DOWNES FISHEL HASS KIM LLP™
Attorneys at Law

400 South Fifth Street, Suite 200
Columbus, Ohio 43215-5492
(614) 221 1216 PH
(614) 221 8769 FX
www.downesfishel.com

PRESENTED TO:
HALL OF FAME CHAPTER OF THE
AMERICAN PAYROLL ASSOCIATION

EMPLOYEE POLICIES AND HANDBOOKS

PRESENTED BY: TODD M. ELLSWORTH
MAY 4, 2012

Todd M. Ellsworth is an associate with the Columbus law firm of Downes Fishel Hass Kim LLP. A veteran of the U.S. Navy, Todd earned his Juris Doctor and Certificate in Alternative Dispute Resolution from The Ohio State University College of Law and a Bachelor of Science in Economics from the United States Naval Academy. Todd represents public and private sector employers in civil litigation, as well as, before administrative agencies, including the Ohio Civil Rights Commission, the Equal Employment Opportunity Commission, the Department of Labor, the State Employment Relations Board, and the State Personnel Board of Review. Todd also advises clients on all issues relating to labor and employment relations and local government law. Additionally, Todd conducts training and seminars throughout Ohio on numerous labor and employment law topics including public records.

Downes Fishel Hass Kim LLP ("DFHK") is a mid-sized Columbus, Ohio, based law firm. DFHK defends business entities, public officials, and the owners and boards of these entities, and private individuals. The philosophy of the firm is to provide services that promote the development of systems and human resource management to maximize the goals and direction of the organization and to avoid and minimize conflict. This may include employee and supervisory training, the development and implementation of policies and procedures, and consultation. Vigorous representation is the first concern with consideration to both the short and long term effects. Services are provided to unionized, non-unionized, and mixed unionized/non-unionized clients. The firm's perspective is pro-management.

The firm also represents clients in pretrial, trial and appellate stages of litigation in both federal and state court and related administrative matters. Our litigation practice includes the defense of discrimination and harassment suits, Constitutional matters, professional partnerships and small business litigation, corporate dissolutions and shareholder disputes, wrongful termination, wage and hour, Family Medical Leave, Fair Labor Standards Act, and other civil actions.

The firm's defense philosophy is proactive, while maintaining a balance between appropriate defenses without unnecessary discovery or discovery disputes. The firm focuses on both the short-term and long-term impact of litigation. A concerted effort is placed on determining issues of liability as early as possible in litigation, allowing the client to make informed decisions concerning case resolution. The firm is flexible as to services based on clients' needs and wishes. The attorneys regularly work in conjunction with all levels of management staff, legal advisors, officers, and directors providing advice, background information, research and/or consultation on specific employment law issues.

DFHK was recognized as one of the 2011-2012 U.S. News-Best Lawyers® in areas of Employment Law-Management, Labor Law-Management and Litigation-Labor & Employment. Additionally, several attorneys in the firm have been recognized by their peers as Super Lawyers® and Best Lawyers® for their outstanding work in areas of Employment and Labor Law and Litigation.

TABLE OF CONTENTS

I. PURPOSE OF HANDBOOKS

A. Generally, Ohio Follows The "At Will" Doctrine.

1. Definition: A contract of employment for an indefinite period which is terminable at the will of either party, with or without cause, reason or notice.

2. Absent any statutory, contractual, or common law exception, nothing in the doctrine protects employees from arbitrary or unjust termination.

3. This sounds good but the exceptions, both statutory and judicial, have swallowed this rule!

   a. Basic Exceptions to "at will" rule:

      i. Employees with a written contract for a fixed and definite term which limits the employer's right to discharge (Executives or other highly compensated individuals).
      ii. Employees covered under collective bargaining agreements negotiated by unions which traditionally provide that employees can only be terminated for "just cause".
      iii. Public Employees covered by State/Federal Civil Service Laws.
      iv. Civil Rights Act of 1964 Title VII prohibits an employer from "discriminating against any individual with respect to his compensation, terms, condition, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a)(1). Title VII covers employers with 15 or more employees.
      v. Civil Rights Act of 1871 Section 1981 provides additional means of recovery for racial discrimination in any action affecting the terms and conditions of employment. 42 U.S.C. 1981. (Public sector / State Action only).
      vi. Civil Rights Act of 1871 Section 1983 provides means of recovery for deprivations of constitutional rights committed by individuals acting "under color of state law." 42 U.S.C. 1983. (Public sector / State action only).
      vii. The Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination in employment based on age. 29 U.S.C. 621. Plaintiffs must be at least 40 years old to be protected by the ADEA. The ADEA covers employers with 20 or more employees.
      viii. The Americans with Disabilities Act of 1990 (ADA) prohibits employment discrimination against individuals with disabilities. 42 U.S.C. 12101. The ADA covers employers with 15 or more employees.
      ix. National Labor Relations Act (NLRA) prohibits discharge for engaging in union activity.

