

Table of Contents

Volume 1

CHAPTER 1. THE PROCESS OF DEVELOPING AN EMPLOYEE HANDBOOK

I. OVERVIEW

§ 1:1 Generally

II. DISTINCTIONS

§ 1:2 Generally

III. IMPORTANCE OF HAVING WRITTEN POLICIES

§ 1:3 Generally

§ 1:4 Compliance with the law

§ 1:5 Legal advantages

§ 1:6 Prevention of employment discrimination complaints

IV. LEVELS OF EMPLOYEES TO BE COVERED BY THE HANDBOOK

§ 1:7 Generally

V. FACILITIES TO BE COVERED BY THE HANDBOOK

§ 1:8 Generally

§ 1:9 Multi-state employers—Developing “local practices”

§ 1:10 —Main policy and local practices statements

§ 1:11 — —Medical leaves of absence

§ 1:12 —Policies that typically vary from state to state

VI. HOW TO PREPARE THE HANDBOOK

§ 1:13 Generally

§ 1:14 Selecting a project coordinator

§ 1:15 Establishing a policy committee

§ 1:16 Determining the topics to be covered

§ 1:17 Gathering information

- § 1:18 Deciding how to present the policy topics
- § 1:19 Drafting, reviewing, and obtaining approval
- § 1:20 Producing the handbook

VII. NEED FOR UPDATING THE HANDBOOK

- § 1:21 Generally
- § 1:22 Right to revise policies
- § 1:23 Reservation-of-rights clauses
- § 1:24 Practical tips for revising policies—Check for legal impediments
 - § 1:25 —Avoid interfering with employees’ current rights
 - § 1:26 —Provide reasonable notice to employees
 - § 1:27 —Determine “legal consideration”
 - § 1:28 —Ensure employees’ understanding of changes

VIII. A SPECIAL WORD ABOUT UNIONIZED EMPLOYEES

- § 1:29 Generally

IX. ANTI-UNION STATEMENTS IN HANDBOOKS

- § 1:30 Generally
- § 1:31 Model policy statement
- § 1:32 Other NLRA implications with respect to employee handbooks
 - § 1:33 —Uncooperativeness
 - § 1:34 —Disclosing private information
 - § 1:35 —Unlawful conduct off-premises
 - § 1:36 —Restrictions against use of premises and fraternization
 - § 1:37 —Rules which violated section 8(a)(1)
 - § 1:38 —The Flamingo Hilton case
 - § 1:39 —Conclusion

X. ELECTRONIC HANDBOOKS AND SPDS

- § 1:40 Electronic handbooks
- § 1:41 Electronic SPDs
- § 1:42 Electronic distribution of SPDs, SMMs and SARs
- § 1:43 Electronic record maintenance and retention
- § 1:44 Electronic participant elections
- § 1:45 The Electronic Signature Act
 - § 1:46 —What is an electronic signature?
 - § 1:47 —Electronic record retention
 - § 1:48 —Regulatory requirements
 - § 1:49 —E-Signature software to evolve

TABLE OF CONTENTS

- § 1:50 Mandatory electronic filing of 5500s to begin in 2010;
2008 pension 5500s must be posted on employer
intranet sites

CHAPTER 2. EMPLOYMENT-AT-WILL

I. OVERVIEW

- § 2:1 Generally

II. BACKGROUND

- § 2:2 The doctrine
§ 2:3 Application of the doctrine

III. LEGISLATION ON THE EMPLOYMENT-AT-WILL RULE

- § 2:4 Federal statutes
§ 2:5 State laws

IV. JUDICIAL EROSION OF THE EMPLOYMENT-AT-WILL RULE

- § 2:6 Generally
§ 2:7 Contract theories—Implied covenant of good faith and
fair dealing
§ 2:8 — —Implied contracts
§ 2:9 — — —Oral assurances
§ 2:10 — — —Written assurances
§ 2:11 — —Promissory estoppel
§ 2:12 Tort theories for discharge—Breach of important public
policy
§ 2:13 — —Discharge for refusal to engage in illegal activities
§ 2:14 — —Discharge in violation of freedom of speech
§ 2:15 — —Discharge for reporting wrongdoing by others
§ 2:16 — —Discharge for performing a statutory duty
§ 2:17 — —Discharge in retaliation for workers'
compensation claims
§ 2:18 — —Discharge after sexual harassment
§ 2:19 — —Discharge for negligent accusation of criminal
conduct
§ 2:20 — —Discharge for protesting company policy
§ 2:21 — —Discharge for consulting attorney
§ 2:22 —Other tort theories—Negligence
§ 2:23 — — —Intentional infliction of emotional distress
§ 2:24 — — —Contract claims
§ 2:25 — — —Defamation

§ 2:26 — — —Invasion of privacy involving off-duty conduct

V. PREEMPTION OF STATE WRONGFUL DISCHARGE SUITS

§ 2:27 Generally

VI. UNIFORM EMPLOYMENT TERMINATION ACT

§ 2:28 Generally

CHAPTER 3. EMPLOYMENT-AT-WILL LIABILITY

I. OVERVIEW

§ 3:1 Generally

II. EMPLOYMENT ADVERTISEMENTS

§ 3:2 Generally

III. AT-WILL DISCLAIMERS IN JOB APPLICATIONS

§ 3:3 Generally

§ 3:4 Effectiveness of at-will disclaimers—In regard to violations of public policy

§ 3:5 — —In regard to employee relations

§ 3:6 — —In regard to union organization

§ 3:7 At-will disclaimers in applications

§ 3:8 Examples of employment application disclaimers

IV. INTERVIEWING APPLICANTS AND CURRENT EMPLOYEES

§ 3:9 Nondiscriminatory interviews

§ 3:10 —Unlawful discriminatory selection criteria

§ 3:11 —Acceptable and unacceptable interview inquiries

§ 3:12 —Disability-related inquiries under the ADA

§ 3:13 Importance of training interviewers

§ 3:14 Training manuals

V. OFFER LETTERS

§ 3:15 Generally

§ 3:16 —Offer of employment letter

§ 3:17 —Letter confirming offer of employment

§ 3:18 —Letter confirming orally extended and orally accepted offer of employment

