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EMPLOYEE HANDBOOKS:

YOUR BEST DEFENSE AGAINST LAWSUITS AND OUTSIDERS

By

Peter M. Panken

Human resources professionals write Employee handbooks. They believe that good human relations breed employee loyalty and productivity. They are right, but in the few cases where disgruntled employees sue or allege mistreatment, fine sentiments generously expressed can be used unfairly to the employer’s disadvantage.

To avoid unexpected traps, employers must carefully draft their Employee handbooks not only to (1) communicate their kind intentions and (2) make employees aware of the benefits to which they are entitled, but also (3) as a management tool to communicate the ground rules. When employees know what they are entitled to and receive it as expected, they are less likely to go to outsiders (unions, government agencies or lawyers). When employees know what is expected of them, employers are more likely to win lawsuits complaining about discharge or discipline.

Employee handbooks are also the embodiment of the “contract” between employer and employee. When employees have no real opportunity to negotiate terms of their employment, courts will construe ambiguous terms in a handbook against the party that drafted it – the employer. The hidden agenda is often fairness and fair warning; thus, work rules and grievance procedures become shields by which employers defend their rights to worker productivity and loyalty.

This paper will first consider the issues raised in drafting Employee handbooks and then the effective use of grievance procedures for the nonunion company.

I. DRAFTING THE EMPLOYEE HANDBOOK: “PR” AND EMPLOYEE BENEFITS

A. Overview

1. What The Parties Want

Employees are interested in when they are paid, how their pay is calculated, what their fringe benefits will be and what time off (with and without pay) they will get. The government wants affirmative action and nondiscrimination statements and sets standards for

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2 The Employee handbook considered here is the one distributed to employees and is not that multivolume compendium of Personnel Procedures which sits on the Human Resources Official’s desk, which can frustrate the expectations of unsuspecting employees.
communicating facts about fringe benefits. The company, on the other hand, wants to motivate proper employee conduct, protect itself from employee claims and indulge in a little “PR” about how wonderful it is to work for the employer.

2. **Dealing With Different Levels Of Employees**

Top management may have individual contracts replete with gold or tin parachutes. Supervisors and managers often receive special privileges, whereas the rank and file get fewer perks and are subject to more rules. Therefore, it is important to recognize and deal with these differences explicitly. One handbook for all will not do the job!

Employers often have different handbooks for different strata. At the very least, supervisors and managers can be excluded from the main handbook. The least satisfactory method is to include all levels in a single document distributed to everyone so that lower compensated workers can covet management’s better benefits. This may suggest a paper handbook for the rank and file but an electronic handbook for management folks who have access to computers.

Another method is to have separate handbooks for different departments. For example, a large manufacturer may draft different handbooks for branch offices, back offices and home offices; and different handbooks for its production, warehouse, and shipping employees and sales staff.

3. **Multistate Employers**

Since an employer’s workplace policies must comply with state, as well as federal laws, drafting a handbook becomes more difficult where the employer has employees working in more than one state. In this case, an employer may either: (1) draft and implement a single handbook with identical policies for all states, making sure to comply with the most stringent state’s laws; or (2) implement generic policy provisions in the handbook, which state either: (i) that the employee should consult with a supervisor for specific details of any provision; or (ii) that state and local laws and rules inconsistent with any provision of the handbook shall govern those jurisdictions. The best option, however, is to have a “local practices” section at the end of the Employee handbook. If a particular state or local law supersedes a handbook provision, a note should be made in the handbook which refers to the “local practices” section in the back of the handbook.

B. **A Little PR**

Most employers cannot be talked out of an early dose of PR, usually taking the form of the history of the company, its mission statement, or a CEO’s “Welcome to the team.” It is harmless unless it lapses into promissory material which can come back to haunt the company. Don’t promise continued employment or “fair treatment” and do reserve the right to amend.

Do state you expect professional performance and productivity. Also state that the handbook is only a summary of company policies and, if there are differences, company policy prevails.
C. Letting Employees Know When and How They Are Paid

People get angriest when you fool with their paychecks or when they do not get what they think they are entitled to when they expect it. This is why the first major topic discussed in a handbook should be wages, when they are paid (weekly, monthly, etc.), how their pay is calculated and what deductions will be taken (tax withholding, unemployment or disability taxes, benefits like health insurance, 401(K) and pension payments etc.).

Overtime. Let employees know they are required to work overtime if requested. Indicate that they will be told by their supervisor or manager whether they will be paid premium rates for hours worked over 40 in a workweek and define the work week (e.g., Monday to Sunday).

D. Employee Benefit Plans

1. Details Do Not Belong In An Employee Handbook

The benefits that change most frequently are insurance and pension plans. The Employee handbook should make employees aware of which categories of employee (e.g., full-time, but not part-time employees) will become eligible to participate in these plans after they have completed a specified period of employment. These plans may include:

- Group Health Insurance
- Pension Plan
- 401(K) Plan
- Accidental Death and Dismemberment Insurance
- Life Insurance
- Short Term (26 weeks) and Long Term (over 26 weeks) Disability Income Protection. These may be government plans in some states and Social Security Disability plans over 26 weeks.
- Workers’ Compensation Insurance

But it is usually not advisable to detail the benefits of the plans in the Employee handbook since many plans will be the subject of a required Summary Plan Description required by the Employee Retirement Income Security Act (“ERISA”). ERISA regulates the terms of pension and welfare benefit plans (such as group health and life insurance plans) and requires a written plan, an available administrator, a claims procedure and the distribution of Summary Plan Descriptions (“SPD”) to employees for both pension and welfare benefit plans. SPDs are required for all of the above plans except government plans (short term state paid disability or
long term Social Security disability). SPDs are also required for a severance pay plan, if one exists, if it qualifies as an employee welfare plan under ERISA. The handbook should indicate that employees will receive SPDs when they become eligible for each plan.

