



Is Your Handbook a Contract?

by James P. Laurie, III, and H. Blake Eaddy

An employee handbook can provide a great deal of useful information to employees, and it can also provide important legal protections for an employer. A well-written handbook gives employees important information about an employer's dismissal or promotion procedures, benefit schedule, probation periods, and other critical employment issues.

However, an employee handbook or manual can also be a legal liability to an employer if a court interprets the handbook as a binding contract between employer and employee. In many states, this likely will happen unless the handbook contains an effective disclaimer.

At-Will Employment

When an employer simply hires an employee, the parties enter a relationship called "employment at will." At-will employment means that the relationship has no specific duration, and that either the employer or the employee may end the relationship at any time and for any reason that does not contradict public policy, such as antidiscrimination law. A party who terminates this type of employment relationship is not subject to a lawsuit for breach of contract. The employment-at-will concept assumes that it is not good policy to lock parties into an employer-employee relationship when one of the parties wishes to terminate it.

Contractual Employment

Employment contracts, however, alter the "at-will" relationship by setting additional terms and conditions of employment. These terms and conditions may cover such areas as time period for employment, production incentives, and termination procedures. Under an employment contract, each party is obligated to follow these terms and conditions; a party that violates them is subject to a lawsuit for

breach of contract. For example, the employment contract may state that the employer can fire the employee only after placing the employee on probation for six months. If the employer fires the employee without doing this, the employer will be subject to a suit for breach of contract.

Handbooks as Contracts

The potential problem with employee handbooks is that some states consider them to be the equivalent of employment contracts. Essentially, the



courts in these states consider any statements contained in an employee handbook to be a promise by the employer to the employee, and one of the conditions of employment. In the eyes of these courts, this perceived contractual obligation implicitly changes the at-will relationship into a contractual one, even if the employer didn't intend to do so. The employer becomes legally obligated to follow the statements and procedures outlined in the employee manual; therefore, any failure to follow these procedures can

make the employer liable for breach of contract.

As an employer, however, you can protect yourself from this implicit obligation by including an effective disclaimer in the manual. The disclaimer should clearly notify employees that the manual is not intended as and does not create a contract of employment. The exact language will vary according to the state (and should be checked by an attorney). But in most cases, to be effective, the disclaimer must at minimum do the following:

- Use straightforward language rather than confusing legalese.
- Be prominently displayed through enlarged characters, highlighting, or similar means.
- Be displayed on the cover or first page of the manual.
- Clearly state that the employer and employee have entered into an "at-will" employment relationship.
- Clearly state that the employer has absolute power to terminate anyone's employment with or without cause, regardless of statements contained in the manual.

In addition, to ensure that the employee has notice of the disclaimer, the employer should require the employee to initial the disclaimer and/or sign a form stating that the employee has read the disclaimer contained in the employee handbook.

You should include a disclaimer in your employee handbooks even if the employment occurs in a state that does not recognize employee handbooks as contracts. This will protect you from any subsequent court ruling that overrules or modifies the state's law regarding handbooks as contracts. ■

James P. Laurie, III, is an attorney, and H. Blake Eaddy is a law clerk, for Safran Law Offices in Raleigh, N.C.