TABLE OF CONTENTS

VI. AT-WILL DISCLAIMERS IN EMPLOYEE HANDBOOKS

- § 3:19 Generally
- § 3:20 Pertinent cases
- § 3:21 Handbook sections that should include disclaimers
- § 3:22 —Introduction
- § 3:23 —Discussion of probationary periods—Arguments against probationary periods
- § 3:24 — — —Acceptable handbook language
- § 3:25 —Complaint resolution and progressive discipline
- § 3:26 —Listing of company rules and regulations
- § 3:27 —Discussion of employee benefits programs
- § 3:28 — —Bonuses
- § 3:29 — —Stock option agreements and profit-sharing and pension plans
- § 3:30 —Performance appraisals
- § 3:31 —Termination policies
- § 3:32 —Accompanying acknowledgment forms
- § 3:33 — —Understanding by employee
- § 3:34 —Options

VII. REVIEWING THE HANDBOOK AND OTHER DOCUMENTS

- § 3:35 Generally

CHAPTER 4. INTRODUCTORY SECTION OF THE HANDBOOK

I. OVERVIEW

- § 4:1 Generally

II. WELCOMING STATEMENT

- § 4:2 Purpose of welcoming statement
- § 4:3 —Model welcoming statement—Welcome to XYZ company
- § 4:4 Commentary—Purpose of the handbook
- § 4:5 — —Reservation of the right to change policies
- § 4:6 — —Whom to see for assistance
- § 4:7 — —At-will disclaimer
- § 4:8 — —Authority to bind the company
- § 4:9 — —Disclaimer of oral representations
- § 4:10 — —Non-interference with employee rights under the National Labor Relations Act
- § 4:11 — —Establishment of positive employee relations

III. STATEMENT ABOUT THE COMPANY'S HISTORY

- § 4:12 Purpose of statement about the company's history
- § 4:13 Company history statements
- § 4:14 —Federal Express Corporation—A brief overview of our history
- § 4:15 —Hasbro Industries, Inc—Company history
- § 4:16 —Bankers Trust Company—Introduction to the bank
- § 4:17 —Marsh Inc—A brief history of the company
- § 4:18 — —Our mission, vision, core values and operating principles
- § 4:19 —The Segal Company history
- § 4:20 —The Bank of Nova Scotia

IV. USE OF GENDER PRONOUNS IN THE HANDBOOK

- § 4:21 Generally

CHAPTER 5. EMPLOYMENT POLICIES

I. OVERVIEW

- § 5:1 Generally

II. EQUAL EMPLOYMENT OPPORTUNITY

- § 5:2 Generally
- § 5:3 —Model policy statement—Equal employment opportunity
- § 5:4 Commentary—Prohibited discrimination
- § 5:5 — —Sexual orientation and gender identity discrimination
- § 5:6 — —Age Discrimination in Employment Act
- § 5:7 — —Discrimination on the basis of disability
- § 5:8 — —Pregnancy discrimination and new expanded protections for pregnant workers
- § 5:9 — —Religious accommodation
- § 5:10 — —Discrimination against covered veterans
- § 5:11 — —Discrimination prohibited by state and local laws
- § 5:12 — —Discrimination prohibited in all personnel actions
- § 5:13 — —Affirmative action plans
- § 5:14 — —Employees' right to inspect affirmative action plans
- § 5:15 Option—Discrimination on the basis of sexual orientation and gender identity (certain federal government contractors)
- § 5:16 OFCCP's pay equity directives

TABLE OF CONTENTS

§ 5:17	OFCCP's revised sex discrimination regulations
§ 5:18	Commentary—Prohibited discrimination—Unlawful harassment
§ 5:19	— —EEOC sexual harassment guidelines
§ 5:20	— — —Employer responsibility
§ 5:21	— — —Types of sexual harassment cases
§ 5:22	— — —Sexual harassment defined
§ 5:23	— —The Speak Out Act
§ 5:24	— —Management and coworker responsibility
§ 5:25	— —Filing complaints
§ 5:26	— —Confidentiality
§ 5:27	— —Duty to report and duty to cooperate
§ 5:28	— —Disciplinary action
§ 5:29	— —No retaliation
§ 5:30	— —Complaints that are frivolous and not made in good faith
§ 5:31	Options—Separate non-harassment policy
§ 5:32	— —No-dating provision
§ 5:33	— —Anti-bullying policy
§ 5:34	— —Love contracts
§ 5:35	—Prohibited discrimination and harassment—California options
§ 5:36	— —New York options
§ 5:37	Hairstyle discrimination
§ 5:38	Commentary—Prohibited discrimination—Artificial intelligence
§ 5:39	Investigating sexual and other forms of harassment
§ 5:40	—General guidelines
§ 5:41	—Recommended investigation procedure
§ 5:42	—Appropriate action to be taken
§ 5:43	—Privileges—Attorney-client
§ 5:44	— —Attorney-work product
§ 5:45	— —Self-critical analysis
§ 5:46	— —Maximizing available privileges
§ 5:47	—Right to representation during an investigation
§ 5:48	— —The Epilepsy Foundation case
§ 5:49	— —The IBM case

III. MEDICAL EXAMINATIONS

§ 5:50	Generally
§ 5:51	—Model policy statement—Medical examinations
§ 5:52	Commentary—Preemployment medical examinations
§ 5:53	— —Federal laws
§ 5:54	— —State laws
§ 5:55	— —Alcohol and drug testing
§ 5:56	— — —Title VII of the Civil Rights Act of 1964