2. **Eligibility Timing**

By phasing in eligibility for fringe benefits, human resources officials create several opportunities to bring a welcome message to new employees each time a new benefit is added. This “good news” talk is also an opportunity for supervisors or human resources officials to explore employee satisfaction and problems informally so as to foster positive human resources relations.

E. **Time Off (Paid and Unpaid)**

1. **Paid Vacations**

This benefit is most likely to be stratified with higher status or longer tenure employees receiving better benefits. Publishing better benefits for upper echelons may produce dissatisfaction among the less advantaged. Most employers publish the least common denominator and confer better benefits upon the elite in private later on. Most plans provide longer vacation for more senior employees. Showing increased benefits for longer seniority promotes loyalty.

   a. **When Vacations Are Earned**

   Is vacation earned after completion of a year’s service? Some companies prefer to start their vacation year on a specific date (e.g., June 1) and prorate vacation for those who have not yet completed a year of employment (e.g., 1 week for those with 6 months or more of service). Others vest vacation after completion of a full year of service. Still others accrue vacation monthly (required in California).

   b. **Vacation Pay**

   Where employees receive a weekly salary, vacation pay of one week at their current weekly wage is an easy calculation. Where weekly wages vary, the employer should specify how vacation pay is calculated. Calculating vacation pay is up to the employer. Some common formulations to consider are:

   1. 1/52 of last year’s W-2 wages per week (this includes overtime, but can be less costly when wages increase annually and no significant overtime is paid);

   2. Average weekly wages over some defined period (last year, last quarter, last x weeks, etc.);

   3. Hours regularly worked (e.g., 20, 35 or 40 hours) multiplied by the employee’s hourly rate of pay at the time vacation is paid; or
4. A specific number of hours of pay (e.g., 40 or 30) at the employee’s regular rate (this may save money where a lot of overtime is worked).

c. **Terms Should be Spelled Out**

- Are part-timers entitled to vacations? Is it prorated?
- When can vacation be taken, this year, next year or can it be banked and taken later or saved until retirement or termination?

d. **Vacation Pay Upon Termination**

One question that always arises is whether vacation will be paid upon termination. Normally, that depends on when vacation is accrued. Thus, in most states (but not California) vacation earned but not taken is due, but there is no prorating of vacation for time worked between anniversary dates. At termination time, however, an employer may be generous.

Some states regulate when wages and vacation pay must be paid upon termination and failure to comply could result in fines and other penalties.

2. **Holidays**

Contrary to popular belief, no law requires employers to grant paid holidays. Almost every employer, however, does grant time off with pay at least for its regular full-time employees. And often employers pay premium pay for holiday work.

Holidays can mean time off with pay or extra pay for working on the “holiday.” Often an employer may not be able to stop all work on a holiday. A skeleton or full crew may be needed in some departments. Therefore, handbooks should reflect these facts.

a. **Selection Of Holidays**

Most of the days are legal holidays. Other days to consider include low volume days, e.g., the day after Thanksgiving, or additional floating holidays, so work can be done with only one or two employees absent in a department.

b. **Anti-Stretching**

By requiring employees to work the day before and the day after the holiday (unless really ill or on jury duty) to earn holiday pay, a mass exodus to stretch holiday time is ameliorated.

3. **Personal Days or Floating Holidays**

Personal days are spread out holidays in disguise. They are useful in dealing with religious observance days an employee would take anyway, e.g., Good Friday or Rosh Hashanah
and Yom Kippur. Because employers are required to make “reasonable accommodation” for the religious observance of their employees, unpaid time off for religious observance may have to be granted subject to the needs of the business.

4. **Jury Duty**

Most states have laws banning employment discrimination against employees because they have been called to serve jury duty. The extent to which an employer will pay the employee’s salary while on jury duty is, however, most often a matter of conscience as well as a matter of state law. (For instance, in New York, employers of more than ten employees must pay $40 per day to an employee for the first 3 days of jury duty.) Most employers offer paid time off for jury duty for a period like two weeks and pay the difference between the pay the juror receives and their regular pay.

You can require proof of jury service and the amount the juror receives.

5. **Bereavement Leave**

No matter what you do with death you look stingy. But you should limit it to close relatives (e.g., parents, sibling, child or spouse). Do you include in-laws, “step” relations, grandparents or grandchildren? Is four days enough to get over the death of a spouse or child? Shouldn’t there be paid time off for the death of a favorite aunt or cousin (no matter how many times removed)? However, lines do have to be drawn. Spell out if it is three or four consecutive days with no loss of pay, which saves money on days off.

6. **Illness**

Coping with and paying for employee absence due to illness is another Simon Legree area. Problems to be dealt with include short term illness, illness that is not serious enough to require a costly visit to the doctor, and distinguishing between genuine malaise, hypochondria and malingering. How many paid days? Do you require a doctor’s note for more than one day? For multiple days, should the employee give one day’s notice that they will be returning to work.

It is important to bear in mind that employees exempt from overtime are required to be salaried, and therefore must receive their salary if they work any hours in a regular work week even if their absence is due to illness. However, they need not get their salary in a regular work week if they do not work at all. But you can only deduct for whole day increments after their sick leave entitlement is exhausted.

7. **Family and Medical Leave**

The Family and Medical Leave Act of 1993 (“FMLA”) requires all private employers with 50 or more employees to provide up to 12 weeks of unpaid leave per year to eligible employees who want the leave because of the birth of a child or placement of an adopted or foster care child, to take care of a child, spouse, or parent who has a “serious health condition,” or for the employee’s own serious illness. In addition, the leave under FMLA is available for “qualifying exigencies” when an employee’s spouse, son, daughter or parent is on
active military duty or called to active military duty status. FMLA also requires an employer to grant up to 26 weeks unpaid leave to an employee to care for a family member who is a servicemember with a serious illness or injury incurred in the line of duty on active duty. While on leave, employees are entitled to continued group health benefits.

