



FRANK STEINBERG'S SMART ENTREPRENEUR'S GUIDE TO EMPLOYEE HANDBOOKS

Written and Published as an Educational Service by

FRANK STEINBERG
BUSINESS & TRIAL LAWYER

Read On and You'll Discover How to
Enforce Policies... Avoid Lawsuits... Steer Clear of
12 Costly Mistakes Businesses Make... and More!

Your Employee Handbook...

-- often called a Personnel Manual or a Policy and Procedures Manual -- is a statement of your company's policies and how the business is to be conducted.

Your employee handbook is the most important communication between your company and your employees. In legal disputes courts sometimes consider an employee handbook to be a contractual obligation.

Your company's employee handbook and related personnel policies should be the first formal communication you have with an employee after he or she is hired. It should spell out your expectations for your employees, and describe what they can expect from your company. Why?

Because in the event of a dispute or poor performance review, your handbook will be the first place the employee turns.

Your company's employee handbook should contain enough detail to avoid confusion, but not so much as to overwhelm. Make sure you are familiar with the myriad of employment laws and regulations. And make sure you ask your lawyer about any topics you don't understand.

Regardless of the size or complexity of your business, before you hire your first employee, you should put your company's policies into an employee handbook. When your company's rules are in writing, you'll find policies easier to enforce -- you'll treat everyone fairly -- and you'll avoid many lawsuits.

What Should an Employee Handbook Include?

A handbook should fit your business. Smaller businesses may do well with a simple manual, while larger ones may require something more comprehensive. Effective employee handbooks may cover some or all of the following topics:

> Non-Disclosure Agreements and Conflict of Interest Statements

Having your employees sign Non-Disclosure Agreements and Conflict of Interest Statements helps protect your company's trade secrets and proprietary information.

> Anti-Discrimination Policies

As the employer, you must comply with the equal employment opportunity laws prohibiting discrimination and harassment. Your employee handbook should include a section about these laws, and how you expect your employees to comply with them.

> Compensation

Explain to your employees that your company will make necessary deductions for federal and state taxes, as well as voluntary deductions for the company's benefits programs. In addition, you should make clear your company's legal obligations regarding overtime pay. Also, you should include information on pay schedules, performance reviews, salary increases, timekeeping, breaks, and bonus compensation.

> Work Schedules

Describe your company's policy regarding work hours and schedules, including attendance, punctuality, and absences. Also, include your company's policy for flexible schedules and telecommuting.

> Standards of Conduct

Make sure you explain how you want employees to conduct themselves in your workplace, regarding everything from dress codes to workplace violence. In addition, remind your employees of their legal obligations, especially if your business is engaged in a regulated activity, such as protecting customer data or avoiding insider-trading.

> General Employment Information

Your employee handbook can include an overview of your business and policies covering employment eligibility, job classifications, employee referrals, employee records, job postings,

probationary periods, termination and resignation procedures, transfers and relocation, and union activities.

> **Safety and Security**

Describe your company's policy for creating a safe and secure workplace, including compliance with OSHA laws that require employees to report to management all accidents, injuries, potential safety hazards, safety suggestions and health and safety related issues. Safety policies should also include your company's guidelines regarding bad weather and hazardous community conditions. And last, your security policy should include your commitment to creating a secure work environment, and your employee's responsibility for abiding by all physical and information security policies, such as locking file cabinets and computers when they aren't in use.

> **Computers and Technology**

Computers and communication technology are essential tools for conducting business; however, employee misuse can have serious consequences for your company. Your employee handbook should include policies for appropriate computer and software use, and steps employees should take to secure electronic information, especially any identifying information you collect from customers.

> **Media Relations**

Your employee handbook should spell out how your employees should handle media inquiries and calls from reporters. You do this by naming a single person to interact with the media, such as a key executive or public relations person. After all, you don't want your employees to bring unwanted attention to your company by talking about your business in ways that could be misrepresented in the media.