- § 5:57 — — —Rehabilitation Act of 1973
- § 5:58 — — —Americans with Disabilities Act
- § 5:59 — — —State laws
- § 5:60 — — —Designation of physician
- § 5:61 — — —Confidentiality—Federal law
- § 5:62 — — —State medical record confidentiality laws
- § 5:63 — — —Confidentiality—Ethical considerations
- § 5:64 — — —Consent to release of medical information
- § 5:65 — — —Fitness exams
- § 5:66 — — —Medical examinations for current employees
- § 5:67 — — —Reports regarding employee’s state of health
- § 5:68 — — —Paying for medical examinations
- § 5:69 Options
- § 5:70 —California options
- § 5:71 Medical examinations and inquiries under the ADA
- § 5:72 —Preoffer, preemployment examinations and inquiries
- § 5:73 —Post-offer, preemployment examinations and inquiries
- § 5:74 —Medical examinations and inquiries for current employees
- § 5:75 —Confidentiality of medical information
- § 5:76 What to do with an employee’s medical information: complying with the ADA’s confidentiality requirements
- § 5:77 Medical examinations and inquiries under the ADA—Drug testing (including cannabis testing) under the ADA and state law

IV. EMPLOYMENT OF RELATIVES

- § 5:78 Generally
- § 5:79 —Model policy statement—Employment of relatives
- § 5:80 Commentary—Conflicts of interest
- § 5:81 — —Federal law
- § 5:82 — —The public sector
- § 5:83 — —State laws
- § 5:84 — —Definition of relative
- § 5:85 — —Relatives in supervisory/subordinate relationships
- § 5:86 — — —Marital and other relative relationships
- § 5:87 — —Employment of relatives
- § 5:88 — —Employees who marry while employed
- § 5:89 Commentary—Conflicts of interest—Nonmarital relationships
- § 5:90 Commentary—Conflicts of interest—Employment categories that apply
- § 5:91 Options
- § 5:92 —California options

TABLE OF CONTENTS

V. ORIENTATION PROGRAM

- § 5:93 Generally
- § 5:94 —Model policy statement—Orientation program
- § 5:95 Commentary—Topics covered during orientation
- § 5:96 — —Completion of required paperwork
- § 5:97 — —Information establishing identity and employment eligibility of new hires

VI. JOB POSTING

- § 5:98 Generally
- § 5:99 —Model policy statement—Job posting
- § 5:100 Commentary—Job-posting programs
- § 5:101 — —Levels of jobs posted
- § 5:102 — —Specifications in posting notices
- § 5:103 Commentary—Job-posting programs—Salary posting requirements
- § 5:104 Commentary—Job-posting programs—Applying for posted jobs
- § 5:105 — —Notification of supervisory personnel
- § 5:106 Options

VII. PERSONNEL FILES

- § 5:107 Generally
- § 5:108 —Model policy statement—Personnel files
- § 5:109 Commentary—Maintenance of personnel files
- § 5:110 — —One file vs. several files
- § 5:111 — —Federal record-retention requirements
- § 5:112 — —Employee review of personnel files
- § 5:113 — —California option
- § 5:114 — —Updating the personnel files
- § 5:115 State laws governing employee access to personnel files

VIII. LIFE THREATENING ILLNESSES

- § 5:116 Generally
- § 5:117 —Model policy statement—Life threatening illnesses
- § 5:118 Commentary
- § 5:119 —Medical issues
- § 5:120 —Legal issues

IX. INDIVIDUALS WITH DISABILITIES

- § 5:121 Generally
- § 5:122 —Model policy statement—Individuals with disabilities

- § 5:123 —Interactive process checklist for human resource professionals
- § 5:124 Commentary
- § 5:125 —Discrimination prohibited by the ADA
- § 5:126 —Reasonable accommodations
- § 5:127 — —Accessibility of facilities
- § 5:128 — —Examples of reasonable accommodation
- § 5:129 — —Reassigning essential job functions
- § 5:130 — —Determining appropriate accommodation
- § 5:131 —What the ADA does not require
- § 5:132 —Pertinent cases
- § 5:133 — —Reasonable accommodation/leaves
- § 5:134 — —Reasonable accommodation/“dangerous” coworkers
- § 5:135 — —Direct threat defense
- § 5:136 — —The Supreme Court’s analysis
- § 5:137 — —Fitness-for-duty exams
- § 5:138 Option—Model policy statement—Service animals
- § 5:139 — —Individuals with disabilities—California option

CHAPTER 6. COMPENSATION POLICIES

I. OVERVIEW

- § 6:1 Generally

II. CLASSIFICATIONS OF EMPLOYMENT

- § 6:2 Generally
- § 6:3 —Model policy statement—Classifications of employment
- § 6:4 Commentary—Regular employees
- § 6:5 — —Distinction between full-time and part-time employees
- § 6:6 — —Definition of employee under selected federal statutes
- § 6:7 —Joint employment under the FLSA
- § 6:8 —Joint employment under the National Labor Relations Act
- § 6:9 —Temporary and agency employees
- § 6:10 — —EEOC’s position
- § 6:11 — —Exempt or non-exempt status
- § 6:12 — —Temporary employees under the Immigration Reform and Control Act of 1986
- § 6:13 —Leased workers
- § 6:14 — —Federal requirements
- § 6:15 — —State requirements
- § 6:16 — —Independent contractors

TABLE OF CONTENTS

- § 6:17 —Non-exempt vs. exempt employees
- § 6:18 —Employee classification and status
- § 6:19 —Volunteers
- § 6:20 —Trainees
- § 6:21 Options
- § 6:22 —California option

III. WORK HOURS

- § 6:23 Generally
- § 6:24 —Model policy statement—Work hours
- § 6:25 Commentary—Length of workweek and days worked
- § 6:26 —Normal work hours and meal periods
- § 6:27 — —General discussion
- § 6:28 — —State laws regarding work hours and meal periods
- § 6:29 —Length of workweek and days worked—Meal, rest, and recovery periods
- § 6:30 —Changing employee work schedules
- § 6:31 Options—Work hours varying by facility
- § 6:32 —Flextime work schedules
- § 6:33 —Work-at-home policies
- § 6:34 —Flexible work arrangements
- § 6:35 — —Flexible work arrangement acknowledgement form
- § 6:36 — —Telecommuting policy
- § 6:37 — —Hybrid and remote working in the post-pandemic world
- § 6:38 Commentary—U.S. Department of Labor guidance on compensability of teleworking breaks
- § 6:39 —Flexible work arrangements—Expense reimbursements in the era of remote working
- § 6:40 Options—Flexible work arrangements—Summer hours