Employers who deny FMLA leave or fail to reinstate returning employees should check carefully with their lawyers since the law allows double damage recovery for willful violations. Only employees who have worked at least one year and 1,250 hours within the previous 12-month period at a worksite where the employer employs 50 or more employees within a 75 mile radius of that worksite are entitled to FMLA leave. However, some states have different requirements.

Child care leave is available “to care for” a son or daughter because of its birth, or because of the placement of a child with the employee for “adoption or foster care” during any 12-month period. Leave must be taken and concluded within 12 months after the date of birth or placement.

Medical leave is available to take care of a child, spouse, or parent who has a “serious health condition” or for the employee’s own serious health condition that renders the employee unable to perform the functions of his or her position.

Employers may require employees to take any paid vacation, personal, sick or family leave as part of the 12-week FMLA leave, but they must tell the employee that the paid leave is designated as FMLA leave.

Employers are required to continue group health plan benefits during the 12-week FMLA leave on the same terms and conditions as when they were on the job. Following FMLA leave, employers must restore returning employees to the positions they held when leave commenced or to an equivalent position with equivalent benefits, pay, and other conditions of employment. While neither seniority nor benefits accrue while on FMLA leave, benefits must be restored without having to requalify.

Highly compensated (top 10%) employees can be denied reinstatement if the employer can demonstrate reinstatement would cause “substantial and grievous economic injury to the operations of the employer.” Employers must give notice to such “key employees” and inform them of their risks when leave is requested or when the employer determines that it will sustain such injury.

Employees may take medical leave intermittently or on a reduced leave schedule without obtaining the permission of the employer (but not for birth or adoption unless the employer agrees). If the need for intermittent leave is foreseeable for planned medical treatment, the employer may transfer the employee to an alternative position with equivalent pay and benefits, but the position does not need to have equivalent duties.

8. **Military Leave**

There are laws requiring employers to grant unpaid leave for military service. These laws are so complicated regarding reinstatement that close scrutiny of them is necessary.
9. **Other Personal Leave**

Problems to be considered in drafting other leave of absence provisions include: (1) length of time away, (2) whether the job will be preserved or filled, (3) what happens if the employee does not return on time; and (4) whether the employer requires reasons for the leave. Such provisions are recommended, as they may prevent ad hoc decisions and avoid discrimination in granting such leave.

**F. Evaluations and Wage Reviews**

It is important not to commit to periodic wage increases unless the employer intends to be bound by these increases. But many employers do refer to “periodic” evaluations not tied to wage increases.

**II. THE EQUAL OPPORTUNITY PROVISIONS OF THE EMPLOYEE HANDBOOK**

Since Title VII of the Civil Rights Act of 1964 (“Title VII”), The Age Discrimination in Employment Act (the “ADEA”), The Americans With Disabilities Act (the “ADA”) and state laws (among others) prohibit discrimination in employment, and Federal Executive Order 11246 requires federal contractors to take affirmative action to end discrimination and make an affirmative anti-discrimination statement, each Employee handbook should include an equal opportunity statement which consists of three parts: (1) a general anti-discrimination policy; (2) a harassment policy; and (3) an anti-retaliation policy, which will be necessary to begin a corporate defense against the personal peccadilloes of boorish or lovelorn employees.

**A. The General Anti-Discrimination Policy**

A good general anti-discrimination statement is as follows:

**EQUAL EMPLOYMENT OPPORTUNITY**

Our policy is to select, place, train and promote the best qualified individuals based upon relevant factors such as work quality, attitude and experience, so as to provide equal employment opportunity for all our employees in compliance with applicable local, state and federal laws and without regard to non-work related factors such as race, color, religion/creed, sex, national origin, age, disability, citizenship, marital status or sexual orientation.

This equal opportunity policy applies to all Company activities, including, but not limited to, recruiting, hiring, training, transfers, promotions and benefits.

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Race, color, religion, sex, national origin and disability are terms found in Title VII and the ADA. Age is defined as “over 40” in the ADEA, but many state laws simply prohibit “age” discrimination without any set limitations.

The Federal Immigration Reform and Control Act of 1986 (“IRCA”) (Pub. L. 99603) prohibits citizenship discrimination in employment. State and local laws should be consulted for other protected classes including marital status, sexual orientation etc. In the above example, New York state and city laws prohibiting discrimination on the basis of disability, marital status, creed and sexual orientation are reflected.

B. Sexual (And Other) Harassment

Harassment on the basis of sex and other protected status is a discriminatory practice in violation of Title VII. EEOC Guidelines on Discrimination Because of Sex, 29 C.F.R. § 1604.11, define sexual harassment as “unwelcome sexual advances, requests for sexual favors and other verbal or physical contact of a sexual nature.” Employers are required to take all necessary steps to prevent such harassment from: (a) becoming an explicit or implicit condition of employment or being the basis for employment, salary or other term or benefit changes (“tangible employment action”); or (b) interfering with the employee’s performance by creating a difficult, intimidating, hostile, or offensive working environment (so called “hostile work environment” harassment).

The issue of an employer’s liability for harassment in the workplace is an evolving area of the law. Generally, employers will be held vicariously liable for a supervisor’s tangible employment actions (i.e., the supervisor conditions a job benefit on sexual favors from the employee). In other words, if a supervisor has sufficient authority to effect the job benefit, the employer will ordinarily be responsible for his actions whether the employer knew of them or not.

In the case of “hostile work environment” harassment, the lines are less clear. One thing is certain, employers will be held responsible for hostile work environment discrimination by a supervisor unless (1) the employer has an effective and well communicated harassment policy and procedure in place, and (2) the employee was unreasonable in not using the employer’s harassment procedure.