x. Fair Labor Standards Act (FLSA) prohibits discharge for exercising rights guaranteed by minimum wage and/or overtime provisions.

xi. Occupational Safety and Health Act (OSHA).

xii. Employment Retirement Security Act (ERISA prohibits discharge to prevent employee from attaining rights under a benefit plan ((health, severance, vested pension, retirement benefit plans)).

xiii. Immigration Reform and Control Act prohibits discharge of LEGAL aliens based upon national origin or citizenship status.

xiv. Family Medical Leave Act (FMLA).

xv. Uniformed Services Employment and Reemployment Rights Act (USERRA): prohibits discharge of returning service persons without just cause.

xvi. State Discrimination, Anti-Retaliation and Whistleblower Statutes:

- Ohio prohibits discharging employees who report illegal employer activity.
- Ohio's Workers Compensation law prohibits retaliation for filing or pursuing a workers compensation claim (or for testifying).
- Ohio law also prohibits employment discrimination similar to that provided in Title VII, the ADEA, and the ADA. - - O.R.C. 4112. (applies to 4 or more employees).
- Ohio prohibits discharge for serving on jury duty.

xvii. State law tort actions:

- Negligent hiring/firing/supervision.
- Wrongful discharge based upon public policy.
- Intentional infliction of emotional distress.
- Defamation.
- Assault/battery.
- Invasion of privacy.
- Promissory estoppel.

B. Not A Contract Of Employment.

1. The purpose of an employment handbook is **not** to create a contract of employment, but to:

a. Provide a general guideline as to the employment policies and procedures.

b. Set forth an employer's culture, requirements, work rules, and expectations.

c. Legal compliance and avoidance of litigation.

II. WHAT MUST BE INCLUDED IN HANDBOOKS

A. Disclosures.

1. At-will: To avoid possible confusion and costly litigation as to the employment relationship, all handbooks must clearly disclose that they do not create contracts of employment for any period or length of time but instead "employment is 'at will' and either party may end the employment relationship at any time with or without notice and for any or no reason at all."

2. No authority to bind: To help avoid any "promissory estoppel" claims, all handbooks must state that no employee, except the President (or other designated personnel), has the power to enter into any employment agreements or to modify the provisions of the employment handbook and even then, the modification must be in writing.

3. Complete agreement: To further prevent reliance on anything that may have been uttered during the interview or hiring process, the handbook must make clear that it is the sole and complete document setting forth the policies and practices of the company and no other promises or documents conflicting with the provisions of the handbook are valid.

   a. Review your employment handbook and eliminate:

      i. References to promises of similar treatment.
      ii. Concepts of fairness or equality.
      iii. Language indicating security or longevity of employment.
      iv. Other promises (express or implied).

B. Discrimination/Harassment Policy.

1. Employment discrimination

   a. Required elements: Generally, to successfully assert a cause of action for discrimination, plaintiffs must prove all of the following (sometimes referred to as the McDonnell Douglas test):

      i. They belong to a protected class.
      ii. They performed their job satisfactorily.
      iii. They suffered an adverse employment action.
      iv. They were treated less favorably than similarly-situated employees outside of that protected class.

      See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

b. Two forms of discrimination:

i. Disparate treatment: employer is treating **me** less favorably because of my membership in a protected class.
ii. Disparate impact: facially neutral policy or procedure with a discriminatory impact on a protected class as a group.
iii. **Example:** Sex discrimination addresses instances of gender-based inequality in the workplace, such as when an employee is demoted, disciplined or terminated solely on the basis of her or his sex.