IV. RECORDING WORK HOURS

- § 6:41 Generally
- § 6:42 —Model policy statement—Recording work hours
- § 6:43 Commentary—Maintenance of work hours and payroll records
- § 6:44 — —Federal law
- § 6:45 — —State laws
- § 6:46 —Completion and approval of time sheets
- § 6:47 Beware the rule of the repeating eight
- § 6:48 Using company-issued cell phones during nonworking time by non-exempt employees
- § 6:49 Commentary—Falsifying time records
- § 6:50 Options

V. REGULAR PAY PROCEDURES

- § 6:51 Generally
- § 6:52 —Model policy statement—Regular pay procedures
- § 6:53 Commentary—Payment of wages
- § 6:54 — —Important qualifications
- § 6:55 — —State wage payment laws
- § 6:56 — —Direct deposit and payroll cards
- § 6:57 —Correcting payroll errors
- § 6:58 —Lost or stolen paychecks
- § 6:59 Options—Reporting time pay
- § 6:60 Salary basis policy

VI. OVERTIME PAY PROCEDURES

- § 6:61 Generally
- § 6:62 —Model policy statement—Overtime pay procedures
- § 6:63 Commentary—Eligibility for overtime pay
- § 6:64 — —Non-exempt and exempt employees
- § 6:65 — —Qualifying as an exempt employee
- § 6:66 — —Top 15 FLSA traps and FLSA audit hot points
- § 6:67 —Weekday overtime rates—State laws
- § 6:68 — —California option
- § 6:69 — —Compensatory time
- § 6:70 —Weekend and holiday overtime rates
- § 6:71 —Scheduling overtime
- § 6:72 —Payment for overtime worked
- § 6:73 Options—Payment of overtime to exempt employees
- § 6:74 —Alternative overtime formulas
- § 6:75 — —Fixed salary for all hours worked up to 40
- § 6:76 — — —Overtime pay procedures
- § 6:77 — —Half-time overtime
- § 6:78 — — —Half-time overtime pay policy for salaried non-exempt employees
- § 6:79 — —“Belo plan”
- § 6:80 Call-in pay
- § 6:81 Shift differentials
- § 6:82 Travel time
- § 6:83 —California option
- § 6:84 Waiting time
- § 6:85 Pay for lectures and training outside of normal work hours
- § 6:86 DOL issues new interpretation of “clothes” under FLSA and expands what constitutes compensable activity
- § 6:87 On-call time
- § 6:88 State overtime pay laws
- § 6:89 State reporting time pay laws

TABLE OF CONTENTS

VII. SALARY ADMINISTRATION PROGRAMS

- § 6:90 Generally
- § 6:91 —Model policy statement—Salary administration programs
- § 6:92 Commentary—Salary administration program
- § 6:93 — —Equal Pay Act of 1963, Lilly Ledbetter Fair Pay Act, state equal pay laws, state and local pay transparency laws, and state and local salary history bans
- § 6:94 — —Title VII of the Civil Rights Act of 1964
- § 6:95 — —Executive Order 13665
- § 6:96 — —Importance of job descriptions
- § 6:97 —Salary reviews and increases
- § 6:98 — —Modifying employees' salaries
- § 6:99 —Total compensation
- § 6:100 —Discussion of wages among coworkers
- § 6:101 Options

VIII. PERFORMANCE REVIEWS

- § 6:102 Generally
- § 6:103 —Model policy statement—Performance reviews
- § 6:104 Commentary
- § 6:105 Options
- § 6:106 Forced ranking systems
- § 6:107 —Developing a defensible force ranking process
- § 6:108 —Ongoing review process
- § 6:109 Documenting performance/behavioral problems
- § 6:110 —Importance of proper documentation
- § 6:111 —Documentation process
- § 6:112 —Communicating the disciplinary decision to the employee

CHAPTER 7. TIME-OFF BENEFITS

I. OVERVIEW

- § 7:1 Generally

II. FAMILY AND MEDICAL LEAVES OF ABSENCE

- § 7:2 Generally
- § 7:3 —Model policy statement—Family and medical leaves of absence
- § 7:4 Commentary—Coverage, eligibility, entitlements
- § 7:5 — —Coverage
- § 7:6 — —Eligibility requirements
- § 7:7 — —Leave entitlements

- § 7:8 — —Status of leaves
- § 7:9 —Child and family care leave
- § 7:10 — —Leave schedules
- § 7:11 —Leave for family member's medical condition
- § 7:12 —Leave for employee's medical condition
- § 7:13 — —Serious health conditions
- § 7:14 — —Certification requirements
- § 7:15 — —Scheduling treatment
- § 7:16 — —Work at home during FMLA leave
- § 7:17 — —Sufficient certification
- § 7:18 —Benefits during employee medical leave
- § 7:19 — —No forfeiture of accrued benefits
- § 7:20 — —Nonaccrual of benefits
- § 7:21 — —Maintenance of health benefits
- § 7:22 — —Recapture of health insurance premiums
- § 7:23 —Additional certification requirements
- § 7:24 —Leave duration
- § 7:25 —Right to reinstatement after leave
- § 7:26 —Employees ineligible for FMLA leave
- § 7:27 — —Waiving FMLA rights
- § 7:28 — —Interpreting the FMLA
- § 7:29 Generally—Model policy statement—Family and medical leaves of absence—California option
- § 7:30 — — —New York option
- § 7:31 School visitation leaves
- § 7:32 Small necessities leave
- § 7:33 Lactation Accommodation at work

III. MEDICAL LEAVES—SMALL EMPLOYERS

- § 7:34 Generally
- § 7:35 —Model policy statement—Medical leaves of absence
- § 7:36 Commentary—Eligibility and duration of leave
- § 7:37 — —In general
- § 7:38 — —Pregnancy leaves under federal law
- § 7:39 — —California option
- § 7:40 —Procedure for applying for medical leave
- § 7:41 — —California option
- § 7:42 —Employees on medical leave
- § 7:43 —Benefits continuation
- § 7:44 —Reinstatement after leave
- § 7:45 Options—Reinstatement after leave
- § 7:46 —Light-duty programs

