

ASHEVILLE AREA CHAMBER OF COMMERCE

A SMALL BUSINESS GUIDE TO EMPLOYMENT LAW

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Legal Disclaimer

This Guide is not intended to be all inclusive. It is offered as a benefit of Chamber membership to alert employers to some of the major legal issues related to the employment relationship. Employers are cautioned that this document is neither intended as legal advice nor should you rely on it as such. Employers should contact an attorney before taking action based on the information in this guide.

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An ounce of prevention is worth a pound of cure

Introduction

CONGRATULATIONS! You are one of many small businesses which contribute significantly to the economic well-being of our area. The Asheville Area Chamber of Commerce truly appreciates the time and effort it takes to operate a successful small business and our goal is to help you grow and thrive. While first and foremost you are a business owner, you are also an employer, and as your business grows, so do the number of your employees. Therefore, not only does it make good sense to understand employment law, but your failure to comply with those laws could cost you thousands of dollars in legal fees and payments.

WHAT WILL IT COST?

The cost to defend a lawsuit in an employment case can be as much as \$75,000 to \$100,000, and if you have violated the law, even unintentionally, you will likely be ordered to pay your employee back pay, possibly doubled, as well as compensatory damages for emotional distress, loss of benefits, and other loss due to the violation.

WHAT ABOUT INSURANCE?

Many companies now offer insurance coverage for employment related lawsuits (EPLI) alleging discrimination or wrongful discharge. Check with your general liability insurer. The cost of premiums will be more than recovered in savings if you are ever sued.

WHAT LAWS APPLY?

Many employment laws apply to all employers, with few exceptions. These include wage and hour laws (minimum wage and overtime, for example) under the federal and state Fair Labor Standards Act, the laws regarding employee/independent contractor status, laws regarding eligibility for unemployment benefits under the Employment Security Commission, as well as a host of other federal and state laws which are listed in **Appendix A**.

In addition, there are both federal and state anti-discrimination laws that apply to employers employing fifteen or more employees. These are also listed in **Appendix A**.

DON'T WAIT FOR FIFTEEN!

The price of success is that many small businesses that begin with just a few employees will soon have fifteen or more employees on their payroll. Without policies and procedures in place, they are forced to defend a charge of discrimination without a weapon.

WHAT SHOULD YOU DO?

Every small business owner should prepare and distribute an employee handbook. At a minimum, the employee handbook should include and Acknowledgment Form, a Statement of Management Rights, an Equal Employment Statement, Payroll Information, Benefits Information (vacation, holidays, sick leave, health insurance information, retirement benefits, if any), Harassment Policy, and a Disciplinary Policy. Sample provisions are included in **Appendix B**.

NOTE: If you offer health insurance, the employee is entitled to a continuation of benefits after separation from employment under COBRA. The employee is required to pay the premiums for continuation of coverage, usually for 18 months. You should include a brief explanation of COBRA benefits in the handbook if applicable. If you have over 50 employees you must include information about the Family Medical Leave Act.

MINEFIELDS, TRAPS, AND RED FLAGS.

I only have 10 full time employees and the rest are part-time, so I don't have to worry.

MAYBE YES, MAYBE NO. As a general rule, if you have fifteen or more employees on your payroll, whether full time or part-time, for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, you will likely be considered and employer under the Equal Employment Opportunity Commission regulations. The rules are complicated. Play it safe and assume that you are an employer if the total number of your employees - full time and part time - exceed fifteen.

I pay my employee a salary and therefore I do not have to pay overtime. If your definition of a salaried employee is someone who is paid a annual or monthly salary, you are WRONG. For purposes of the wage and hour laws, it does not matter how the employee is paid. What matters is what the employee does. Do not think salary or hourly. Think exempt or non exempt. The vast majority of employees are not exempt from the overtime requirement, and you must pay them overtime at one and one half their hourly wage for hours worked over 40 hours in any given work week. Exempt employees are classified as executive, administrative, and professional. There other very limited exempt classifications such as salespersons (generally only outside salespersons). As a general rule, to be classified as exempt,

the employee must exercise independent judgment (without supervision or direction) with respect to the job or act in a supervisory capacity. Some examples of non exempt employees who are entitled to overtime are: bookkeepers, accountants, and desk clerks who work under the supervision of another person.

If my employee volunteers to work overtime, I don't have to pay them overtime.

WRONG. This is called suffer to work. If an employee begins work early, works through lunch, or stays late and you are aware of this, you must pay overtime. The best way to avoid this is to require the employee to request to work overtime in writing and in advance.

I can avoid all the legal obligations of an employer by using independent contractors.