2. Workplace harassment: Conduct that unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment.

a. Harassment is a subset of discrimination that protects employees from harassing behavior in the workplace as a result of the employee's membership in a protected class. The theory behind harassment is that abusive and harassing behavior can adversely affect the terms, conditions or privileges of employment, thereby violating Title VII.

b. Example definition: Sexual harassment is any unwanted attention of a sexual nature from someone in the workplace (supervisors, coworkers, clients, customers) that is offensive, causes discomfort, and/or interferes with the employee's job performance. This includes unwelcome sexual advances, requests for dates or sexual favors, lewd or explicit sexual remarks, innuendoes, jokes, gestures, touching, discussions of sexual activity, indecent exposure, whistles, and the display of obscene or suggestive pictures or cartoons, pornographic posters.

3. Avoidance measures:

a. Must have an anti-discrimination and harassment policy that includes:

i. Definition of harassment.
ii. Statement of the consequences.
iii. A complaint procedure (which identifies who to report it to).
iv. Assurance against retaliation.

b. Investigate all accusations **PROMPTLY!**

i. Investigator not in chain of command.
ii. Investigator from outside if necessary.

c. Consider a standard investigative form that should address the following:

i. What happened?

ii. Who was the alleged harasser? (supervisor/employee)
iii. Where and when did all harassment occur?
iv. What effect did alleged harassment have on complainant's work?
v. Was the harassment welcome (how did complainant react?)
vi. Evidence?
vii. Witnesses?
viii. Motive?

d. If results of investigation reveal inclusive results or that harassment did not occur:

i. Advise both complainant and harasser that results did not establish conclusively that harassment occurred.
ii. Advise both that retaliation is unlawful.
iii. Reiterate policy of commitment to investigating and preventing harassment.
iv. Encourage complainant to continue to report any further allegations.
v. Weigh appropriateness of company-wide review of harassment policy without revealing details of allegations.
vi. Explore any options for limiting contact between the two parties (be careful of retaliation charge though).

e. If results of investigation reveal harassment **did** occur:

i. Prompt, remedial action must occur (warning, suspension, demotion, transfer, termination) **AFTER** weighing the evidence:
- Was it serious or minor?
- What is the harasser's previous employment record?
- What is complainant's previous employment record?
- Was harasser aware of policy?
- Did complainant welcome the harassment in any way?
- What is policy (progressive discipline?).
- Past practice of employer.

ii. Action taken must be designed to prevent reoccurrence in future.
iii. Document investigation and action taken in detail!
iv. Advise complainant of action taken and importance of reporting any future incidents.

C. Workplace Violence Policy.

1. It should go without saying in today's society that workplace violence is a serious issue. The news headlines are constantly reminding us of this unfortunate fact. Further, Ohio law holds that employers owe a duty to provide a safe workplace for their employees. This includes a workplace free from violence or the threat of violence.

2. Main legal purpose: Limit/reduce exposure to Intentional Torts/Negligent Retention/Workplace Safety Litigation.

3. A workplace violence policy should encourage the following actions:

   a. Reporting any/all violent, harassing, or threatening actions immediately to designated personnel.

   b. Immediate investigation into all allegations.

   c. Employees who are feeling stressed or showing signs of stress should be encouraged to seek assistance through an EAP or other program.

   d. Clearly state that the employer maintains a workplace free from violence or threats of violence and any one found to have threatened or committed violence toward another employee will face disciplinary action up to and including termination.

4. Weapons ban: Consider including a ban of all weapons on company-owned or operated property/equipment.

5. Warning signs: The following are examples of warning signs, symptoms, and risk factors which may indicate an employee's potential for violence. Employees should be aware of these indicators. In all situations, if violence appears imminent, employees should take the precautions necessary to assure their own safety and the safety of others. An employee should immediately notify his supervisor if he witnesses any of the following behaviors:

   a. Dropping hints about a knowledge of firearms.

   b. Making intimidating statements, such as: "You know what happened in Oklahoma City," "I'll get even," or "You haven't heard the last from me."

   c. Keeping records of other employees the individual believes to have violated departmental policy.

   d. Physical signs of anger, such as hard breathing, reddening of complexion, menacing stares, loudness, and profane speech.

   e. Acting out violently either verbally or physically.

   f. Excessive bitterness by a disgruntled employee or an ex-employee;

   g. Being a loner; avoiding all social contact with co-workers.

h. Having a romantic obsession with a co-worker who does not share that interest.

i. History of interpersonal conflict.

j. Domestic problems; unstable/dysfunctional family.

k. Brooding, depressed, strange behavior; a "time bomb ready to go off."