IV. PERSONAL LEAVES—SMALL EMPLOYERS

- § 7:47 Generally

TABLE OF CONTENTS

- § 7:48 —Model policy statement—Personal leaves of absence
- § 7:49 Commentary—Eligibility, duration, and procedure for applying
- § 7:50 —Reasons for granting personal leaves of absence
- § 7:51 —Reinstatement after a personal leave of absence
- § 7:52 State family and medical leave laws

V. MILITARY LEAVES OF ABSENCE

- § 7:53 Generally
- § 7:54 —Model policy statement—Military leaves of absence
- § 7:55 —Model policy statement—Military leaves of absence—Options
- § 7:56 Commentary—Eligibility
- § 7:57 —Application, duration, and pay
- § 7:58 —Reinstatement privileges

VI. BEREAVEMENT LEAVE

- § 7:59 Generally
- § 7:60 —Model policy statement—Bereavement leave
- § 7:61 Commentary—Eligibility for paid bereavement leave
- § 7:62 —Benefit schedule
- § 7:63 Options—“Significant other” relationships
- § 7:64 —Amount of paid time off granted

VII. JURY AND WITNESS DUTY LEAVE

- § 7:65 Generally
- § 7:66 —Model policy statement—Jury and witness duty leave
- § 7:67 Commentary—Eligibility for paid leave and schedule of benefits
- § 7:68 — —Jury service under federal and state laws
- § 7:69 — —Public policy concerns
- § 7:70 —Qualifying for jury and witness duty leave
- § 7:71 —Release from jury service
- § 7:72 Options

VIII. VACATIONS

- § 7:73 Generally
- § 7:74 —Model policy statement—Vacations
- § 7:75 Commentary—Vacation eligibility and entitlement
- § 7:76 —Part-time regular employee accrual schedule
- § 7:77 —Newly hired employees
- § 7:78 —Vacation carryover
- § 7:79 —Pay in lieu of vacation
- § 7:80 —Holidays within vacation periods

- § 7:81 —Vacation scheduling
- § 7:82 —Vacation pay advances
- § 7:83 —Vacation for terminating employees
- § 7:84 Options—Alternative accrual schedules
- § 7:85 —Vacation restrictions
- § 7:86 —Vacation carryover
- § 7:87 —“Cap on accrual” provision
- § 7:88 Model policy statement—Vacations—California options
- § 7:89 Options—Paid time off (PTO) policies
- § 7:90 — —California option

IX. HOLIDAYS

- § 7:91 Generally
- § 7:92 —Model policy statement—Holidays
- § 7:93 Commentary—Employee eligibility and holidays observed
- § 7:94 —Holidays falling on weekends
- § 7:95 —Absences before or after holidays
- § 7:96 Options

X. PERSONAL DAYS

- § 7:97 Generally
- § 7:98 —Model policy statement—Personal days
- § 7:99 Commentary—Purpose of and eligibility for personal days
- § 7:100 —Personal day accrual schedule
- § 7:101 —Advance approval to use personal days
- § 7:102 — —Minimizing abuse
- § 7:103 — —Religious accommodation obligations
- § 7:104 —Carryover of and payment for unused personal days
- § 7:105 Options
- § 7:106 Generally—Model policy statement—Personal days—California option

XI. SICK DAYS

- § 7:107 Generally
- § 7:108 —Paid sick leave laws and ordinances (Note: See Appendix K for a detailed summary of federal, state and local sick leave laws.)
- § 7:109 —Federal Contractor Paid Sick Leave (Executive Order Number 13706)
- § 7:110 —Model policy statement—Sick days
- § 7:111 Commentary—Eligibility for paid sick days
- § 7:112 —Sick day accrual schedule

TABLE OF CONTENTS

- § 7:113 — Carryover of and payment for unused sick days
- § 7:114 — —Comprehensive sick leave programs
- § 7:115 — —Sick leave time and state laws
- § 7:116 — Guidelines regarding absenteeism and tardiness
- § 7:117 —Short-term disability benefits
- § 7:118 —Long-term illnesses
- § 7:119 Options—Other types of sick leave benefits plans
- § 7:120 —Family and Medical Leave Act
- § 7:121 Model policy statement—Sick days—California option
- § 7:122 Options—State laws requiring short-term disability benefits
- § 7:123 Donating sick leave time

XII. SALARY CONTINUATION PLAN

- § 7:124 Generally
- § 7:125 —Model policy statement—Salary continuation plan
- § 7:126 Commentary—Explanatory statement and description of eligibility
- § 7:127 —Salary continuation benefits
- § 7:128 —Qualifying for benefits
- § 7:129 —Exclusions from coverage and statement regarding costs
- § 7:130 Options

CHAPTER 8. GROUP HEALTH AND RELATED BENEFITS

I. OVERVIEW

- § 8:1 Generally

II. COMPANY EMPLOYEE BENEFIT PROGRAMS

- § 8:2 Generally
- § 8:3 —Model policy statement—Our employee benefits programs
- § 8:4 Commentary—Types of programs
- § 8:5 — —Summary plan descriptions
- § 8:6 — — —Penalties for ERISA violations
- § 8:7 — — —No right to jury trial under ERISA
- § 8:8 — —Contradictions in language disclaimer
- § 8:9 — —Modification right disclaimer

III. HOSPITALIZATION BENEFITS

- § 8:10 Generally
- § 8:11 —Model policy statement—Hospitalization benefits

- § 8:12 Commentary—Eligibility for coverage and effective date
- § 8:13 — —Employees age 65 and older
- § 8:14 — —Discriminatory benefit plans under the Internal Revenue Code
- § 8:15 — —Benefits provided under the plan
- § 8:16 — —Cost of benefits
- § 8:17 — —Termination of benefits and additional benefit details
- § 8:18 Options—Effective date of coverage
- § 8:19 — —Premium costs
- § 8:20 — —Health maintenance organization option
- § 8:21 Health care reform legislation—Overview
- § 8:22 —Employer “shared responsibility” provisions
- § 8:23 —Required plan provisions
- § 8:24 —Reporting requirements and employee communications
- § 8:25 —Other provisions

