



## 1. Common Employer misconceptions

***“We don’t need an employee handbook that’s just for large Companies..... we are too small.....”***

As armchair lawyers we have all heard of the legal concept that “ignorance of the law is no excuse”. No one gives us citizens a written procedure to say stealing is illegal but it is the law and we would expect to be punished for theft. Consequently, employers mistakenly believe the concept applies to all company rules.

Not so ..... e.g. *“surely every employee must know that it is wrong to use your company credit card for personal use.”*

Actually, no if you issue a credit card without any instructions or rules then do not expect any sympathy from an Employment Tribunal and good luck trying to prove theft. However, incorporated within the Expenses Policy in the handbook and the employee knows the restrictions of use and consequences of abuse; they will also know other important rules relating to expenses such as what they can and can’t claim for; and what they have to do to get their expenses reimbursed and the penalty for abuse.

Another well know legal *“truth” is that justice will prevail. E.g. “ We don’t have any written procedures about social media at work but surely a tribunal will accept that it is wrong for an employee to talk about work on Facebook”.*

I’m afraid not.

Employment law is different. Employers have an obligation to set out what is expected of their employees and what benefits they get as part of the employment contract. Back to the social media example above ..... Employers increasingly ask employees to use Facebook at work. So, if we are concerned about protecting company confidentiality we must ensure that a confidentiality clause is included in the employment contract and it is worded in a broad enough way so that the Company is adequately protected and the employee adequately informed. A social media policy is essential if employees are required to use social media at work to differentiate home and business use. The Social media policy would live in the employee handbook.

You can see where I am going with this. Every company, no matter how big or small, needs to provide employees with an employee handbook. It is not about becoming policy police it is about making it clear to employees what is expected of them.

The laws of the land will of course prevail but take the example of the credit card if you issue without any rules you cannot argue against the defense that:

*“I have simply borrowed the money I will pay it back each month the card is a credit card after all I’m just using it as credit and it was issued to me?”*

Why have all this bother when a sensibly worded policy makes it very clear what you can and can’t do and the penalties for abuse.

Back to the law again for a moment with reference to disciplinarians and grievances. You will be aware of common law requirement of burden of proof and the requirement to make a judgment based on it being beyond reasonable doubt. This concept does not apply to employment law.

Employment law requires employers to have followed a reasonable procedure as exemplified by **ACAS**. The burden of proof is nowhere as strong as it is with common law. Employers can make their decisions on the **balance of probability** and **do not** have to establish their case beyond reasonable doubt. The procedure followed is therefore critical and must be followed by management and communicated to employees.

*Interesting point:* Employers are required by statute to advise employees in their contracts of employment about the arrangements for disciplinary and grievance processes and the fact that these arrangements include an appeals process. However, every employment lawyer and HR advisor will advise you to clarify that the policies exist but that they are not contractual. So if you can’t put the actual policy in the contract where do you put it?.. In the Employee Handbook....

Probably the last thing you need is an employment tribunal claim landing on your desk. However, employers are unaware that they might be exposing their company to unnecessary risk if they do not invest in an Employee Handbook.

All this talk of tribunals is important but the real message I want to get across is the primary role of having appropriately worded policies, tailored to suit your business, and communicating them to your employees is to prevent problems, enhance business performance and the secondary role is to protect the business.

Once you have a policy you must, of course, keep it up to date, communicate any changes and make sure you follow it. See inherent risks below

The reality is that when benefits are not provided, and policies are not administered in a consistent manner, business performance suffers and the business is exposed to expensive tribunal claims the cost of which is not just the award but management time and legal fees.

## **2. What Goes in an Employee Handbook**

Here are topics to consider to include in an Employee Handbook.

1. **Introduction:** begin the handbook by describing your company's history and business philosophy.
2. **Code of Conduct:** outlines company standards and expectations regarding e.g. dress code, timekeeping, attendance, use of equipment/premises. Emphasize the importance of good attendance and showing up on time. Explain that numerous unexplained absences or repeated tardiness can be a basis for disciplinary action up to and including dismissal.
3. **Hours & Leave:** state the normal working hours for full-time employees, rules for part-time employees, and how overtime compensation can be authorized for those entitled to it. Explain the rules relating to Annual Leave, Sick Leave and reporting requirements, Family Leave, time off to Care for Dependents, Compassionate Leave, Un-paid Leave.
4. **Pay and salaries:** be clear on when staff will be paid, by what method and how you set pay and salaries. Also explain any bonus/ incentive programs.
5. **Health & Safety:** state that employee safety is a major concern of your business and that employees are expected to follow safety rules and report any potentially dangerous conditions.
6. **Dignity at Work:** Your handbook should set out the Company policy in relation to bullying and harassment (dignity at work) that it will not be tolerated, any complaints of harassment seriously that it is illegal and violates your policies. The policy should specify how and to whom an employee can complain of bullying/harassment, what procedures you will follow to investigate complaints, and what actions will be taken against harassers.
7. **Complaints:** Let employees know what procedures they should follow to make and resolve complaints.
8. **Electronic communications:** Include your company policies on use of email, the Internet, social networking sites, blogs, and so on. Because you may have to read employee communications (for example, if one employee accuses another of sending harassing email), your policy must tell employees that their communications may be read and are not private. If you monitor employee communications, say so.