An employer may be held liable for acts of sexual harassment by coworkers in the workplace if the employer knew or should have known of the conduct. If the employer can show that appropriate corrective action was immediately taken, and that it has communicated a strong anti-harassment policy setting forth effective avenues for the employee to complain, the employer’s liability, if any, may be reduced.

To minimize problems, employers should provide employees with a clearly stated policy expressing strong disapproval of sexual (and other prohibited) harassment as defined above, including the fact that it is discriminatory and, thus, illegal, that penalties for noncompliance with the law are potentially severe for the employer and for the employee who harasses, and that employees have the right to and should make a complaint when subjected to such harassment.
In addition to liability for employment discrimination, employees who engage in sexual harassment and employers who condone or ratify it may also be subjecting themselves to civil tort liability for battery and intentional infliction of emotional harm and other causes of action under the laws of many states.

There are similar strictures against racial, religious and national origin harassment, but sex harassment is the most prevalent problem. Nevertheless, the anti-harassment policy should include everything.

Here, then, is a suggested policy formulation:

A fundamental policy of the Company is that the workplace is for work. Our goal is to provide a workplace free from tensions involving matters which do not relate to the Company’s business. In particular, an atmosphere of tension created by non-work related conduct, including ethnic, racial, sexual or religious remarks, animosity, unwelcome sexual advances or requests for sexual favors or other such conduct does not belong in our workplace.

Harassment of employees or of applicants by other employees is prohibited. Harassment includes, without limitation, verbal harassment (epithets, derogatory statements, slurs), physical harassment (assault, physical interference with normal work or involvement), visual harassment (posters, cartoons, drawings), and innuendo.

Sexual harassment is a violation of state and federal law. It includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact and other verbal or physical conduct, or visual forms of harassment of a sexual nature when submission to such conduct is either explicitly or implicitly made a term or condition of employment or is used as the basis for employment decisions or when such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment.

You cannot be forced to submit to such conduct as a basis for any employment decision and the Company will do its best to keep itself free of any conduct which creates an intimidating, hostile or offensive work environment for our employees.

What To Do If You Feel Our Policy Has Been Violated

In the event that any sort of ethnic, racial, religious, or sexual harassment, or similarly abusive verbal or physical conduct
interferes with any individual's work performance or creates an intimidating, hostile or offensive work environment, we urge you to contact the Director of Human Resources.

If you feel uncomfortable bringing the matter to the Director of Human Resources or if the Director of Human Resources is thought to be involved in the harassment, you may contact the Executive Vice President of __________, who, to the extent possible, will treat the matter with the degree of confidentiality that you require. Charges of harassment will be promptly and thoroughly investigated and a report will be made to you concerning the results of the investigation.

If the Company determines that harassment has occurred, appropriate relief for the employee bringing the complaint and appropriate disciplinary action against the harasser, up to and including discharge, will follow. A non-employee who subjects an employee to harassment in the workplace will be informed of our Company’s policy and appropriate action will be taken. In all cases, the Company will make follow-up inquiries to ensure that the harassment has not resumed.

An employee who remains unsatisfied after investigation by the Director of Human Resources may seek review from the Executive Vice President of _____________. The Executive Vice President of _____________ may direct or conduct an independent investigation, including witness interviews and statements concerning the complaint. Additionally, the Executive Vice President of _____________ may take further remedial or disciplinary action as is appropriate.

The Company understands that these matters can be extremely sensitive, and so far as possible, will keep all employee complaints and all communications, such as interviews and witness statements in strict confidence.

The Company will not tolerate retaliation against any employee who complains of sexual or other harassment or provides information in connection with any such complaint.

C. Anti-Retaliation Policy

An Employee handbook should also stress that the company prohibits any form of retaliation against any employee for filing, in good faith, a complaint under the Equal Employment Opportunity Policy, or for assisting in a complaint investigation, and that employees who are found to have engaged in retaliatory activity will be disciplined up to, and including, termination. However, the policy may state that if, after investigating any complaint
of harassment or unlawful discrimination, the company determines that the complaint is not bona
fide and was not made in good faith, or that an employee has provided false information
regarding the complaint, disciplinary action may be taken against the individual who filed the
frivolous complaint or who gave the false information.

To minimize problems, employers should provide employees with a clearly stated
policy that: (1) expresses strong disapproval of harassment, discrimination and retaliation, as
defined above; (2) explains that penalties for noncompliance with the law are potentially severe
for the employer and the employee who engage in such conduct; and (3) explains that employees
have the right to and should make a complaint when subjected to such harassment.

III. EMPLOYEE OBLIGATIONS

A. General Work Rules

This part of the handbook is designed to specify employee obligations. Fact
finders in employment termination cases may be deciding whether the employer acted for a
forbidden reason, but the hidden agendas which influence their decision include fair treatment
and fair warning. Spelling out the rules in writing helps employers prove fair treatment and
warning. Individual transgressions are dealt with by written warnings, but the rules of the game
are best spelled out in the Handbook.

Here is one formulation of work rules which covers most areas in terms
sufficiently broad to allow the employer to justify discharge or discipline for infractions:

YOUR RESPONSIBILITIES

Our Company has always maintained the highest standards of
customer service. Therefore, in all dealings with the public
and with each other, all Company employees are expected to
respect the dignity of each individual. With the foregoing in
mind, the Company has developed policies and rules for the
benefit of us all.

Some of the policies have already been outlined earlier in the
handbook. Others are contained in the following list. You are
encouraged to read this list of actions and to understand them
fully. Many of these things have never been a problem for the
Company, and we hope to keep it that way. If any one of these
actions or any one of the previously mentioned actions or
similarly egregious action is taken by you, it can result in
disciplinary action, up to, and including, dismissal.