IV. BASIC SURGICAL AND MAJOR MEDICAL INSURANCE

- § 8:26 Generally
- § 8:27 —Model policy statement—Basic surgical and major medical insurance
- § 8:28 Commentary—Eligibility for coverage and effective date
- § 8:29 — —Benefits provided under the plan
- § 8:30 — —Cost of benefits, termination of coverage, and additional benefit details
- § 8:31 Options—Effective date of coverage and premium costs
- § 8:32 — —Health maintenance organization option
- § 8:33 AFLAC

V. DENTAL INSURANCE

- § 8:34 Generally
- § 8:35 —Model policy statement—Dental insurance
- § 8:36 Commentary—Eligibility for coverage and effective date
- § 8:37 — —Benefits provided under the plan
- § 8:38 — —Cost of benefits, termination of coverage, and additional benefit details
- § 8:39 Options—Effective date of coverage and premium costs
- § 8:40 — —Health maintenance organization option

VI. LIFE INSURANCE

- § 8:41 Generally

TABLE OF CONTENTS

- § 8:42 —Model policy statement—Life insurance
- § 8:43 Commentary—Eligibility for coverage and effective date
- § 8:44 — —Benefits provided under the plan
- § 8:45 — —Cost of benefits, termination of coverage, and additional benefit details
- § 8:46 Options—Effective date of coverage
- § 8:47 — —Option to purchase additional life insurance benefits

VII. SHORT-TERM DISABILITY INSURANCE

- § 8:48 Generally
- § 8:49 —Model policy statement—Short-term disability insurance
- § 8:50 Commentary—Introduction and funding of benefits
- § 8:51 —State short-term disability laws
- § 8:52 —Introduction and funding of benefits—Benefits provided under the plan and additional benefits details
- § 8:53 Options

VIII. LONG-TERM DISABILITY INSURANCE

- § 8:54 Generally
- § 8:55 —Model policy statement—Long-term disability insurance
- § 8:56 Commentary—Eligibility for benefits and effective date
- § 8:57 — —Benefits provided under the plan
- § 8:58 — —Cost of benefits, termination of coverage, and additional benefits details
- § 8:59 Options—Effective date of coverage
- § 8:60 — —No long-term disability plan

IX. WORKERS' COMPENSATION INSURANCE

- § 8:61 Generally
- § 8:62 —Model policy statement—Workers' compensation insurance
- § 8:63 Commentary—General overview of coverage
- § 8:64 — —Procedure for reporting job-related injuries or illnesses
- § 8:65 — —Additional benefits details

X. CONTINUING OR CONVERTING GROUP HEALTH INSURANCE COVERAGE

- § 8:66 Generally
- § 8:67 —Model policy statement—Continuing or converting your group health insurance coverage

- § 8:68 Commentary—Eligibility for continuation of benefits and duration of coverage
- § 8:69 — —Continuation coverage option for employee dependents
- § 8:70 — —Costs of continuation coverage
- § 8:71 — —Events limiting the maximum period under COBRA
- § 8:72 — —Notification regarding continuation coverage
- § 8:73 — —Additional benefits details

XI. RETIREMENT PLAN

- § 8:74 Generally
- § 8:75 — —Model policy statement—Retirement plan
- § 8:76 Commentary—Overview of the plan and its objectives
- § 8:77 — —Plan membership and vesting
- § 8:78 — —Additional benefits details
- § 8:79 The defined benefit plan provisions of the Pension Protection Act of 2006
- § 8:80 Options

XII. 401(K) PLAN

- § 8:81 Generally
- § 8:82 — —Model policy statement—401(k) plan
- § 8:83 Commentary—Objective of the plan and eligibility to participate
- § 8:84 — —Contributions, withdrawals, and plan investments
- § 8:85 — —Additional benefits details
- § 8:86 Options

XIII. EMPLOYEE ASSISTANCE PROGRAM

- § 8:87 Generally
- § 8:88 — —Model policy statement—Employee assistance program
- § 8:89 Commentary—Services provided and eligibility to participate
- § 8:90 — —Alcohol and drug abuse
- § 8:91 — —Confidentiality of employee assistance program records
- § 8:92 — —Privacy concerns
- § 8:93 — —Company rules and regulations
- § 8:94 — —Additional details regarding the EAP
- § 8:95 Options
- § 8:96 — —In-house services
- § 8:97 — —Third-party services

XIV. EDUCATIONAL ASSISTANCE PROGRAM

- § 8:98 Generally

TABLE OF CONTENTS

- § 8:99 —Model policy statement—Educational assistance program
- § 8:100 Commentary—Eligibility requirements
- § 8:101 — —Reimbursement information
- § 8:102 — —Procedure for reimbursement
- § 8:103 Options—Flat dollar reimbursement
- § 8:104 — —Training

XV. COST-CONTROL MEASURES

- § 8:105 Generally
- § 8:106 Preferred provider organizations
- § 8:107 Managed care
- § 8:108 Flexible benefits plans
- § 8:109 —Tax benefits for employers
- § 8:110 —Cost considerations
- § 8:111 —Potential for adverse selection
- § 8:112 Flexible spending accounts
- § 8:113 —Rules for employee elections
- § 8:114 —Using the monies
- § 8:115 —Money at risk

XVI. A WORD ABOUT SEVERANCE PAY PLANS

- § 8:116 Generally
- § 8:117 Why it's advantageous to have a severance plan covered by ERISA
- § 8:118 Health insurance during severance period

XVII. DOMESTIC PARTNER BENEFITS

- § 8:119 Introduction
- § 8:120 Certification of the relationship
- § 8:121 Reasons for offering such benefits
- § 8:122 Legal issues
- § 8:123 Municipally mandated benefits
- § 8:124 Tax status of benefits
- § 8:125 Domestic partner benefits
- § 8:126 —Model policy statement
- § 8:127 —Declaration of domestic partnership