D. FMLA Disclosure.

1. FMLA requires covered employers to provide eligible employees with up to 12 weeks of leave per year for certain family and medical situations, with restoration for the employee to the same or a similar position upon return to work. Also, the FMLA now provides eligible employees with up to 26 weeks of leave per year to care for a service member injured in the line of duty.

2. Private employers with 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year are covered by FMLA. (The 20 calendar weeks do not need to be consecutive.) Further, all public employers, regardless of size, are covered by the FMLA.

3. The Regulations to the FMLA expressly state that if a covered employer has a handbook, the employer MUST include information concerning FMLA entitlements and obligations under the FMLA in the handbook. *See* 29 C.F.R. 825.301(a)(1).

4. The FMLA Policy should include the following:

a. How the year will be calculated.

i. Failure to specify will result in the use of time period most favorable to employee.
ii. If employer chooses to change the way a year is determined, it must give at least 60 days notice to all employees.
iii. Possible methods of calculating the year:
- Calendar year.
- Any fixed 12 month period (anniversary of employment, fiscal year, etc.).
- 12 month period measured forward from date initial leave commences.
- Rolling 12 month period measured backward from the date the leave commences.

b. Qualifying reasons for an employee taking FMLA:

i. Birth of an employee's child and subsequent care of the infant.
ii. The placement of a child with an employee for adoption or foster care.
iii. When an employee is needed to care for the spouse, son, daughter, or parent of the employee when that spouse, son, daughter, or parent has a serious health condition.
iv. A serious health condition of an employee that makes the employee unable to perform the functions of his or her position.
v. In order to care for a service member injured in the line of duty if that service member is a family member and/or the employee is a next-of-kin.
vi. To assist a spouse, parent or child of a member of the U.S. military due to the contingencies (as defined by the Department of Labor) of the service member being called to active military service.

c. Who to see in order to request FMLA leave.

d. Advance notice of 30 days required whenever leave is foreseeable.

e. That medical certification will be required for any/all FMLA requests.

f. Right to return to work in same or similar position upon expiration of FMLA.

g. Health care benefits will continue during FMLA but employee is responsible for paying his/her portion of premium during leave.

i. Failure to return from FMLA entitles employer to reimbursement of benefits paid while on FMLA.

h. Accrued sick/vacation leave must be used concurrently with FMLA leave.

i. An eligible employee is one who has been employed by the Employer at least 12 months and worked a minimum of 1,250 hours of service during the 12 months prior to the leave of absence.

5. DOL FMLA Regulations effective January 2009:

a. Employers are to provide employees with a more substantive notice whenever leave is designated FMLA within five days of having sufficient information to make the determination. The current regulations require the designation notice to be provided within two days, which can be

difficult to comply with. However, having more time to designate the leave comes with a price – employers will now be required to inform employees of the precise number of hours, days, or weeks that will be designated FMLA within the body of the notice. The more substantive calculations may prove difficult for unforeseeable and intermittent leave requests. The DOL will also require employers to inform intermittent employees every 30 days that their leave is designated and protected under FMLA and advise the employees as to the amount of FMLA taken during the 30-day period.

b. Employers may directly contact an employee's medical provider to obtain clarification or authentication of FMLA documentation. Previous regulations prohibited employers from personally contacting an employee's medical provider. The new regulations are clear that, even though employers will now be permitted to contact an employee's medical provider personally, employers must still comply with HIPAA's privacy rules.

c. Except in cases of emergency, employees are to comply with an employer's usual call-in procedures before taking paid leave for any period of unscheduled, intermittent leave under the FMLA. The proposed regulations make it clear that an employee covered under FMLA is not entitled to any paid benefits that they would not normally be entitled under the employer's paid leave policy. Previous FMLA regulations stated that an employer cannot enforce FMLA notice provisions that are stricter than the FMLA notice provisions.

d. Some employers previously only qualified requests for FMLA leave in order to care for a family member with a serious health condition if the employee is the only individual or family member available to provide care. The new regulations prohibit this practice.

e. The new regulations will permit public employers to run compensatory time concurrently with FMLA leave. This was not permitted in the prior regulations and will allow employers to treat compensatory time off the same as other paid leave benefits.

f. Employers must stop counting time worked by an employee in a light-duty assignment (typically pursuant to a workers compensation injury) toward an employee's twelve-week FMLA allotment.

g. Finally, the proposed regulations clarify the confusion of an employee's waiver of FMLA rights contained in a severance or settlement agreement. The DOL's proposed regulations state that employers and employees can enter into enforceable agreements that waive an employee's right to

institute litigation regarding past FMLA claims. However, future FMLA claims that arise after the date of the agreement may not be waived.