> **Employee Benefits**

Your company's handbook should detail your company's benefit programs and eligibility requirements, including all benefits that may be required by law such as disability insurance, worker's compensation, and COBRA. Also, the employee benefits section should discuss your plans for health insurance options, retirement, employee assistance, tuition reimbursement, business travel, and any other fringe benefits your business provides to attract and retain employees.

> **Leave**

You should carefully document your company's leave policies, especially for leave you must provide by law. These include family medical leave, jury duty, military leave, and time off for court cases and voting. In addition, you should explain your policies for vacation, holiday, bereavement, and sick leave.

> **And More**

Here are other components and policies you may wish to include in your employee handbook:

- ◆ An employee acknowledgement form
- ◆ Introduction to the Employee Handbook
- ◆ Equal Employment Opportunity Statement

General Policies

- ◆ Personal Information
- ◆ Attendance

- ◆ Use of Company Property
- ◆ Confidentiality
- ◆ Dress Code
- ◆ Safety and Accident Rules
- ◆ Substance Abuse
- ◆ Sexual Harassment
- ◆ Smoking
- ◆ Performance Reviews
- ◆ Employment Categories

Compensation and Benefits

- ◆ Payroll
- ◆ Work Hours and Reporting
- ◆ Holidays
- ◆ Vacation
- ◆ Sick Leave
- ◆ Family and Medical Leave
- ◆ Maternity Leave
- ◆ Jury Duty
- ◆ Military Service
- ◆ Group Insurance Benefits
- ◆ Short-Term Disability
- ◆ Continuation of Medical/COBRA
- ◆ Worker's Compensation
- ◆ Retirement Plans
- ◆ Tuition Assistance
- ◆ Employee Assistance Program

Discriminatory Practices

Under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and the Age Discrimination in Employment Act (ADEA), it is illegal for you to discriminate in any aspect of employment, including the following:

- ◆ Hiring and firing
- ◆ Compensation, assignment or classification of employees
- ◆ Transfer, promotion, layoff or recall
- ◆ Job advertisements
- ◆ Recruitment
- ◆ Testing
- ◆ Use of company facilities
- ◆ Training and apprenticeship programs
- ◆ Fringe benefits
- ◆ Pay, retirement plans, and disability leave, or
- ◆ Other terms and conditions of employment

In addition, discriminatory practices under these laws include the following:

- ◆ Harassment on the basis of race, color, religion, sex, national origin, disability, or age;
- ◆ Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- ◆ Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities; and
- ◆ Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, or national origin -- or a person with a disability. Title VII also prohibits discrimination when a person takes part in schools or places of worship associated with a particular racial, ethnic, or religious group.

Your company must post notices to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. These notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

New Jersey has enacted strict protections against discrimination and harassment based on sexual orientation, status as a parent, marital status and political affiliation. For specific information, you're invited to call me at (908) 685-0600.

More Discriminatory Practices Under Federal EEO Laws

Title VII

Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion or sex.

National Origin Discrimination

- ◆ It is illegal to discriminate against a person because of his or her birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.
- ◆ A rule requiring that employees speak only English on the job may violate Title VII unless your company shows that the requirement is necessary for conducting business. If you believe such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule.

The Immigration Reform and Control Act (IRCA) of 1986 requires that your company hire only those employees who are legally authorized to work in the U.S. However, your company may violate both Title VII and IRCA if you request employment verification only for individuals of a particular national origin, or individuals who appear to be or sound foreign. Instead, you must ask for employment verification from all applicants and employees. If your company imposes citizenship requirements or gives preference to U.S. citizens in hiring or employment, you may be violating IRCA.

Religious Accommodation

- ◆ Your company is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.

Sex Discrimination

Title VII's broad prohibitions against sex discrimination specifically cover:

- ◆ Sexual Harassment -- This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment. (The "hostile environment" standard also applies to harassment on the bases of race, color, national origin, religion, age, and disability.)
- ◆ Pregnancy Based Discrimination -- Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions.