CHAPTER 9. EMPLOYEE CONDUCT

I. OVERVIEW

- § 9:1 Generally

II. PERSONAL APPEARANCE AND DEMEANOR

- § 9:2 Generally

- § 9:3 —Model policy statement—Personal appearance and demeanor
- § 9:4 Commentary—Appropriate dress
- § 9:5 — —Rights of employers
- § 9:6 — — —Religious accommodations
- § 9:7 — —Challenges of sex discrimination in dress codes
- § 9:8 —Maintenance of the work environment
- § 9:9 Options—Specificity in dress and grooming requirements
- § 9:10 —Uniformed employees
- § 9:11 —No buttons or pins
- § 9:12 —Business casual or “dress down” days

III. ABSENTEEISM AND TARDINESS

- § 9:13 Generally
- § 9:14 —Model policy statement—Absenteeism and tardiness
- § 9:15 —Model policy statement—Absenteeism and tardiness—Options
- § 9:16 Commentary—Lost-time benefits and notification requirements
- § 9:17 —Physician’s statements
- § 9:18 —Disciplinary action
- § 9:19 — —Fair administration of disciplinary action
- § 9:20 — —Minimizing absenteeism and tardiness problems

IV. GUIDELINES FOR APPROPRIATE CONDUCT

- § 9:21 Generally
- § 9:22 —Model policy statement—Guidelines for appropriate conduct
- § 9:23 Commentary—General guidelines
- § 9:24 —Types of unacceptable behavior
- § 9:25 —Disciplinary action
- § 9:26 Options

V. COMPLAINT RESOLUTION PROCEDURE

- § 9:27 Generally
- § 9:28 —Model policy statement—Complaint resolution procedure
- § 9:29 Commentary—Overview of complaint resolution procedure
- § 9:30 —Step one: Discussion with supervisor
- § 9:31 —Step two: Meeting with department head
- § 9:32 —Step three: Committee review
- § 9:33 —No-retaliation provision
- § 9:34 Options—Open door policy

TABLE OF CONTENTS

§ 9:35 —Nonunion employees’ right to representation

VI. CONFIDENTIALITY OF INFORMATION

- § 9:36 Generally
- § 9:37 —Model policy statement—Confidential information
- § 9:38 Commentary—Rationale and general guidelines
- § 9:39 —Insider trading
- § 9:40 —Confidentiality statements and disciplinary action
- § 9:41 Options
- § 9:42 —Business and personal conflicts of interest

VII. WORKPLACE SEARCHES

- § 9:43 Generally
- § 9:44 —Model policy statement—Workplace searches
- § 9:45 Commentary
- § 9:46 —Legal issues associated with workplace searches—
Constitutional law
- § 9:47 — —State tort laws
- § 9:48 — —Unionized employers
- § 9:49 Options

VIII. ELECTRONIC AND TELEPHONIC COMMUNICATIONS

- § 9:50 Generally
- § 9:51 —Model policy statement—Electronic and telephonic
communications
- § 9:52 —Model policy statement—Options
- § 9:53 —Model policy statement—Use of Social Media
- § 9:54 —Acknowledgment of employee use of business
equipment and technology policy and consent to
monitoring
- § 9:55 The NLRB imposes broad restrictions on social media
policies
- § 9:56 Blogging and social media policies—FTC guidelines
- § 9:57 Commentary
- § 9:58 Options

IX. SOLICITATIONS AND DISTRIBUTION OF LITERATURE

- § 9:59 Generally
- § 9:60 —Model policy statement—Solicitations and
distribution of literature
- § 9:61 Commentary—Employee no-solicitation policy
- § 9:62 — —“Working time” and “working hours”
- § 9:63 — —Oral solicitation and distribution of literature

- § 9:64 — —Validity of no-solicitation rules
- § 9:65 —Nonemployee solicitations
- § 9:66 —Wearing union insignia or buttons
- § 9:67 Federal government contractors and subcontractors
must notify employees of their labor rights

X. BULLETIN BOARDS

- § 9:68 Generally
- § 9:69 —Model policy statement—Bulletin boards
- § 9:70 Commentary
- § 9:71 Options

XI. EMPLOYEE COMMITTEES

- § 9:72 Generally
- § 9:73 —Model policy statement—Employee committees
- § 9:74 Commentary
- § 9:75 —Determining whether a committee violates the
NLRA
- § 9:76 — —Does the committee constitute a labor
organization?
- § 9:77 — —Is the committee dominated by the employer?
- § 9:78 — —How about a handbook committee?

XII. SMOKING

- § 9:79 Generally
- § 9:80 —Model policy statement—Smoking
- § 9:81 Commentary—Smoking policy generally
- § 9:82 — —Off-duty use of tobacco products
- § 9:83 — —A word on e-cigarettes
- § 9:84 —Complaints

XIII. DRUG-FREE WORKPLACE

- § 9:85 Generally
- § 9:86 —Model policy statement—Drug-free workplace
- § 9:87 Commentary
- § 9:88 Options
- § 9:89 Signs and symptoms of a drug or alcohol problem

XIV. SAFETY AND HEALTH

- § 9:90 Generally
- § 9:91 —Model policy statement—Safety and health
- § 9:92 — —Options
- § 9:93 Commentary
- § 9:94 —OSHA and the general duty

TABLE OF CONTENTS

§ 9:95	—Specific standards and regulations
§ 9:96	—COVID-19 and other OSHA infectious disease guidance
§ 9:97	—Nondiscrimination/whistleblower protection
§ 9:98	—Violations, penalties, and investigation priorities
§ 9:99	—Job safety and health poster
§ 9:100	—Employee’s right of access to records
§ 9:101	— —Annual log and summary of recordable injuries and illnesses
§ 9:102	— —Supplementary record
§ 9:103	— —Employee access to log
§ 9:104	— —Record-retention period
§ 9:105	— —OSHA access to employee records
§ 9:106	— —Employee access to health and safety records
§ 9:107	—Hazard communication standard
§ 9:108	— —Covered employees
§ 9:109	— —Exempt products and conditions of exemption
§ 9:110	—Occupational Safety and Health Act enforcement—Employers may require warrant
§ 9:111	— —Right to participate in walkaround
§ 9:112	— —Company parties and other events
§ 9:113	Employer responsibility to protect employees against heat hazards
§ 9:114	Bomb threats
§ 9:115	Emergency action plans
§ 9:116	Tuberculosis liability issues in the workplace
§ 9:117	Ergonomics in the workplace
§ 9:118	Diabetes liability issues in the workplace