Using independent contractors does, indeed, avoid most of the obligations of an employer - you do not withhold FICA, FUTA, federal or state income taxes from the payroll check. Wage and hour laws don't apply. You are not responsible for unemployment insurance or workers' compensation insurance. However, just because you say you are using contract labor does not mean that the worker isn't your employee. In fact, in most cases the IRS and the courts will find that the worker is your employee and the consequences are not good. You will owe taxes and penalties, and will pay out of pocket for injuries on the job. Remember, it's not the label you attach to the worker, but rather what the worker does and how much control you exercise over the worker.

If I fire an employee, he/she will not be entitled unemployment benefits.

MAYBE AND MAYBE NOT. If you fire an employee for misconduct or substantial fault, the employee will not be entitled to benefits (misconduct) or will be entitled to limited benefits (substantial fault). These are legal terms that are defined by the Employment Security Commission and the Courts. The burden is on the employer to prove misconduct or substantial fault, i.e. a violation of work rules known and communicated to the employee. Therefore it is necessary not only to document the rules in writing, but also to document the fact that they have been communicated to the employee.

NOTE: You should contact an attorney before attending an unemployment hearing if the employee has alleged that his/her termination was not related to performance but was a pretext for a discriminatory discharge.

A FEW LEGAL BASICS FOR EMPLOYERS.

What is employment at-will?

In the absence of a contractual agreement between an employer and an employee establishing a definite term of employment, the relationship is presumed to be terminable at the will of either party without regard to the quality of performance of either party.

What does this mean?

Employment at will means that you can terminate an employee for a good reason or no reason (remember, however, the employee would be entitled to unemployment benefits), but not an illegal reason such as a discriminatory reason.

Legitimate reasons for termination under the employment at-will doctrine.

No reason (Things just are not working out.)
Reduction in force
Reorganization
Performance

NOTE: Probationary periods do not expand or limit the employment at-will doctrine, but generally are used to limit the opportunity of an employee to begin benefits coverage and entitlement to vacation/sick leave benefits.

Exceptions to Employment at Will.

Contract Employees whose contract specifies that they will be employed and will be paid for a definite period of time or for a specific job or product. The contract will specify how it can be terminated.

NOTE: Do not under any circumstances reduce to writing any agreement you have with the employee concerning pay, promised raises, promised benefits, or expectations for performance. Your employee handbook should deal with these matters. Any written agreement in the form of a letter or memorandum can be construed as an employment contract.

Employee handbooks, unless they specify that the employment is at will, may be viewed as an implied contract of employment.

Assurances such as, "If you do a good job, you'll have a job here forever," may be viewed as an implied contract of employment.

The Public Policy Exception has been carved out by the courts. It provides that while there may be a right to terminate an employment at-will for no reason, or for an arbitrary or irrational reason, there can be no right to terminate such employment

for an unlawful reason or purpose that contravenes public policy. A different interpretation would encourage and sanction lawlessness, which law by its very nature is designed to discourage and prevent. For example, you could not terminate an employee for reporting wage and hour or OSHA violations to the authorities, or testifying truthfully against the employer in a legal proceeding, or for refusing to comply with an order that involves the violation of a law or regulation.

Also of more recent significance is the "concerted activity" protection afforded all employees under the National Labor Relations Act. Employees who complain about matters that relate to wages and conditions of employment may not be retaliated against.

HIRING DECISIONS APPLICATIONS, INTERVIEWS AND REFERENCE CHECKS.

Recruiting

Newspaper ads, notices and other solicitation forms should be reviewed carefully to eliminate wording that can later be relied upon by a disgruntled employee in a wrongful discharge or discrimination case. These materials should be free of language which implies a fixed duration of employment and should also be free of language that could arguably constitute evidence of race, sex, religious, handicap, national origin, or age discrimination.

Interviewing

The interview should not promise "permanent employment" or "employment that will last as long as the job is satisfactorily performed" or "that an employee will be terminated only for just cause." The interviewer should indicate to the applicant that all employees are employed "at will." After the interview, the interviewer should complete written documentation or an evaluation sheet.

Immigration Reform and Control Act

The Immigration Reform and Control Act prohibits the employment of "unauthorized aliens," penalizing employers who hire them and requiring all employers to check whether each of their employees is legally entitled to work. Once hired, the INS Form I-9 must be completed by the employee and the employer.

Employment Application Questions

A number of problem areas have arisen concerning questions which are included in an employment application or asked during the course of job interviews. DO NOT ASK ABOUT:

Age or date of birth - Age is considered to be irrelevant in most hiring decisions and, therefore, date of birth questions are improper. It is permissible to ask an applicant to state his or her age if it is less than 18.