E. Disciplinary Process.

1. The discipline policy should promote fairness and a process free from possible discriminatory animus.

2. It is advisable to have a "Termination Caesar" or legal counsel review every termination and disciplinary decision prior to actual termination/discipline of employees to ensure it complies with past practices of the company and that the decision is as insulated as possible from legal attack.

3. The policy should be clear that the employer reserves the right to institute discipline "up to and including termination of employment" for violation of the policies and procedures.

   a. Sample language: Each incident or violation of this policy will be taken on a case-by-case basis. It is the company's policy to provide progressive discipline when, in the company's sole discretion, the condition and situation so warrant; however, the company has sole discretion in determining the type and level of discipline it will administer based upon each incident, the severity of the incident, and the past discipline of the employee.

4. The employer must ensure workplace safety, so any decision to retain an employee for violation of safety rules must be weighed in light of the employer's duty to provide a safe workplace as well as the possible litigation that may be instituted should the employee retained commit another safety violation that results in injury to another employee.

F. Privacy Policies.

1. Generally: Invasion of privacy complaints usually attach to workplace searches of property or persons.

   a. Inquiry is whether employee had a "reasonable expectation of privacy" under the circumstances.

   b. Very fact-specific!

   c. Employee notice and consent are highly relevant factors as are the area/item searched and the intrusiveness of the search itself.

   d. Courts generally balance the employee's privacy expectations vs. employer's legitimate business interests.

2. Policy language must clearly state that an employee should have no reasonable expectation of privacy in company property and that company reserves right to inspect/monitor company property at any time.

3. Drug tests: Considered searches of the person so policy should be included in handbook if you drug test.

   a. Random drug testing is typically permissible where safety is at stake.

   b. Policy should reiterate that results will never be publicly released (on a need to know basis only).

   c. Policy must inform employees that they will be subject to testing, state the grounds for testing, and the consequences of failure/refusal.

   d. Policy should provide employee with opportunity to explain positives and have appeal process (such as retesting of sample).

4. Property searches:

   a. Policy should provide notice to employees that lockers, desks, vehicles may be searched without consent or knowledge and refusal to permit such may result in discipline.

   b. Ensure only use of company issued and supplied locks on lockers and forbid private locks.

   c. Notice to employees that purses, lunchboxes, or briefcases may be searched on entering or leaving the premises.

   d. Conduct searches in a non-discriminatory and least intrusive manner.

5. E-mail/internet monitoring, computer use:

   a. Adopt written policy advising employees they have no legitimate expectation of privacy in use of company e-mail and other electronic communications devices.

   b. Notice that e-mail and computers are company property and employees are consenting to have such use monitored at company's sole discretion.

   c. Prohibit use of discriminatory, unprofessional, threatening e-mail transmissions.

   d. Prohibit use of e-mail and internet for personal reasons or to access sexually explicit materials.

G. Workers' Compensation.

1. Policy must explain that Workers' Compensation Insurance is available to protect employees in the event of injury or illness resulting directly from work.

2. Inform the employee that they must notify their supervisor and the designated person or Department Head immediately if they are injured on the job, no matter how minor.

3. Advise employees that they will need to complete a report of injury form for any/all injuries reported no matter how minor.

4. Policy must inform employees that all workers' compensation leaves of absence that also qualify under the FMLA will count against the 12-week FMLA entitlement but that additional leave may be permitted for employees injured at work.

5. Advise employee that retaliation for exercising workers compensation rights is prohibited and encourage employee to report such allegations pursuant to the discrimination and harassment policy.

6. Advise employees that engaging in unlawful, deceitful, or fraudulent receipt of workers compensation benefits is grounds for immediate termination.

H. Employee Benefits.

I. Employee Leave Policies.

III. WHAT SHOULD BE INCLUDED IN HANDBOOKS

A. Cell Phone Usage Policy/Technology/Social Media.

1. If you supply cell phones to your employees, you may want to consider a cell phone usage policy which requires an employee to pull off to the side of the road and/or turn off the power whenever speaking on a cell phone while in route/driving/operating dangerous equipment.