1. Improperly treating or servicing a fellow employee, customer or
any other non-employee.

2. Excessive lateness and absenteeism.
3. Insubordination or lack of cooperation.

4. Failing to follow Company job instructions.

5. Failing to follow instruction of, or to perform work requested by, a Supervisor or Manager.

6. Failing to meet a Company measure of efficiency and productivity.

7. Placing long distance personal phone calls or making or receiving excessive personal phone calls on Company time.

8. Unauthorized or excessive absences (including late arrival and early departure) from work.

9. Sleeping on Company property or during the time in which you are supposed to be working.

10. Abusing, wasting or stealing Company property or the property of any Company employee or non-employee.

11. Removing Company property or records without written authorization.

12. Falsifying your employment application or other personnel records.

13. Falsifying Company reports or records (including timesheets).

14. Violating the law on Company premises, including gambling.

15. Fighting or starting a disturbance on Company premises or while performing job duties, including, but not limited to, assaulting or intimidating a Company employee or non-employee.

16. Unauthorized possession of firearms, weapons or dangerous substances while performing job duties or on Company premises.

17. Reporting to work in a condition unfit to perform your duties, including reporting to work with measurable amounts of illegal drugs or controlled substances in your system or being under the influence of alcohol or drugs or controlled substances.

18. Consuming or selling alcohol, illegal drugs or controlled substances on Company premises or while performing your job duties.

19. Smoking, eating and drinking in prohibited areas.
20. Violating a Company safety rule or practice or creating or contributing to unhealthful or unsanitary conditions.

21. Acting in conflict with the interests of the Company.

22. Disclosing confidential Company information without authorization.

23. Unauthorized solicitation or distribution on Company property.

24. Using profanity toward others.

25. Failing to fully cooperate in any Company investigation.

Some employers draft elaborate explications and enumerations of infractions and wind up defending against lawyers who contend that their client sneaked through a loophole. Therefore, these rules are written in general terms so that they may be interpreted broadly. One of the least used but most important rules is Rule 25 requiring cooperation in investigations. This gives the employer ammunition to rid the workplace of perpetrators who hide their guilt behind a refusal to incriminate themselves.

Other areas to be covered include the following:

**COMPUTER AND EMAIL USAGE**

The Company provides electronic communication systems to maintain superior communications with internal and external customers. These tools are for Company business only. Any use of these tools (including, but not limited to, internet services and email) for personal use is prohibited.

These systems include computers, software, electronic mail (email), copiers, fax machines, telephones, voice mail, surface messengers, communication tools and various online services. All of these systems are operated and managed based upon this policy.

The Company purchases and licenses the use of various computer software for business purposes and does not own the copyright to this software or its related documentation. Unless authorized by the software developer, the Company does not have the right to reproduce such software for use on more than the designated amount of computers.

These systems and any other informational, storage, or retrieval services that the Company provides are Company tools to be used for business purposes only.
The use of these systems is not private or confidential. The Company, as permitted by law, reserves, and intends to exercise, the right to review, audit, intercept, access and search these business systems at will, monitor data and messages within them at any time for any reason, and disclose selected contents without notice or other restrictions. Messages sent through these systems remain the property of the Company.

Employees must not permit any proprietary or confidential information of the Company to enter the public domain through electronic transmissions. Also, these systems shall not be used to receive copyrighted materials, trade secrets, proprietary information, or similar materials from outside the Company without prior authorization.

Any messages or communications used through this system are subject to the Company’s anti-harassment, anti-discrimination, and non-solicitation policies. Employees are expected to carefully compose and review the wording, tone and content of communications prior to transmission.

It is important that our computers and email system not be used in ways that are disruptive, offensive to others, harmful to morale or otherwise improper.

For example, the display, transmission or retention of sexually explicit images, messages, and cartoons is not allowed. Other such misuse includes, but is not limited to, ethnic slurs, racial comments, off-color jokes, or anything that may be construed as harassment or showing disrespect for others.

Email may not be used to solicit others for commercial ventures, religious or political causes, outside organizations, or other non-business matters.

**CONFIDENTIALITY**

As an employee of the Company you may learn confidential business information. During and after employment with the Company, confidential business information may not be shared with non-employees of the Company and may only be shared with Company employees on a need to know basis. If you violate this policy, disciplinary action will be taken, up to, and including, immediate discharge.

The Company will provide employee information to outside agencies only upon written authorization of the employee or as provided by law. The Human Resources Department is the
only authorized department for disclosure of information. Most banks, credit agencies, or other parties requiring employment information will provide you with an appropriate form. Authorization forms may also be obtained from the Human Resources Department.

Our standard credit or other reference letters are limited to confirming dates of employment, job title, and current rate of pay. All requests for employment verification must be received by the Human Resources Department in writing. Our response will be in writing unless special arrangements are made in advance with the Human Resources Department. The Company does not provide letters of recommendation.

The Company protects employee’s confidentiality and expects the employees to protect the Company’s confidences as well. Supervisors may not give out any information about an employee and must refer any phone calls seeking such information to the Human Resources Department. Under no circumstances may a Supervisor or Manager verify employment over the phone.

In addition, the Company also expects that you respect the privacy of your fellow employees, both with employees and non-employees. Personal information about any employee may not be discussed with other employees or non-employees without written Company authorization.

B. Drug And Alcohol Policy

Individuals under the influence of drugs and alcohol on the job pose serious safety and health risks not only to themselves, but also to all those who surround or come in contact with the user. Therefore, possessing, using, consuming, purchasing, distributing, manufacturing, dispensing or selling alcohol or controlled substances, or having alcohol or controlled substances in your system without medical authorization during your work hours, on Company premises or while on duty will result in disciplinary action, up to, and including, immediate termination.

Most companies would prefer a drug-free workforce as well. But some states are taking the position that illegal drug users are protected by handicap discrimination laws requiring employers to prove that being drug-free is a “bona fide occupational qualification.”

C. No Smoking Policy
D. **No Solicitation Rules**

The National Labor Relations Act regulates no solicitation rules so that union organizers are treated as if they are like any other solicitors.