Age Discrimination in Employment Act

The ADEA's broad ban against age discrimination also specifically prohibits:

- ◆ Statements or specifications in job notices or advertisements of age preference and limitations. An age limit may be specified only when age has been proven to be a *bona fide* occupational qualification;
- ◆ Discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and
- ◆ Denial of benefits to older employees. Your company may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Equal Pay Act

The Equal Pay Act (EPA) prohibits discrimination on the basis of sex in the payment of wages or benefits where men and women perform work of similar skill, effort, and responsibility for the same company under similar working conditions.

- ◆ Your company may not reduce wages of either sex to equalize pay between men and women.
- ◆ Your company may violate the EPA when you pay a different wage to a person who worked in the same job before or after an employee of the opposite sex.
- ◆ Your company may violate the EPA when a labor union causes your company to violate the law.

The Civil Rights Act of 1991

The Civil Rights Act of 1991 made major changes in the federal laws against employment discrimination enforced by EEOC. The Act was made law partly to reverse several Supreme Court decisions that limited the rights of persons protected by these laws. The Act authorizes compensatory and punitive damages in cases of intentional discrimination, and provides for recouping attorneys' fees and the possibility of jury trials. Also, it directs the EEOC to expand its technical assistance and outreach activities.

Employee Handbooks:

How to Steer Clear of 12 Costly Mistakes Businesses Make

A clear, well-written employee handbook follows the KISS rule: Keep It Simple, Stupid. It helps (1) define company expectations regarding performance and conduct, (2) serves as a means of formalizing company rules so all employees are held to the same standards, and (3) provides general information about the organization as well as the benefits and services the company offers.

If your employee handbook is developed and implemented incorrectly, it can do more harm than good. Here are 12 costly mistakes to avoid when creating an employee handbook:

COSTLY MISTAKE #1: Failing to clearly publicize and promote your employment at-will disclaimer. Employment at-will disclaimers make it clear that you, as the employer, do not intend to have the handbook construed as a “contract” or promise of employment. They protect your company from claims of termination in breach of contract claims. To be effective the disclaimer should state (1) that nothing in the employee handbook is to be construed as a contract, (2) that employment is at-will and either the employer or the employee may terminate the employment relationship at any time with or without cause, and (3) that written or oral statements made to the employee are not to be interpreted to alter the at-will relationship. The disclaimer should be prominently featured in the handbook and written in large boldface type.

COSTLY MISTAKE #2: Failing to regularly update your employee handbook. Employee handbooks that are out of date and no longer consistent with company practices are useless -- and may leave your company vulnerable to legal liability. Regularly updating your handbook will help ensure that it complies with new laws, new technology changes in how you do business. Your company should review its handbook every 12-18 months to make sure it is current in every way.

COSTLY MISTAKE #3: Failing to apply policies consistently. Administering a written warning, for example, to one employee because he or she has been absent three times within a month’s period, while terminating another employee for the same offense will likely be viewed as discriminatory. Policies are intended to ensure that everyone is treated fairly and that all employees are held to the same standards. You should train your managers to consistently respond to situations and to always follow company policy. You should meet with your company’s supervisors and educate them on the policies included within the handbook, the purpose behind each policy, and how the policies are to be enforced.

COSTLY MISTAKE #4: Failing to get the employee’s acknowledgment. Having a handbook is one thing, but holding your employees to the handbook’s policies is another. Handbook acknowledgments are important so you ensure that all employees have read, understand, and are prepared to comply with company policies. The acknowledgment form should state that employment is at-will and that your company retains the right, in its sole discretion, to modify, alter or amend the handbook at any time. Once signed, keep acknowledgment forms in employee personnel files.

