

## Updated Personnel Policy Manuals: Today's Reality

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### Two schools of thought:

- 1) It is better to have a written comprehensive Personnel Policy Manual that covers all the bases
- 2) It is best *not* to write anything down because it can cause more harm than good

Have you thought about establishing or updating an employee policy manual in your practice, only to procrastinate because you've heard conflicting information about whether to have one or not? Perhaps you've heard a personnel policy manual can create more liability than protection and that writing anything down is bad business practice because it can be used against you.

These concerns couldn't be further from the truth, especially with the prevalence of anti-discrimination laws protecting employees from illegal discrimination, harassment, and retaliation, all of which have been significant game changers for employers.

Personnel policy manuals serve a variety of purposes which, if properly written, implemented, and used, can keep an employer out of legal trouble and can assist in prevailing if a charge is brought against the employer. Of course, the key words in this statement are "properly written, implemented, and used." A poorly written policy manual can be a significant liability to an employer, as can one that is established with staff but never followed.

A properly written manual will outline expectations, communicate philosophies, explain employee benefits, and summarize practice policies. When a policy manual is given to an employee at the start of employment, this sets the stage for the type of culture that exists within the practice from the very beginning, which allows for better acclimation of the new employee.

From the start, a well-informed employee will more clearly understand important policies such as: leaves of absence, vacation and/or paid time off, "at-will" employment, equal employment opportunity, pay, time records, disability accommodation, and what may constitute a need for disciplinary action, to name a few, all of which set the parameters of the employment relationship as well as assist in avoiding potential liability. A basic benefit of a policy manual is to provide adequate communication to all staff members from the very beginning of the employment relationship. The business owner/manager can rest assured that everyone is clear on the management of staff and can focus on other aspects relating to the business.

In some cases, a personnel policy manual fulfills an employer's legal obligation to provide written statements on certain legal matters to employees as required by some state laws. For example, some states require employers to inform employees about what will happen to unused paid leave upon termination. If the employer prefers to deny payment of unused paid leave, the employer has a legal obligation to inform employees ahead of time before taking that action. A paid leave forfeiture clause written in the paid leave policies of a personnel policy manual is sufficient notice to the employee for compliance.

Unwritten policies can often result in inconsistent treatment of employees, which can lead to charges of discrimination. In this situation, employees begin questioning why others received something different, in most cases more beneficial, than they did. When they cannot conclude that the inconsistent treatment was based on legitimate reasons, they determine it had to be based on illegal discrimination and may think the only remedy is to file a claim against the employer.

Charges of discrimination and disparate treatment (i.e. members of a protected class are treated differently than others) can be costly and time-consuming and can be prevented with the use of a policy manual. For an employer, having a policy manual means having a reference guide to ensure consistency. Thus, when an employee situation arises, the employer can either look in the policy manual for the answer or simply tell the employee, "Look in the manual. That's my policy for everyone." It's straightforward, clear, and equitable.

What if a claim is filed? How would a policy manual help an employer fight such a claim? A worst case scenario for an employer is to find himself in a situation that is "he said, she said." Statistically-speaking, when this happens, the employer loses the fight 87% or more of the time. In general, it seems

the odds are stacked against the employer, so it is to the employer's advantage to be able to provide as much proof as possible to defend the case.

A dispute stemming from a disgruntled employee regarding employment will likely involve one or more of the employer's policies. A court or a government agency will generally expect the employer to have a personnel policy manual in place and will request, among other information and documentation, to review it. Being able to supply an up-to-date policy manual will provide some evidence of good faith on the part of the employer and greatly enhance the employer's defense. A failure to supply the policy manual can easily be interpreted as proof the employer did, in fact, treat employees differently.

What about the risk associated with having a policy manual? The risk does not come from having a policy manual in place. In most cases, the liability is the employer's own making, and it stems from poorly written materials and a failure to adhere to the written policies.

This is particularly true of small practices. All too often small practice owners erroneously believe that most laws only apply to larger employers, and they write their manuals accordingly. In truth, more than 95% of the employment laws apply to small employers, and many of them are written specifically for the small business. For example, many state-specific pregnancy leave laws are for employers with fewer than 15 employees.

Furthermore, it is not good enough to write a policy manual based on current federal and state laws and then use it for the next five or ten years or more without revamping or revising it. As policies change based on business needs, it is prudent to modify the policy manual to reflect those changes. In addition, federal and state laws can change regularly and the employer's policy manual should reflect those changes. A failure to keep the policies current will result in the employer following an obsolete policy that is not legally defensible.

Significant risk is also associated with employers failing to administer the policies written in the policy manual. This happens when employers write a policy manual, think that's good enough, and the manual gets put on a shelf and is never used. Along comes a situation with an employee, the employer doesn't double-check the manual for reference, and mishandles the situation. This action negates the written policy, can inadvertently treat employees differently, and is worse than not having written policies at all because it shows the employer actually knew better and failed to comply anyway.



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## Conclusion

Significant benefits can be gained through the use of personnel policy manuals. Effective communication with employees results in fewer misunderstandings; employees are treated fairly and consistently; and the employer's job of managing day-to-day issues and situations is less stressful. If prepared correctly, a policy manual can go a long way toward establishing a good relationship between an employer and employee and assist in protecting the employer during a lawsuit or claim.

Nevertheless, great care should be taken when implementing a personnel policy manual to ensure compliance with federal and state laws. The employer must also be cognizant of keeping the manual current with the laws that do change. Thus, it is highly recommended that an employer interested in implementing a policy manual within the practice consult with a professional organization with experts in this area to ensure the highest standard of quality.

The next time an employee situation comes up and you're unsure how you handled the problem in the past, consider how much easier it would be if you had a point of reference, such as a policy manual, to assist you. If you're like most, the benefits of having a policy manual will far outweigh any negatives, and getting one implemented may just keep the government from knocking on your door.