Generally, employers have the right to adopt rules prohibiting (1) solicitation and distribution of literature by employees during their actual working time and (2) distribution of literature in work or public areas at any time. However, these prohibitions must be applied uniformly to all types of solicitation or distribution by employees and cannot discriminate against union oriented solicitation or distribution of literature. During non-working times, such as breaks and lunches, employees must be allowed to solicit for union purposes if they wish. Thus, a general no-solicitation ban is unlawful and adoption of an otherwise lawful rule, only upon the advent of union activity, raises a presumption of discriminatory application.

As to outside solicitation, employers are generally allowed to assert their private property rights to exclude such outsiders but, again, only if done on a nondiscriminatory basis.

E. **Employee Privacy Expectations**

It is generally unwise to include high-toned promises of privacy in Employee handbooks lest the courts treat them as employer promises. However, expected incursions on employee privacy should be spelled out as follows:

**INSPECTION**

The Company reserves the right to search any person entering on its property, or offsite, while performing services for the Company and to search property, equipment and storage areas, including, but not limited to, clothing, personal effects, vehicles, buildings, rooms, facilities, offices, parking lots, desks, cabinets, lunch and equipment boxes or bags and equipment. Any items which you do not want to have inspected should not be brought to work.

F. **Employee Information**

Another employee obligation that should be spelled out is the employee obligation to keep their information in personnel records updated.

IV. **TERM OF EMPLOYMENT - EMPLOYMENT-AT-WILL**

Most employers do not offer lifetime employment. It is important to spell out that at-will employment is all that is offered, to dispel claims of oral promises made by misleading missing or deceased officials. Therefore, the following formulation is suggested:
TERM OF EMPLOYMENT

Unless you are given a written contract signed by the President specifying an employment term, your employment is “at-will.” This means that both the Company and the employee have the right to terminate employment at any time with or without cause. Nothing in this handbook, nor any oral or written representation by any employee, official, Manager, or Supervisor of this Company shall be construed as a contract of employment, unless the President signs a written contract of employment.

V. MISCELLANEOUS PROVISIONS

A. Right To Alter

The following clause puts the employee on notice of, and allows amendment by the employer of, any company policies. It should be noted that courts are choosy about non-communicated amendments. Therefore, it is a wise policy to let employees know that changes have been made.

B. Receipt

Since fair warning is a hidden agenda in termination cases, it is wise to obtain a signed receipt for the Employee handbook in the following form:

I hereby acknowledge that I received [or had access to] the Employee Handbook describing Company policies and my benefits as an employee of the Company. I have read and understand the Company policies contained herein and am fully aware of my obligations at all times to fully comply with the responsibilities that are imposed on me as a condition of employment.

SIGNATURE

NAME (PLEASE PRINT)

VI. GRIEVANCE PROCEDURES

A. What Is A Grievance Procedure And Why Should A Non-Union Company Want One?

A grievance procedure is a tool for the resolution of conflicts between the employees and their employer.
If there is no conflict in the workplace, there is no need for a conflict resolution mechanism and a grievance procedure is not needed. But the inevitability of conflicting needs, goals and aims in the organizational endeavor suggests that any employer of significant size who believes there is no conflict in the workplace, is guilty of, at best, wishful thinking.

Most employers would prefer the autocratic method of conflict resolution. The employer makes the decision and the employees accept it. That works where the resolution posed by the employer is understood and accepted by the employees. However, if the employees fail either to understand the resolution, or to accept it as they understand it, they have at their disposal several methods to seek a resolution which is more “just.”

If employees do not like an employer’s resolution, they can certainly quit. The ones who quit, however, may be the better or more skilled workers who can easily get jobs elsewhere. It is much harder to make the least skilled or least desirable workers leave. They have nowhere else to go. They stay and you suffer from their lagging productivity.

If the problem is important to the employees, they may ask outsiders to represent them (e.g., EEOC, lawyers or unions). Here, the employees are looking for representation to achieve what they think is a “fair” resolution of the conflict.

B. The Purposes Of A Grievance Procedure

Before deciding what kind of grievance procedure to adopt, it is important to understand the purposes to be achieved. They can be broken down into four main areas:

The Four C’s

Communication that there is a problem;

Catharsis relieving the pressure created by the problem;

Crystallization figuring out what the real problem is; and

Conflict Resolution finding a useful way to resolve the problem.

C. The Structured Grievance Procedure

1. What Should Be A Grievance?
The first decision an employer must make is to define what “grievances” it will listen to. In the union context, disputes over basic group items like wages, hours and working conditions are not subject to the grievance procedure, but are treated as matters of negotiation between the union and the company.

2. **Individual Or Group Grievances?**

The first question to be resolved is whether the company should hear individual grievances only or consider matters raised on behalf of one or more groups of employees. Self-appointed representatives or leaders of groups within employee ranks often conflict with the appointed company supervisors. Encouraging group factionalism and competing power bases creates, rather than lessens, conflict. Accordingly, most grievance procedures are, and should be limited to, individual employee problems.

3. **What Kind Of Individual Grievance Should The Company Encourage**

Employee grievances are likely to fall into several categories. Some grievances upon analysis turn out to be a cry for help. Others may complain of unfair treatment, feeling cheated, or may result from the employee simply not understanding the system that management has carefully planned with the greatest goodwill.

Many companies believe that early communication of perceived employee problems is preferable and for that reason define grievances broadly so that they can hear all of their employees’ concerns including, some of the following:

- I did not get what I was entitled to in terms of wages, time off, promotional opportunities, workload, etc.;
- I was treated unfairly, disciplined when I should not have been, received warnings that were unfair, was unfairly discharged, got heavy work assignments, etc.;
- I was the victim of a supervisor’s favoritism to some other employee;
- I am not getting enough wages or benefits or time off;
- I am getting less than employees at the plant down the road;
- I am concerned with my safety or comfort;
- I am being harassed by my supervisor or fellow employees.