Obviously the above is just a taster of what can be included in an Employee Handbook. There will be conduct not covered by the handbook. You cannot write an employee handbook that will cover every possible workplace situation and Handbooks differ due to Organization size, sector and culture. Therefore, it is important that employees understand that the Handbook is not a “catch all document.”

### **3. What are the benefits of an Employee Handbook?**

An Employee Handbook:

- Acts as a communication tool in which the employer may state employment expectations and consequences for not meeting those expectations.
- Helps to enforce company policies and gives the employer a basis for employee performance and conduct counseling. Employers who have written employment policies are able to point to specific policies or practices as published in the company handbook when counseling or disciplining employees. When these policies are not in writing, it is easier for the employee to plead ignorance, which may extend the counseling period.
- Defines the employment relationship- Serves as a reference guide for both the employee and the employer, thereby eliminating common misunderstandings and unreasonable employment expectations.
- Allows the employer to etch out certain rights it would not otherwise have in dealing with employees and to make certain disclaimers regarding the terms and conditions of employment. Policies concerning workplace inspections, drug testing and background investigations can help to reduce an employee's expectation for privacy in the workplace. Without policies such as these, employers may not be able to conduct such searches and investigations. In addition, disclaimers regarding possible changes in benefits forewarn the employee that benefits may change, allowing the employer to more easily make such changes than if it did not have the policy at all.
- Proves that the employer's policies are consistent with current employment laws and as evidence of the company's legitimate employment practices. For example, policies regarding equal employment opportunity, harassment, overtime and leave procedures can help to show that the employer knew and abided by current employment laws.

### **4. BEWARE of the inherent risks of the Handbook!!!!!!!!**

Common errors made by employers include:-

- Routinely deviating from stated policies - employers who do not adhere to their stated policies may be better off without written policies at all. Employers must stick with the stated policies or be liable for breach of contract or claims of discrimination.
- Inconsistent application of policies - not only must company policies be consistently applied, they must be consistently applied among like groups of employees.
- Adoption of illegal policies- when personnel policies are not consistent with the legal requirements for that employer, it does two things:

- it mistakenly leads the employer to commit an illegal practice and
  - it is proof of the employer's illegal action.
- Continuation of use of outdated policies - outdated policies are those that may have been policies of the company at one time but are now out of date and are just as dangerous as inconsistently applied policies. An annual review of company policies is important to ensure that all policies are current and valid.
  - Use of other companies' employee handbooks - many employers are inclined to pick and use employee handbooks prepared by other companies. This is a dangerous practice because no company is just like yours. If your company is much smaller than the company providing the handbook, the policies will hold you to a much higher standard than is required and you may not be able to adhere to the policies consistently. If your company is much larger than the company providing the handbook, the handbook may be too detailed and comprehensive in scope.
  - Overly restrictive policies- Companies that adopt overly restrictive policies may be tying their own hands and require the employer to follow a much higher than required procedure or practice. Overly vague policies. Overly vague policies are of little use to employers and employees and may set up the employer for inconsistent application of the policies and subsequent claims of discrimination.
  - Overly detailed policies- policies concerning company benefits and leave procedures, in particular, can be very complex and difficult to interpret.
  - Make sure your policies appropriate and not overly restricting and worded to suit your business because once you have a policy you are obliged to follow it. Failure to follow ACAS code or you own disciplinary policy will result in a 25% uplift on any tribunal claim.

## 5. Developing an Effective Company Handbook

In developing an effective employee handbook, keep in mind the 6 "C"s:

- **Clarity**
- **Consistency**
- **Comprehensive**
- **Current**
- **Communicated**
- **Commitment**

Each of these elements is critical in the success of the handbook, as described below:

- **Clarity** - For an employee handbook to be effective, it must be understood by

all employees of the company. The tone should be informative but written as though you were speaking directly to an employee. A complicated or convoluted handbook will only confuse the employees (and the employer) and result in further misunderstandings.

- **Consistency** - The employee handbook must be consistent with actual company practices and other company policies. Furthermore, it must be applied in a consistent manner to all employees, without illegal discrimination.
- **Comprehensive** - Although the handbook may not contain every conceivable policy; it should contain most of the company's important policies at the time it is created. In addition, policies themselves should be worded carefully e.g. policies that are overly vague or incomplete leave too much room for misunderstanding.
- **Current** - Even though the employee handbook is current at the time it is prepared, it may soon fall out of step with prevailing labour laws and company practices. To keep the employee handbook as current as possible, review and update it at least once each year.
- **Communicated** - An employee handbook that is not distributed to the employees is of little value to anyone. To enforce the policies in its handbook, you must give the handbook to the employees. In addition, ask for a signed acknowledgment form from each employee who receives the handbook. Employers are wise to keep copies of each of the handbook revisions and obtain signed acknowledgment forms for each employee covered under each version.
- **Commitment** - Finally, be committed to enforcing the policies of the handbook. Employers who are not committed to maintaining the handbook in the proper manner should not consider adoption of written policies in the first place.

## 6. What do you need to draft an Employee Handbook?

You will need an depth knowledge of :-

- your business
- employment legislation
- the options open to you and businesses of your type
- what is critical ...what to leave out
- how to word broadly enough to cover all eventualities and
- when specific policies are required.

You know your business, **HCHR** can help with the rest. We have access to up to date template documents which we tailor to suit the individual need of your business/charity and most importantly while developing your handbook, we

will assess the risks facing your business and the ways in which the policies you have developed can be communicated to staff in order to protect your organisation.

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