XV. WORKPLACE VIOLENCE

§ 9:119	Generally
§ 9:120	—Model policy statement—Workplace violence
§ 9:121	Commentary
§ 9:122	—“Tell-tale” signs of troubled workers
§ 9:123	—Minimizing exposure to workplace violence
§ 9:124	—Security measures
§ 9:125	OSHA And The Gig Economy

XVI. TAPING/EAVESDROPPING ON CONVERSATIONS

§ 9:126	Generally
§ 9:127	—Model policy statement—Taping/eavesdropping on conversations
§ 9:128	Commentary
§ 9:129	—Legislation restricting secret recordings—Federal law

- § 9:130 — —State wiretapping laws
- § 9:131 Generally—Model policy statement—Taping/
eavesdropping on conversations and Recording of
Meetings

XVII. TERMINATION OF EMPLOYMENT

- § 9:132 Generally
- § 9:133 —Model policy statement—Termination of
employment
- § 9:134 Commentary—Resignations
- § 9:135 —Employment-at-will disclaimer
- § 9:136 —Exit interviews
- § 9:137 Options
- § 9:138 Model policy statement—Reductions in the workforce
- § 9:139 State plant closing laws
- § 9:140 Sample union avoidance training materials: The do's
and don'ts and tips for managers/supervisors

CHAPTER 10. POLICY POTPOURRI

I. OVERVIEW

- § 10:1 Generally

II. MODEL POLICY STATEMENTS

- § 10:2 Community service
- § 10:3 Company cafeterias and lunchrooms
- § 10:4 Company newsletter
- § 10:5 Credit union
- § 10:6 Emergency closings and delayed openings
- § 10:7 Emergency medical procedure
- § 10:8 Employee identification badges
- § 10:9 Garnishments and support orders
- § 10:10 Loans
- § 10:11 Media inquiries
- § 10:12 Moonlighting
- § 10:13 Personal telephone calls
- § 10:14 Purchases of company products
- § 10:15 Reference inquiries
- § 10:16 Safety committee
- § 10:17 Accuracy of employment applications and work-
related documents
- § 10:18 Service award program
- § 10:19 Suggestion awards
- § 10:20 Use of company equipment
- § 10:21 Visitors to company facilities

TABLE OF CONTENTS

§ 10:22	Voting time
§ 10:23	—California option
§ 10:24	Return of company property
§ 10:25	Membership in associations and professional organizations
§ 10:26	Matching gifts program
§ 10:27	Parking facilities
§ 10:28	Loyalty to the company
§ 10:29	Conduct at company parties and other events
§ 10:30	Use of company vehicles
§ 10:31	Use of company stationery
§ 10:32	Use of personal mail
§ 10:33	Use of mobile telephones and related devices
§ 10:34	Adoption assistance
§ 10:35	Conducting personal business
§ 10:36	Motor vehicle safety policy
§ 10:37	Personal privacy
§ 10:38	Compliance hotline
§ 10:39	Employment of minors
§ 10:40	Conduct at clients' offices
§ 10:41	Personal use of vehicle in the course of employment
§ 10:42	Referral bonuses
§ 10:43	Sabbatical leave for full-time regular employees
§ 10:44	Routine time off from work
§ 10:45	Volunteer firefighters
§ 10:46	Volunteer emergency service—California option
§ 10:47	Civil air patrol leave—California option
§ 10:48	Family military leave—California option
§ 10:49	School and child-related activities leave-California option
§ 10:50	Victim of domestic violence or violent crime
§ 10:51	Victims of domestic violence, sexual assault, stalking, and other crimes and abuses—California option
§ 10:52	Victims of crime—California option
§ 10:53	Leave for crime victims to be heard in court—California option
§ 10:54	Employee blood donation leave
§ 10:55	Organ and bone marrow donation leave—California option
§ 10:56	Contracting and purchasing authority
§ 10:57	Lockers
§ 10:58	Language policy
§ 10:59	Policy on copyrighted material
§ 10:60	Policy for reporting all legal matters to the general counsel and other related guidelines
§ 10:61	Employment-at-will
§ 10:62	Signing authority

- § 10:63 Recycling
- § 10:64 Data protection policy
- § 10:65 Biometric Information Privacy Policy
- § 10:66 Identity theft policy
- § 10:67 Policy for recruitment of client employees
- § 10:68 Use of cameras and camera phones
- § 10:69 Transportation reimbursement benefit program
- § 10:70 Background screening of applicants and employees
- § 10:71 Eye protection
- § 10:72 Safety toe footwear
- § 10:73 Personal radios and CD players
- § 10:74 Immigration
- § 10:75 Pets in workplace
- § 10:76 Whistleblower policy
- § 10:77 Litigation-specific document retention policy
- § 10:78 Job sharing policy
- § 10:79 Celebration & events policy
- § 10:80 Perfect attendance awards
- § 10:81 Gender-based restroom policy
- § 10:82 Artificial Intelligence policy

Volume 2

APPENDICES

- Appendix A. A Model Handbook
- Appendix B. Federal Employment Laws
- Appendix C. State Employment Laws
- Appendix D. Selected Human Resources and Government Forms
- Appendix E. A Severance Pay SPD
- Appendix F. Model Guidelines for Union Employees
- Appendix G. Mediation and Arbitration
- Appendix H. State Criminal Law Records—Use of Arrest and Conviction Information
- Appendix I. State Laws for Direct Deposit of Payroll
- Appendix J. Release Requirements—State Survey
- Appendix K. Mandatory Paid Sick Leave Laws—Private Employers
- Appendix L. COVID-19 Supplement
- Appendix M. Child Labor Law Posting Requirements

Table of Laws and Rules

TABLE OF CONTENTS

Table of Cases

Index