Broad definitions encourage communication and allow catharsis. Narrow, rigidly enforced definitions leave felt needs unspoken. If broad categories of grievances are excluded, employees may build up pressure and let off steam in less constructive ways.
Among the more useful, broadly based definitions of matters which are to be handled through the “grievance” or “problem solving” procedure are the following:

- “Any problems on the job which concern you;”
- “Any job-related grievances or problems;”
- “Any grievances or problems arising out of your employment;” or, more narrowly
- “Any unfair or discriminatory treatment.”

4. Formulating The Grievance Steps

Structuring the grievance procedure in several steps encourages Communication, Catharsis and Crystallization and helps neutralize the problem supervisor.

a. Step One: Communication Between The Employee And The Supervisor

However, if the immediate supervisor is the problem, the employee should be permitted to start orally at the next level above the problem or through HR.

If the problem is such that when it is out on the table and the employee looks at it, it does not seem as bad as it did before they talked about it, it may be easy to resolve. The informality of the discussion allows the employee to back off without seeming silly. It also allows for exploration of the true parameters of the problem.

Informality in Step One also helps supervisors better their communication skills and enhances their leadership when they are able to resolve problems without the embarrassment of the matter getting to a higher level of management.

CAUTION: Many supervisors have not been trained in handling complaints. It is important in any grievance procedure to train your supervisors. They must be trained to listen and to communicate respect to the employee. Instruct them to take the time (and give them the time):

- To receive the employee in a private area and to listen to the employee patiently;
- To take notes of what the employee says;
- Not to interrupt or argue with the employee;
- To ask the employee to repeat the story again, after the employee has finished, while checking the notes already made;
– To confirm that the supervisor understands the problem by restating the problem to the employee and asking the employee to confirm that this is the problem and that these are the facts as the employee perceives them;

– Not to be afraid of making an “instant fix” if that is in order;

– To “check it out” if that seems the proper course before answering;

– To communicate the supervisor’s position to the employee after the necessary check; and

– To inform employees of their rights to pursue the matter to a higher level.

b. Step Two: Crystallization And Catharsis
   And A Check On Communication

Step Two of the grievance procedure will normally be more formal. The First Step was informal and oral. The Second Step should require more formality. The use of a written grievance form to channel the problem will force the employee to formalize and frame his/her complaint.

A suggested form for the written grievance is as follows:

**STEP TWO GRIEVANCE:**

**NAME:**

**DEPARTMENT:**

**DATE:**

**SUPERVISOR:**

Please describe the Grievance (Problem) you want raised:

I have discussed this problem with my supervisor on ___ __________.

I have received the following response:

I disagree with my supervisor’s response because:

I think the proper solution should be:
i. If the problem is a minor one, the employee may think twice before committing it to writing. The reluctance to commit to writing works like a steam valve. If the pressure is not very great the valve will not open. If something is truly building up pressure among the employees, they will exert it with the force to commit it to a written grievance.

ii. In order to maintain the integrity of Step One of the grievance procedure and to be sure that the supervisors have a chance to resolve the problem, employees should be asked to express the date on which the matter was discussed with the supervisor and the supervisor’s response. This is how a company can find out that a supervisor communicated one thing, but the employee received a different message. Asking the employee to describe the response received is a useful managerial tool to be sure that the supervisor and the employee are in fact communicating. Where lack of communication is the problem, the supervisor can be encouraged to correct the problem.

iii. By asking employees to indicate why they disagreed with their supervisor, the employee is forced to crystallize the difference in position. Very often this act of crystallization can show that the differences between the company and the employee are not as great as might have been perceived.

iv. Finally, the employee is asked to propose a solution to the problem. It may be that through all the rhetoric, the employee and the supervisor have lost sight of a potentially very simple solution to the problem, and if the employee proposes a solution which is acceptable to the company, both sides win.

v. Some employees do not easily articulate the problem, especially when faced with a written form. For this reason, many companies encourage employees to seek management aid in completing the written grievance. This is often delegated to a sympathetic individual in the Human Resources Department who is not a designated grievance step.

vi. The written grievance ought to be submitted to a higher level of management than the one involved in Step One, such as an office or area manager, someone in the Human Resources Department or a Department Manager. The decision of who is to handle Step Two will depend upon the size and complexity of the organization and the skills of the individuals involved.
c. **Step Three: Conflict Resolution**

The next question the company has to face is, if there is still disagreement after the first two steps, how is the matter to be resolved. While there is not any great disagreement between people believing in grievance procedures in the nonunion company as to the first steps, there is a wide variety of responses to the third step.

The greatest number of companies use a higher company official, *i.e.*, a personnel director, a vice president, or even the president, for final resolution. A minority of companies adopt an arbitration procedure with an outside arbitrator. Others have used a system where a panel of three people, including an employee and two management people not involved in the particular problem, hear all sides, review the documentation, and make a final resolution.

In any event, the resolution should be patiently explained to the employee emphasizing the reasons for the decision. This will be the company’s last chance to convince the employee of the fairness of the decision.

Although that decision may be final as far as the grievance procedure is concerned, in fact, in many cases it is not necessarily a final decision if the matter involved is one which can be brought to an outside agency. Matters which will be handled by outside agencies very often involve discrimination, termination, failure to promote, wage differential based on race or sex, etc. In cases of discharge, a number of legal commentators have recently suggested that courts take it upon themselves to consider whether a particular discharge was or was not justified. Of course, employees who are unhappy with wages, hours, or working conditions have the option to take other employment or to seek the organization of a union.

D. **When And Where To Handle The Problems**

There is a fine line to be drawn between listening to the general griper and handling real problems. Regular weekly grievance times should be avoided because they encourage the fabrication of grievances, especially if they can be used as a means of avoiding work. Another way to discourage gripers is to hold the informal or Step One grievance session after working hours so that the employee is not on company time. This discourages time wasting by those who prefer griping rather than working. However, if there is a serious problem, handling it on working time does communicate an understanding of the seriousness of the problem.