2. Train supervisors to highly enforce this policy so as to avoid/reduce workplace accidents (and litigation for negligence/intentional torts).

3. Even if you do not supply the cell phones yet permit employees to use their own private cell phones while driving or working, consider this policy so as to reduce the risk.

4. Don't forget, under OSHA, you have a general duty to provide a work environment safe from recognizable hazards. This duty applies when employees

are working from their vehicles as well. (Cell phone usages while driving a vehicle is a recognizable hazard).

B. FLSA Safe-Harbor Provision.

1. The Regulations to the FLSA were amended in August of 2004. One change is that the FLSA now provides employers with a "safe harbor" against the effects of FLSA improper salary deductions if the employer has a complaint process in place. To be entitled to the safe harbor protection, the employer must:

   a. Have a policy that prohibits improper deductions which is **clearly communicated** to employees.

   b. The policy must have a complaint mechanism that is properly followed with each employee complaint.

   c. Make immediate (i.e., the next paycheck) re-imbursement when improper deduction verified.

   d. Make a good faith effort to comply with law and your policies (take complaints seriously and investigate it).

2. Effects of improper deductions from salary:

   a. Destroys the employee's exempt status for the period in which the improper deduction was made.

   b. Destroys the exempt status for all other employees in the same classification.

   c. Destroys the exempt status for all employees working under the manager who authorized the improper deduction.

C. Method Of Payment And Payroll Deduction.

1. Ohio law requires that private sector employees be paid at least semi-monthly, i.e., not later than the first of the month for work performed between the first and the fifteenth of the preceding month, unless a different period is established by law or written contract. All employers must make payment for overtime in the same paycheck as payment for the regular hours during that same work period. O.R.C. § 4113.15.

2. Policy should clearly set forth the pay period for employees and state that the only deductions from an employees check will be those permitted/required by law.

3. Beware of Proper v. Improper deductions from paychecks:

   a. Deductions for damage/loss to property: (WH Opinion Letter March 10, 2006): Although an employer may have a policy which deducts the cost of damage to or loss of company equipment or tools from a **non-exempt** employee's paycheck (so long as the employee does not drop below minimum wage due to the deduction), the employer **cannot** apply this policy to an exempt employee or exempt status will be lost.

   b. Express permissible deductions: Exempt employee's salary **may** be reduced in full day increments, without destroying their exempt status, in the following situations:

      i. Absence for part of a work week due to personal reasons, other than sickness or disability. Employers may allow or require the exempt employee to substitute earned vacation or personal leave. May apply to exempt employees if deductions are limited to full day absences only.
      ii. Absence due to sickness or disability if the employer has a bona fide plan to provide substitute wage replacement benefits (unless it's unpaid FMLA leave). Employer must have a separate sick leave or disability leave policy. Exempt employees may be docked pay under a policy that provides for unpaid FMLA leave.
      iii. Offset for amounts received as a witness, jury duty or military pay (Ohio Law). The total compensation for the work week must remain the same, but deductions can be made for witness or jury duty pay **or** the employee may be required to remit the payment to the employer in order to receive full compensation.
      iv. Penalties or suspensions imposed in good faith for violations of safety rules or other workplace conduct rules.
      v. Proportionate part of the employee's full salary if they start or end employment during a work week.

   c. Deductions from the final paycheck for monies owed the employer may be made to the checks of **non-exempt** employees (as long as it does not drop the employee below minimum wage).

   d. An employee's final paycheck may **not** be withheld pending return of the employer's equipment.

D. Non-Solicitation.

   1. If you are non-union, do you want your employees promoting unionism during working times and working areas? Do you want union officials to be able to distribute leaflets on your property?

2. If you said no – then you will want to **HIGHLY** consider a non-solicitation policy.

3. Sample language: In the interest of efficiency and security, solicitations or distributions by employees of literature of any kind is restricted to non-work areas and during non-work time. Employees are prohibited from soliciting or distributing literature of any kind in work areas or during work time. Solicitation or distribution of literature of any kind by non-employees is not permitted on company premises at any time.

4. This policy must be equally and fairly applied to **ALL** solicitation (even for Girl Scout cookies or "minor inconveniences").

IV. WHAT NEVER TO INCLUDE IN HANDBOOKS

A. Exact Medical Benefit Program And Prices.

1. As employers of all size are aware with today's rising medical premiums and benefits costs, the odds are very probable that you will change insurance providers (perhaps frequently).

