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Re: Employee Handbooks

Are you fully protected from employment law claims? The New York Law Journal has reported that one in five law suits filed in the federal Courts is an employment case. The state courts, as well as the federal, state and local human rights agencies, are inundated with thousands more claims by employees against employers. Win, lose or draw, an employer can incur many thousands of dollars in legal fees alone if a disgruntled employee decides that he or she has been wronged.

Management lawyers traditionally focus on winning these cases, or settling them out of Court, to reduce the exposure to a large judgment and/or legal bill. However, winning or even settling cases can be very expensive for employers. We emphasize the **prevention** of claims through various techniques, including a carefully constructed Employee Handbook.

In this litigious society, every employer should have one! A well crafted Employee Handbook can function as a powerful Risk Management tool in many ways. Some examples:

1. The US Supreme Court has ruled that publishing and applying procedures to resolve sexual harassment and other discrimination claims internally, **before** they lead to litigation, may provide a defense if a claim is filed in Court.
2. Adopting and following disciplinary procedures may deter a wrongful termination suit, and this may be your best defense if a suit is filed.
3. Adopting and publishing other critical Risk Management policies, such as At-Will Employment and Equal Employment Opportunity.
4. Confirming that discretionary bonuses are, in fact, discretionary.
5. A Confidential Information policy may protect against damaging disclosures.

Employee Handbooks also serve Management as a communications tool and time saving device. Some obvious benefits are:

- Avoiding the time wasted explaining frequently discussed policies (like holiday, vacation and sick leave) over and over to each employee that asks.
- Avoiding the embarrassment and more severe consequences of giving different information to different employees.
- Emphasizing the rule that most Human Resources issues must, in the first instance, be directed to the Human Resources person, and not to the boss.

For those employers that have an Employee Handbook, we caution that it must be carefully designed by employment law specialists to fit the employer's needs and goals. Slapping an employer's name on a generic document downloaded from the Internet, or borrowed from another company, may be worse than no Handbook at all!

Assuming that an employer has adopted a competently prepared Handbook, it is advisable to review it on a periodic basis to determine whether it should be up-dated for any number of reasons, including the following:

Compliance with changing laws For example, in 2005 the US Department of Labor issued Regulations which changed the Model Initial COBRA Notice. That Notice should be included in the Handbook of every employer covered by COBRA.

Growth in number of employees As a company grows the need for a broader range of employment policies often grows with it. Also, various employment laws have thresholds that only make them applicable to companies with more than a specified number of employees.

Geographic expansion Employment laws vary from state to state. Therefore, as a company expands into new states the Employee Handbook should be reviewed to insure that it is consistent with the laws of the expansion states.

Wide-spread changes in employer needs As computers and cell phones proliferate, more and more companies seek to avoid unproductive work hours by adopting policies that restrict employee computer use and personal phone calls on company time.

Specific changes in employer needs A particular employer might resolve nagging problems with simple directives on mundane topics such as dress code, timeliness, and lunch room clean up.

We offer to review any existing Employee Handbook and provide suggestions as to necessary and advisable changes. As part of this service, we will also provide parameters for the legal fees for an update, a rewrite, or a whole new Handbook, if necessary.

Very truly yours,

Richard H. Waxman

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If you wish to learn more about our Employment Law practice, visit the Employment Law section of our website at: www.waxmanlaw.com.

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