential Information**
- 12. Copyrighted Material**
- 13. Software**
 - a) General Policy**
 - b) Licensed Software**
 - c) Purchasing Software**
 - d) Registering Software With The Company**
 - e) Installation of Software**
 - f) Shareware**
 - g) Home Computers**
 - h) Penalties and Reprimands for Software and Copyright Violations**
- 14. Virus Watch**
- 15. Network Connectivity and Integrity**
- 16. Reporting Problems**
- 17. Reservation of Rights for the Company Only**

- C. **Personal Mail**
- D. **Telephone Etiquette**

XV. DRESS CODE

- A. **Appearance In General**
- B. **Male Employees In Particular**
- C. **Female Employees In Particular**
- D. **Visiting Office Dress Code**

XVI. MISCELLANEOUS ISSUES

- A. **Break Periods**
- B. **Bulletin Boards**
- C. **Business Travel Expenses**
- D. **Endorsements**
- E. **Flowers**
- F. **Food**
- G. **Identification Badges And Building Access**
- H. **Meal Periods**
- I. **Personal Property**
- J. **Parking**
- K. **Solicitation and Distribution of Materials**
- L. **Smoking and Tobacco**
- M. **Tips**

- N. Use Of Telephones And Cellular Telephones**
- O. Use Of Company Premises, Property And Materials**
- P. Visitors in the Workplace**
- Q. Confidentiality**

XVII. WORKPLACE SAFETY

- A. Safety In General**
- B. Hazardous Chemicals and Your Right to Know**
- C. Reporting Accidents**
- D. Workers' Compensation**
- E. Safety and Uniforms**
- F. Violence in the Workplace**
- G. Weapons**

XVIII. RULES AND GUIDELINES

- A. Company Rules**
- B. Addressing Grievances**
- C. Post-Termination Hearing (Public Sector Employers)**

HANDBOOK ACKNOWLEDGEMENT

DRUG-FREE WORKPLACE POLICY OUTLINE

- I. STATEMENT OF POLICY**
- II. PROGRAM PROTECTIONS AND TESTING PROCEDURES**
- III. SUPERVISOR & EMPLOYEE AWARENESS EDUCATION (REQUIRED UNDER BWC RATE REDUCTION PROGRAM)**
- IV. DRUG AND ALCOHOL TESTING CUTOFF LEVELS**
- V. EMPLOYEE ASSISTANCE**
- VI. BUREAU OF WORKERS' COMPENSATION'S 10 STEP BUSINESS PLAN**
- VII. TYPES OF TESTING**
 - A. Pre-Employment Drug Testing**
 - B. Reasonable Suspicion Testing (H.B. 223 Compliant)**
 - C. Post-Accident Testing**
 - D. Follow Up Testing after Return to Work From Assessment or Treatment**
 - E. Random Drug Testing**
 - F. Transfers or Promotions**
 - G. Annual or Biennial Testing**
 - H. Safety-Sensitive-Position Testing**
 - I. Customer-Required Substance Abuse Testing**
 - J. Other Testing Programs**
- VIII. USE OF LEGAL DRUGS**
- IX. TAMPERING WITH A SPECIMEN OR FAILURE TO PROVIDE A SAMPLE**

- X. DISCIPLINARY PROVISIONS FOR RECEIVING A POSITIVE DRUG AND/OR ALCOHOL TEST RESULT: EMPLOYEES**
- XI. ODOR OF ALCOHOL**
- XII. VOLUNTARY SELF DISCLOSURE, ASSESSMENT AND REHABILITATION UNDER THE EMPLOYEE ASSISTANCE PROGRAM**
- XIII. DOT PROHIBITED CONDUCT (49 CFR Section 382)**
- XIV. DOT MINIMUM REQUIREMENTS FOR A POSITIVE DRUG AND/OR ALCOHOL TEST**
- XV. NOTICE TO EMPLOYER OF ILLEGAL ACTIVITY**
- XVI. DRUG-FREE WORKPLACE ACT (Contracts of \$10,000.00 or more with the government.)**
- XVII. SEARCHES**

**ACKNOWLEDGMENT OF THE COMPANY'S
SUBSTANCE FREE-WORKPLACE POLICY, CONSENT TO TESTING
AND RELEASE OF INFORMATION AND LIABILITY**

STANDARDS OF CONDUCT & ETHICS POLICY OUTLINE

I. CONFLICTS OF INTEREST

- A. Use of Inside Information**
- B. Personal Financial Interest**
- C. Outside Activities**

II. COMPETITIVE PRACTICES

III. DEALINGS WITH SUPPLIERS

- A. Reciprocity**
- B. "Kickbacks" and Rebates**

IV. DEALINGS WITH CUSTOMERS AND POTENTIAL CUSTOMERS

- A. In General**

V. POLITICAL ACTIVITIES AND CONTRIBUTIONS

VI. RECEIPT OF GIFTS AND ENTERTAINMENT

- A. In General**
- B. Gifts**
- C. Entertainment**

VII. INTEGRITY OF RECORDS AND FINANCIAL REPORTS

VIII. USE OF AGENTS AND NON-EMPLOYEES

IX. STANDARDS COMPLIANCE

- A. Initial Verification**
- B. Maintaining Compliance**
- C. Audits of Compliance**

X. EMPLOYEES' RELATIONS WITH CO-WORKERS AND MANAGEMENT

A. In General

B. Standards of Violations

XI. CONTINUANCE OF EXISTING PERSONNEL POLICIES, RULES AND PERFORMANCE STANDARDS

XII. UPDATING EMPLOYEE INFORMATION