2. Unless you cherish the thought of reprinting your handbooks every time you change insurance providers, skip the details in your handbook.

3. Simply stating that the company provides health, dental, vision, etc… is sufficient.

B. Progressive Discipline With No Exceptions.

1. While it is acceptable to state that the company will provide progressive discipline when warranted, if you decide to list out certain infractions as unacceptable – ensure that you add at the end of each section that "the company, in its sole discretion, reserves the right to skip progressive discipline all together and/or institute discipline at a higher level including discharge."

2. Not providing an exception to the progressive discipline steps leads to a plausible argument that no exceptions were permissible and that you must follow the progressive discipline procedure strictly.

C. "For Cause" Language.

1. Unless you are drafting a collective bargaining agreement with a union, there is absolutely no reason that a statement insinuating that terminations will only be for "just cause" should appear in an "at-will" policy book.

2. "At Will" and "Just Cause" are polar opposites and cannot live happily together in a handbook – take any references to terminations being for "just cause" out immediately.

D. Promises or Personal Guarantees.

1. Unless you want to be held personally liable for breaking a promise or "guarantee" do not have any references to either in your handbook.

2. The only "guarantee" that should be referenced in a handbook is the "guarantee" that continued employment is **NOT** guaranteed.

3. Review your handbook to ensure that no implied or express promises or guarantees exist.

Presentation/Handbooks/Employee Handbooks Outline 6-16-09

APPENDIX A
Employee Handbooks & Policies Websites & Vendors

The Department of Labor
- www.DOL.gov

Thompson's Handbook Builder
- http://handbook.thompson.com/index.html

Ohio Employee Handbook- HRIT Inc. and Downes Fishel Hass Kim, Ohio Compliant Handbooks
- www.hrit.com
- http://www.hrit.com/employee-handbook/ohio-employee-handbook.htm
- Requires purchase before viewing

Personnel Policy Manual System
- http://www.ppspublishers.com/
- Requires subscription

The Certified Employee Handbook Template
- http://www.certifiedemployeehandbook.com/
- Requires purchase before viewing

Ohio Personnel Advisor
- http://hrhelp.biz/preview/Oh_pre/ohio_forms.asp
- Requires a subscription to print forms, but can view some forms without paying for subscription

Employee Policy Manual
- http://www.employeepolicymanuals.com/Employee_Handbook_Value_Pkg.html
- Requires purchase before viewing

. www.employeeuniversity.com = training videos and seminars for HR compliance

Software
- Employee Policy Handbook
  - ISBN 1-931591-17-2
  - Contains pre-written employee policies to help create an Employee Handbook Policy Manual with no necessity to format or research basic employee policy. Provides a 100-page Employee Handbook template with two Microsoft word document files.
- Human Resources Policies and Procedures for Strong Employee Policies
  - ISBN 1931591-008
  - Assists in developing HR and employee policies with pre-written and fully editable content that encompasses the critical areas of managing human resources, including regulatory and legal requirements. Contains information on manual preparation, a sample Manager's Manual, sample Human Resources Procedures Manual, sample reports, forms, and agreements, a sample Employee Handbook, and sample job descriptions.

APPENDIX B
SAMPLE OF TABLE OF CONTENTS

TABLE OF CONTENTS

APPENDIX C
SAMPLE COMPUTER/INTERNET/SOCIAL MEDIA POLICY

The internet, including electronic mail and other online services, can increase the productivity of the Company's employees. As is true with all resources available to employees, there is a potential for misuse or abuse. This Company and all of its employees must be held accountable for their use and misuse of electronic resources.

DEFINITIONS

"On-duty" refers to paid time working. It does not include paid or unpaid breaks taken on company premises.

"Off-duty" refers to paid and unpaid breaks and non-company time off company premises.

PROHIBITIONS

[Two options. Select one: (1) Employee strictly prohibited from private use, or (2) Employee to limit private use]

(1)

Company internet, email and other online services shall be used for business purposes only. Access to any internet site or service using Company-owned equipment, which does not further business purposes, is strictly prohibited on-duty or off-duty.

Employees shall be aware that computer, internet and email usage can and will be monitored by the Company. Employees shall have no expectation of privacy in Company computers or information accessed or disseminated on those computers. Improper use of Company computers, internet or email may result in discipline, up to and including, termination.

