

Appendix

Appendix A: Employee Handbook Guidance

Must-Haves

Disclaimer – The first page of the employee handbook should be a disclaimer, which provides that the handbook is merely a guideline and not a contract of employment. Typically, the disclaimer should stand out and clearly state that the employer has the right to amend, modify, revoke, and interpret the policies in the handbook at its sole discretion. It should further state that the policies are not meant to modify the at-will status of employment.

To avoid implied contract claims, employers should issue only general statements of policy in employee handbooks and should always include an explicit statement reserving the right to alter, amend, or change any handbook policy at any time and for any reason.

In keeping with North Carolina's employment at-will standard, the North Carolina courts have generally declined to support or enforce implied contract claims that are based on an employer's *unilateral* publication and distribution of an employee handbook or policy manual. *Roberts v. Wake Forest University*, 286 S.E.2d 120 (NC Ct. App. 1982)).

Introduction – The introduction is an important part of the employee handbook, not so much for legal reasons, but from a practical standpoint. This is often one of the company's first opportunities to welcome the employee. First impressions are important, and the introduction to the employee handbook should describe the company and its mission, values, and beliefs. While an employer should not attempt to include the entire business philosophy in the handbook, it should include a few key statements so that the employee can learn about the company from the very beginning. At a minimum, the employer should include the mission statement and a brief description of the employee's role in fulfilling that mission. The introduction may also include a brief statement of the company's history and accomplishments. Oftentimes, the introduction is in the form of a letter from the restaurant's owner. This is a nice touch that adds a personal feel to the process and can help connect employees to the company.

Equal Employment Opportunity – Every handbook should include a brief outline of the company's policy with respect to equal employment. From a legal standpoint, the equal employment opportunity policy serves to put employees and managers on notice that discrimination will not be tolerated. In addition, absence of an equal employment policy could send an unintended message to the employees that the employer is not concerned with diversity or nondiscrimination, as an example. If you are required to maintain an affirmative action plan, that fact should be included, but it is unnecessary to include the entire plan. The following is an example of a very basic equal opportunity statement:

XYZ Restaurant is an Equal Opportunity Employer. We will extend opportunities and benefits to employees without regard to race, religion, color, sex, national origin, age, disability, handicaps, or veterans' status. This policy confirms XYZ's commitment to fair employment and the elimination of discriminatory practices that might exist.

Once the introductory materials are completed, the employee handbook should then address the general employment policies of the company. The following topics are a few employment policies that are especially important in the restaurant industry.

Attendance Policy – Attendance policies are a vital part of any employee handbook and can be especially important in the service industry. No manager wants to be regularly understaffed during important hours of operation such as weekends and peak dining hours.

While attendance policies are complicated by laws and regulations, such as the Family Medical Leave Act, it is nonetheless a good idea to include a complete, yet concise statement about attendance. This policy can be used to ensure that there are no misunderstandings about expectations of attendance and punctuality.

In addition, as restaurant employees, especially servers, regularly swap shifts or wish to have shifts "picked up" by other employees, the attendance policy should include proper protocol. For example:

Employees are expected to arrive at work prior to their scheduled start time and be at their workstation and ready to begin working by the scheduled start time.

All time off or schedule changes must be requested and approved by a manager, in writing, in advance. XYZ views attendance as one of the most important facets of your job. All unapproved absences will be noted in the employee's personnel file. Excessive absences or tardiness will result in disciplinary action up to and including termination.

You may also want to require a written request for shift changes that includes the initials of the employee requesting the shift change, the employee agreeing to work the shift, and the manager approving the request. The policy should state that the original employee scheduled is responsible for the scheduled shift until these steps have been completed. Ensure that attendance and shift change policies are applied consistently to your entire workforce, as any disparities can lead to allegations of discrimination.

Dress Code – The requirement for a dress code will also vary by company and job. Most hospitality businesses require uniforms for front-of-the-house employees, and safety requirements may govern the uniforms and dress code of kitchen employees. The dress code should be described clearly in the handbook. The policy should clearly set forth requirements for those employees that are in contact with customers and will generally include standards for dress, hygiene, and attitude.

While the hospitality business might provide at least part of the uniform, hygiene is of utmost importance. The policy should include a statement with respect to hair length or style and a statement that clothes should be clean and neat, hands should be clean, and fingernails cut and free of dirt. With respect to "back of the house" employees, the dress code should address issues relating to safety, such as not wearing loose-fitting clothes; wearing hairnets or hats; and wearing closed-toe, slip-resistant shoes at all times.