COSTLY MISTAKE #5: Failing to effectively communicate the contents of your employee handbook. After spending the time developing your employee handbook, you should also spend time communicating its contents and purpose to your employees. Never assume that your employees will become familiar with your company handbook on their own. You should demonstrate the importance of the employee handbook as a communication tool by setting aside time to discuss its contents with employees and answer any questions. Employees may be apprehensive about your implementing an employee handbook. That’s why you should explain that the handbook is intended to clarify policies and procedures -- and protect both the employees and the company. In addition, make sure you review the employee handbook with each new person hired.

COSTLY MISTAKE #6: Failing to choose your handbook’s words clearly and carefully. Leaving too much to interpretation is never a good idea. Make sure your word choice is

effective, your language is clear, and your company is protected. If you are too vague or technical, employees may interpret policies differently from the way you intended -- or not understand them at all. What's more, if the matter goes to court, the court may side with the employee if he or she reasonably misinterpreted your company's policy. Write your handbook at a fifth-grade level so it is easily understood by all your employees.

COSTLY MISTAKE #7: Failing to keep your handbook to a reasonable length for employees. Yes, you need to cover all the important points. Still, you do not want to hand each employee a 300-page document. When employees feel overwhelmed by rules and regulations, they may feel too burdened to perform well. Make sure you strike a balance between covering the essential points, while keeping your handbook a reasonable and constructive document.

COSTLY MISTAKE #8: Failing to allow management discretion in implementing the company's policies. Just as being overly vague can be harmful, so can being too specific. It's important to avoid exhaustive lists. For example, I don't recommend that you include a list of the behaviors that may result in disciplinary action unless you state that the list is intended only to provide examples and is not the complete list. In addition, you cannot be expected to think of all circumstances, so it's important to include statements about management's discretion.

COSTLY MISTAKE #9: Failing to focus on local and state requirements. In many cases, state law provides for greater employee protection than does federal law. For instance, many states have added sexual orientation as a protected class under their equal employment opportunity laws. If your company's handbook does not include this provision, your company could be vulnerable to discrimination claims. Make sure your employee handbook is geared toward both federal and state laws, a point that is particularly important in New Jersey.

COSTLY MISTAKE #10: Failing to take into account federal laws. In your employee handbook, laws such as the Family Medical Leave Act cannot be violated or misstated. The same is true for violating personal rights. Also, make sure you provide a way employees can complain about harassment and discrimination. Asking an employment lawyer to review your employee handbook will help you steer clear of violations.

COSTLY MISTAKE #11: Failing to point out company benefits packages and employee perks. Many companies fail to capitalize on the opportunity to market the company. The employee handbook doesn't need to be only a book of rules. Instead, use the handbook to promote the benefits of working for your company.

COSTLY MISTAKE #12: Failing to have your handbook reviewed by an employment lawyer. The law does not require you to have an employee handbook, but if you choose to have one, you have to know that it's done right. You don't want to be hauled into court because your employee handbook overlooked key points or was misinterpreted by employees.

Employee handbooks are excellent communication tools. But, when drafting a handbook, your company must exercise caution. Your handbook's value depends on your choice of words, your explanation of policies, and your compliance with all applicable local, state and federal laws. Don't allow these 12 costly mistakes to land your company in court. If you have questions or concerns about your employee handbook, you're invited to call me at (908) 685-0600.

MEET FRANKLYN C. STEINBERG, III



Mr. Steinberg is the founder and principal of Steinberg Law, LLC. He has practiced law in New Jersey for 32 years.

Practice Areas: Mr. Steinberg represents clients in matters relating to Professional Practices; Business Formation, Purchases and Sales; Commercial Litigation; Employment Law and Litigation; Aviation Law; Sports Law; General Business Law; and state and federal trials and appeals.

Legal Experience: Mr. Steinberg began his legal career as a law clerk to the Hon. Frederick B. Lacey, one of the most distinguished trial judges of the United States District Court for the District of New Jersey. He received his early training as a trial lawyer at a prestigious New Jersey law firm. After achieving partnership status at another established New Jersey firm, he decided to put his experience to work in his own law practice.