E. **Time Limits**

Time limits help filter out stale complaints, which were not important enough to raise promptly, and provide a framework for speedy resolution so that problems once raised do not fester. Time limits for raising grievances should therefore be relatively short — a week or two, except in cases where the employee could not fairly be expected to understand what took place until the grievance was raised. However, where an employee has not been properly paid, reliance on failure to file a grievance within a specified time is not warranted as a matter of law in most states.
Time limits are also significant in the company response time to the grievance. A prompt response communicates respect. A prompt target date for the company’s response is preferable, usually three or four working days after the grievance was filed, or, at most, within five to ten working days. If more time is needed, a response within the time limit should be made, indicating that the matter is under consideration and will take a longer time to resolve. An expected resolution date for the problem ought to be stated.

F. Preserving The Integrity Of The System

Once the grievance procedure is in place, care must be taken to see that it works and that no one is the subject of any reprisal for using the procedure. On the other hand, the company must also be sure that the procedure helps, not hurts, its supervisors.

1. The Second and Third Steps sometime involve choosing between conflicting claims, with supervisors on one side and employees on the other. Where the employee’s view is adopted, care must be taken to deal with the supervisor’s natural feeling of resentment of “losing.” This can sometimes be done by convincing the supervisor to “come around” and assuring supervisors that they are in no jeopardy in “losing.” Most certainly the supervisor should be allowed to take some credit for the resolution, if possible.

The quickest way to render any grievance procedure impotent is for employees to “win” at Step Two or Three, only to be faced with a supervisor out to “get them” at the next opportunity. This, of course, suggests supervisory training in the use of the grievance procedure. Companies should not forget that supervisors are themselves employees who often feel squeezed between management demands and their inability to motivate those they supervise to accomplish what is required. As employees, these same supervisors have the same need for communication, catharsis and crystallization of their problems, not the least of which may be the “flak” they get from subordinates through the grievance procedure. Trying to allow the supervisor the dignity of winning something, even if the employee’s view prevails, helps ameliorate these natural feelings.

2. On the other hand, a supervisor who sabotages the system should be firmly or even publicly disciplined for such action. Otherwise, employees will view the whole system as ineffectual and problems will arise through less desirable channels. Most employees are realists. They soon perceive whether the grievance procedure actually allows them to have a respectful hearing, or if the hearing is a sham, and their supervisor’s resentment will “take care of them” later. That means vigilance to assure that a whole system of communication doesn’t fail because a supervisor lacked the maturity to accept it.

Supervisory training, consistent management diligence and expeditious use of time and effort are all necessary to preserve the integrity of the system. More thoughtful companies believe the investment is worth it. At the very least, it helps them understand what is happening in their companies and affords them a chance to head off trouble, if they so choose.
G. A Suggested Grievance Procedure

A good formulation of a guidance policy for your Employee handbook might be as follows:

ON THE JOB PROBLEMS

As an employee of the Company and an important member of our team, we are concerned that your on the job problems are brought to the attention of the Company. Many problems tend to arise out of misunderstanding or lack of complete information. If problems are kept hidden, they tend to fester and to grow out of proportion to their seriousness. If you feel that anything has occurred that is in any way unfair to you, or if you have any complaints, requests, or constructive criticism, the best way to eliminate the problem is to talk it over.

Since your Supervisor is responsible for seeing that you receive fair treatment, all problems should be taken to your Supervisor first and discussed. Your Supervisor is always ready and willing to answer your questions about your work or your progress. If you have ideas for doing things a better way or encounter a problem with practices discussed herein or any problems arise in the course of your work, talk to your Supervisor. In most instances, the problem can be immediately solved after this first step is taken.

If, after talking to your Supervisor, you have not received a satisfactory explanation or decision, you should notify your Supervisor that you wish to present the problem to the Human Resources Manager. To do this, please write a note to the Human Resources Manager stating: (1) your name and department; (2) what the problem is; (3) when you discussed it with your Supervisor; (4) what your Supervisor’s response was; (5) why you disagree; and (6) what you suggest as the proper response to the problem you raised. The Human Resources Manager will investigate and, to the extent necessary, will discuss the problem with you.

[Option for a third step:

If you feel you did not receive a satisfactory explanation or decision, you should notify the Human Resources Manager that you wish to present the problem to the (President). To do this, please write a note to the (President) stating: (1) your name and department; (2) what the problem is; (3) when you discussed it with your Supervisor and the Human Resources
Manager; (4) what their responses were; (5) why you disagree; and (6) what you suggest as the proper response to the problem you raised. The (President) or his or her designee will investigate and to the extent necessary, will discuss the problem with you.]

In all cases, if an immediate decision is possible, it will be given to you; if not, you will be informed of a time when an answer will be available.

We urge that you bring all problems or complaints out into the open since only in this manner can any action be taken by the Company.

VII. PRINT v. ELECTRONIC DISTRIBUTION OF THE EMPLOYEE HANDBOOK

It is obviously cheaper to distribute the Employee handbook to employees via their computers. Whether to do so may depend on the nature of the workforce. A workforce that works at desks with their computers is an obvious target for electronic distribution. Another advantage of the electronic media is that changes can be easily and conveniently made. Again, it is vital that every employee acknowledge, in writing or electronically, that they have read the changes and understood them.

Where the workforce is not tied to a desk and a computer screen, it is possible to distribute electronic Employee handbooks via kiosks. However, it is probable that many employees may take the position that they neither read nor understood the document and it is important that they be given a period of time while on the clock to go to the kiosk, read the document and also to print it out if they wish.

In industrial situations, it is probably best to distribute a hard copy of the Employee handbook together with the receipt that is indicated in our discussion on Employee handbooks.