Access to the internet, email or other online services using personally-owned electronic devices (ie. cell phones, iPad) while on-duty is also strictly prohibited. Paid work time is to be dedicated to work-related activities. Employees who access the internet and or engage in communications on the internet while on-duty shall have no expectation of privacy in that access those or communications, including the personal electronic device used in that access or communication.

(2)

Electronic equipment and resources are provided for Company business. However, the Company may permit employees incidental personal use of the computer at their desk or work station during non-working time with their Supervisor's approval. When using a computer for personal use, the employee must not use it in any illegal, obscene, offensive or intimidating manner, or any other manner that violates Company policy. Employees are also prohibited from

using company computers or any other resources for personal gain, to compete with the Company in any way, or for the advancement of individual views.

Use of the Company's technical resources must not interfere with the employee's productivity, the productivity of any other employee, or the operation of the Company's technical resources. Employees shall not download, upload or otherwise install any unauthorized programs on the computer system. Employees will be held responsible for any intended and unintended material which appears on their computers.

To that end, the following is a non-exclusive list of prohibited uses of Company internet, email or other online service:

- Any use that interfere with normal business activities;
- Any use that involve solicitations;
- Any use in connection with a business activity that operates for-profit;
- Any use that could possibly bring embarrassment or harm to the company;
- Operation of a business for personal gain, sending chain letters, or soliciting money for religious or political organizations or causes or any reasons unrelated to the company's business;
- Any use that would violate any federal, state, or local laws;
- Any use that would transmit, download, or print obscene, pornographic, threatening, or racially, sexually, or religiously harassing materials;
- Any use that involves the distribution or printing of copyrighted materials, which includes articles and software, in violation of the copyright laws;
- Any use that violates the privacy rights of the Company, other employees, or clients;
- Any access to confidential information. The transmission of confidential information shall only be in accord with the current procedures and regulations;
- No employee shall use the computer of any other employee without explicit permission. All employees shall use all reasonable safeguards when using the internet, e-mail, or online services to avoid the mistaken distribution of another's information.

Employees shall be aware that their personal and professional on-duty and off-duty use of company computer, internet and email can and will be monitored by the company. Employees shall have no expectation of privacy in Company computers or information accessed or disseminated on those computers. **EMPLOYEE USE OF COMPANY COMPUTERS CONSTITUTES THE EMPLOYEE'S CONSENT TO THE COMPANY REVIEWING COMPUTER HISTORY AND USE, INCUDING PASSWORD-PROTECTED WEBSITES/EMAIL AND DELETED MATERIAL, SO THAT THE COMPANY MAY ENSURE COMPLIANCE WITH THIS POLICY.** Improper use of company computer, internet or email usage may result in discipline, up to and including, termination.

OFF-DUTY USE OF SOCIAL MEDIA

As the use of social media such as Facebook becomes more popular, it is important that employees understand their responsibilities and limitations on the use of social media off-duty as it may affect their employer. "Social media" includes any form of electronic communication through which users create online communities to share information, ideas, personal messages and other premises.

While off-duty, employees are reminded to be careful of the information they disclose on the internet, including social media sites. The following uses of social media off-duty are strictly prohibited:

- Comments or displays about coworkers or supervisors or the Company that are vulgar, obscene, threatening, intimidating, harassing, or a violation of the Company's workplace policies against discrimination, harassment or hostility on account of age, race, religion, sex, ethnicity, nationality, disability or other protected class, status, or characteristic. Company policies with respect to these prohibitions apply to off-duty conduct;

- Statements or uses of the Company's logo or trademark which violate trademark or copyright laws.

- Engagement in unprofessional communication. "Unprofessional communication" includes that which, if left unaddressed, could potentially result in a civil or criminal cause of action against the Company. "Unprofessional communication" also includes that which the Company could demonstrate has a substantial risk of negatively affecting the Company's reputation, mission or operations, such as slander, defamation or other legal cause of action.

- Disclosure of confidential and/or proprietary information acquired in the course of employment, such as protected health information about customers or patients.

Social media sites may be inspected by the Company for cause to determine potential violations of Company policy. If an employee believes that an online communication violates any Company policy, the employee should immediately report the communication to his or her supervisor. The Company may investigate the matter, determine whether such communication violates Company policies, and take appropriate action. This action may include discipline, up to and including termination.

This policy does not apply to communications protected by the National Labor Relations Act.