Education: In 1974, Mr. Steinberg graduated *magna cum laude* from Denison University (Granville, Ohio). And in 1977, he received his law degree from Seton Hall University School of Law (Newark, New Jersey), where he also served as Managing Editor of the Seton Hall Legislative Bureau.

Trial Experience: Over the past 32 years, Mr. Steinberg has litigated hundreds of complex matters before the State and Federal courts. His extensive trial experience spans a wide range of cases. He has litigated both jury and non-jury trials and has argued appellate matters in the U.S. Third Federal Circuit Court of Appeals, the Superior Court of New Jersey, Appellate Division, and the Supreme Court of New Jersey. Mr. Steinberg serves as local counsel for out-of-state firms in federal litigations. Also, he frequently represents clients in mediation and arbitration proceedings.

Court Admissions & Professional Memberships: He is admitted to practice before the Supreme Court of New Jersey (1977), the United States District Court for the District of New Jersey (1977) and the United States Court of Appeals for the Third Circuit (1978). Mr. Steinberg is a member of the American Association for Justice, the Mid-Atlantic Aviation Coalition, the Lawyer-Pilot's Bar Association and the Aircraft Owner's and Pilot's Association.

Employment Law: In addition to litigation, a significant area of focus for Mr. Steinberg is employment law. He often represents executives and individuals in employment disputes involving *Fortune 500* companies. Many of these matters have been resolved through his successful negotiation of separation agreements that provided for substantial compensation packages.

Aviation Law: An avid pilot for more than 30 years who holds a commercial license, Mr. Steinberg also actively practices in the area of aviation law. He also counsels the Firm's business clients.

Civic Service: For the past 20 years, Mr. Steinberg has been involved in the Somerset County Business Partnership. This year he serves as Chair of its Board of Directors. In addition, Mr. Steinberg teaches Sports Law in Seton Hall University's Stillman School of Business. He has been a featured speaker for the New Jersey Institute for Continuing Legal Education and various professional groups.

You're Invited to Call or E-mail.

"If you have questions about any aspect of business law, commercial litigation, employment law, aviation law, sports law, or state or federal trials and appeals -- please don't hesitate to call. I'll be happy to help you in every way!" -- *Frank*

FRANK STEINBERG BUSINESS & TRIAL LAWYER

*Helping Entrepreneurs and Professionals
Solve Problems ... Reduce Risk ... Seize Opportunities ... Increase Profits*

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New Jersey Employment Law Blog
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"Frank was very adept at dealing with the legal issues and was very comforting."

Frank is a very personable guy who puts you at ease and makes you feel good about your situation. Usually when you need a lawyer, you've got a problem. I was very depressed about my situation. Frank was able to see it for what it was and came up with a number of options. One panned out very well, which relieved me of a great deal of stress and anxiety. I had not had much experience with lawyers. In fact, this was the first time I had to defend myself in this way. Frank was very adept at dealing with the legal issues and, almost as important, he took the burden off of me. Frank was very comforting. I certainly refer friends and colleagues to Frank.

Bruce Cobb
Sr. Vice President, (Large Financial Institution)
Weehawken, Rutherford & Englewood Cliffs, New Jersey

“Frank has always been the picture perfect image of what every attorney should be.”

Frank always makes me feel like I am the most important client in his practice. Yet at no point was that true. At the time we met, I was a small start-up company. When many people hear “small start-up,” their behavior changes. I never experienced that with Frank.

Of every attorney I’ve worked with -- and I’ve worked with tons -- Frank is the only attorney who never acted like the traditional attorney. Frank was completely honest, factual -- good or bad -- and never compromised his integrity. Frank has always been the picture perfect image of what every attorney should be. He is a really, really good man. My wife had occasion to work with Frank and she feels the same.