Safety and Accident Rules – Having a set safety policy is especially important in the hospitality industry. Although the handbook will generally refer to other documents such as postings and extensive safety manuals, it is important to reference the safety policies in the handbook. The

handbook should also reference additional resources and training that the company provides relating to safety. It is also a good idea to hold periodic training with respect to safety issues.

Anti-substance Abuse – Drug or alcohol abuse can be a serious and dangerous problem in any workplace. It is a good idea to clearly state your policy, requirements for testing and disciplinary action if you test employees, and any recovery or confidential employee assistance programs (EAPs) offered by the company.

Alcohol Service Policy – An effective alcohol service policy must set forth steps for monitoring customer consumption, procedures for ensuring that customers do not become intoxicated, and steps for handling an alcohol-related incident. Employees must also be instructed not to serve minors and must be prohibited from consuming alcohol while working.

If your restaurant or bar allows employees to consume alcohol following shifts, then the rules governing post-shift consumption should be clearly set forth in the policy. For example, some restaurants and bars require employees to leave the establishment following their shift but allow them to return out of uniform if they wish to dine or consume alcohol. Other restaurants and bars prohibit any employee from consuming alcohol at the workplace because of the potential for abuse.

No-harassment Policy – As recent litigation rates undoubtedly indicate, harassment, specifically sexual harassment, is a serious issue for the hospitality industry and other employers. An employee handbook must include a statement that harassment is illegal and will not be tolerated by the employer. The handbook must also include definitions and descriptions of conduct that is prohibited under the policy, disciplinary action that will be taken against harassers, a complaint procedure, assurance that all complaints will be confidential and will be promptly investigated, and assurance that there will be no retaliation against a person who files a complaint.

Because an employee's knowledge of the policy and complaint procedures is so vital if litigation does ensue, employers should also have each employee sign a separate acknowledgement that the employee has read and understands the no-harassment policy. The signed statement should be kept in the employee's personnel file. Employers should also make sure that managers and supervisors are aware of and trained in all aspects of the no-harassment policy, including participating in training at time of hire and at periodic intervals, thereafter, learning how to address complaints, and being trained on their role in conducting investigations.

Tip Reporting Policy – The wage and hour and tax implications that apply to tipped employees make it important to have a written policy governing reporting and treatment of tips received by employees. This policy should include an acknowledgment that the employee is required by the IRS to report all tips received from customers. The policy should further state that if the tips reported by all tipped employees do not equal a legally required percentage of total sales, the employer will allocate the difference between the tips reported and that percentage of sales as additional income to each employee who underreported tip income.

The tip reporting policy should also address the wage and hour implications of tipped employees. Employees need to know that tips are included in the wages of the employee for purposes of calculating their minimum wage. If your restaurant has tip-pooling arrangements among employees, that should be included in the employee handbook as well. An employer needs to be

very careful, however, regarding which employees are included in the tip pool to avoid a violation of the Fair Labor Standards Act.

Fraternization Policy – Employers should consider including a policy prohibiting fraternization among supervisors and their subordinates. Supervisors and subordinates should be prohibited from engaging in a romantic relationship and any other type of personal relationship outside the restaurant. This policy is essential to preventing perceptions of favoritism and potential claims of harassment if a relationship between a supervisor and subordinate ends.

Additional Guidelines to Consider Including in Your Employee Handbook

Use of Company Property – Although not as common in the restaurant industry, a policy about company property is something employers may want to include (for example, that uniforms provided by the company must be returned at the end of employment).

Group Insurance Benefits – Make a summary reference to your insurance benefits and eligibility. Then direct the employees to the details in a separate benefits handbook that may be provided by the insurance provider.

Short-term Disability – If you provide a short-term disability benefit, you will want to mention it in the employee handbook; but again, because the rules are complicated, refer to a more detailed document.

Continuation of Medical Care/COBRA – If you employ 20 or more persons, the law requires that, under most circumstances, you provide continuation of medical/healthcare benefits to employees who leave the company. This policy should be outlined in the employee handbook.

Workers' Compensation – Your business likely is required to have workers' compensation insurance. Make sure that your employee handbook contains the proper notices as required by state law. (For more information, see page 13?)

In addition, you should include other policies and benefits provided to employees including maternity leave, funeral leave, jury duty, military service, and tuition reimbursement policies.