One more difference about Frank surprised me: Frank has the ability to adapt to every situation, even situations that are not aligned with his areas of expertise. No matter what subject I gave him, Frank became an expert in that area. Frank is a quick study and, to his credit, never said I’m not comfortable exploring that -- or that he was not experienced counseling on that subject. What’s more, Frank represented me just as well in those areas as someone in that field.

Frank’s law firm caters well to businesses with between 50 and 100 employees. I know from personal experience that Frank’s law firm makes a small business look, feel and act bigger. Will I continue to refer friends to Frank? Absolutely, as I have for years!

**Kevin Harrigan
Flemington, New Jersey**

“Frank gave one of my clients sound, practical advice, including not pursuing litigation.”

I’ve known Frank for 30 years. He’s a gentleman and a delight to work with -- and he has a great sense of humor. I had a situation where one of my accounting clients made a mistake. Frank helped negotiate a good resolution and gave sound, practical advice, including not pursuing litigation because the upside wasn’t there. Frank is my tax client and I am Frank’s corporate client. I have referred clients and colleagues to Frank -- and will continue to refer in the future.

**Kal Barson, CPA
Barson Group
Somerville, New Jersey**

“Frank is fair, honest, straightforward...and very sharp in his knowledge of the law.”

Frank Steinberg is the greatest attorney on Earth. He is fair, honest, straightforward and speaks in simple language, no legal mumbo-jumbo. He’s not your typical attorney. That’s why I like him.

Frank is a normal, down-to-earth guy, whom I’ve known for 20 years. We got to know each other from a real estate deal. Then he was instrumental in helping me with business situations and contract problems. Frank is extremely helpful and he has always been there for me.

Frank is very sharp in his knowledge of the law. He gives good advice. In addition, he’s considerate of his clients and provides excellent service. He’s not just out there to make a buck.

I’ve never felt like I wasn’t important to Frank. He always had time for me; he never rushed. When talking with Frank, I was his most important client. He’s unassuming, not arrogant. In

fact, you might be fooled by his demeanor into thinking he isn't as good as he is. Frank is disarming in his approach -- and more talented than he comes across. He's tough and aggressive when he needs to be; otherwise, he's calm and reserved.

When a friend needs a lawyer in Frank's areas of expertise, I refer him to Frank. If his need is in another area of the law, I still refer him to Frank, who refers them to a competent, capable lawyer with the skills he needs.

Frank is accessible, friendly and congenial. He has always accomplished what I've asked him to do. Frank is almost like a member of the family. I get a warm feeling working with Frank.

Richard Simberg
320 Enterprises, Inc. dba Phones & More
Flemington, New Jersey

“Frank is a great attorney and he knows his stuff. I could not have been more pleased.”

Frank Steinberg is very lovely, lovely man, just in who he is. He has wonderful karma. Frank is very kind and interested in helping people. I met Frank at a networking event when I was with the American Red Cross. He gave me suggestions about how to connect with companies. Frank is very intelligent and interested in his work, and the world in general. When I had a legal situation, I consulted with Frank and he was wonderful. Frank got back to me right away. He answered all my questions and was supportive, available and very reassuring -- everything you'd want from a lawyer. He is a great attorney and he knows his stuff. Frank is easy to work with and easy to talk to. Plus he's a very funny person and has a great sense of humor. I can't recommend Frank enough. I think he's great -- and could not have been more pleased.

Fay Reiter
Princeton, New Jersey

You're Invited to Call or E-mail.

“If you have questions about any aspect of business law, commercial litigation, employment law, aviation law, sports law, or state or federal trials and appeals -- please don't hesitate to call. I'll be happy to help you in every way!” -- *Frank*

FRANK STEINBERG **BUSINESS & TRIAL LAWYER**

Helping Entrepreneurs and Professionals
Solve Problems ... Reduce Risk ... Seize Opportunities ... Increase Profits

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