Race, religion, or national origin - Questions should not be asked about race, religion, or national origin either on employment applications or during job interviews. An employer may tell employees about hours of work and ask whether the applicant can be present at that time. The employee may be required to adjust work schedules in some situations to accommodate religious beliefs and practices.

Physical traits or handicaps - The ADA prohibits pre-employment inquiries regarding whether or not an individual has a disability, the health of the individual, the medical history of the individual, or the workers' compensation history of the individual. These questions, along with a medical examination, may occur after an offer of employment has been made.

Education - If a job for which application is being made does not require a particular level of education, it is improper to ask questions about an applicant's educational background. Applicants can be asked about educational background, schools attended, degrees earned, and vocational training when the performance of a job requires a particular level of education.

Sex, marital, or family status - Questions relating to the applicant's sex, marital, or family status should not be asked on an employment application or in a job interview.

Arrest or conviction records - Inquiries concerning whether an applicant has ever been convicted of a crime are usually proper so long as the applicant is given an opportunity to explain the circumstances resulting in the conviction. However, employers may not reject an applicant simply because he or she has a criminal record. You must follow a three step process to determine whether the conviction is relevant to the work applied for.

Garnishment or Bankruptcy - Questions concerning whether an applicant has been the subject of garnishment or bankruptcy proceedings should be eliminated from employment applications and job interviews.

Citizenship - Under the Immigration Reform and Control Act, it is unlawful to discriminate against an applicant based upon citizenship. A proper inquiry is whether the applicant is authorized to work in the United States and whether, if an offer is extended, the applicant can produce evidence of that work authorization and identity.

Drugs - It is permissible to ask an applicant if he or she uses drugs. The application also affords an employer the opportunity to obtain the applicant's agreement to be bound by the employer's drug policy, including a consent to submit to drug testing.

Other Problem Areas – Like decisions based on criminal records, questions and decisions concerning credit rating or credit references have been found to be discriminatory against minorities.

Sample interview questions are attached as **Appendix C**.

Notification of Terms of Employment

At the time of hire, every employer must notify employees, orally or in writing, of the rate of pay, policies on vacation time and pay, sick leave, and comparable matters, and the day and place for payment of wages. N.C. Gen. Stat. '95-25.13.

Negligent Hiring

Employers have been found liable for hiring employees without doing adequate background checks and who later injure other employees or customers. Pay special attention to "gaps" between jobs and the failure of an applicant to answer certain questions. Obtain a consent and release to gather information from former employers, and even if the former employers have a policy against releasing employee information, it can be demonstrated that, at the very least, an effort was made to obtain it. Contact personal references provided by the applicant. Verify prior residences given by an applicant to make sure that one has not been omitted or changed for some reason. In cases involving particularly sensitive jobs, determine whether an applicant has a criminal record. Document what you have done. Comply with the Fair Credit Reporting Act.

DISCIPLINE AND TERMINATION

Employee Performance Reviews

The errors which most often occur in evaluating employees include excessive leniency, the tendency to avoid the ends of a rating scale (like "superior" or "poor"), and the inclination on the part of some managers and supervisors to rate an employee in each area of consideration on the basis of an overall impression rather than on the basis of how the employee has performed in each specific area. Excessive leniency usually results in falsely increasing and then frustrating an employee's expectation and can make an otherwise routine termination hazardous. Employees should have the right to review the evaluation and the opportunity to comment on it. This part of the process can alert an employer to actual or potential problems with an employee. The employee should sign an acknowledgment on the evaluation form that he or she has read the evaluation. The employee will then be unable to claim later that he or she was unaware of the evaluation. It also provides proof of fairness on the part of the employer.

NOTE: Continued salary increases when an employee is not performing well may constitute adverse evidence in a wrongful discharge or discrimination claim later on. Avoid labeling general across-the-board wage increases or cost of living increases

as "merit" increases.

Termination

Before making decision - Review the personnel file to see what documentation exists supporting the termination decision. Investigate any matters about which you are uncertain to make sure that you have the facts straight.

Termination Conference

Rehearse what you will say and how you will handle the situation.

Two employer representatives who have worked with the employee or who are responsible for the employee's job performance should be present.

Review the employment history briefly, commenting on specific problems that have occurred and the attempts on the part of the employer to correct those problems.

Within the first few minutes of the interview, tell the employee that he or she is being terminated.

Don't argue with the employee in an effort to justify your decision. Avoid counseling at this point; it should have already been done.

During the course of a termination conference, the conversation should never include references to sex, age, race, handicap, national origin or religion.

Be organized and prepared for the interview and give the impression that you are confident that the right decision has been made.

Attempt to obtain an employee's agreement that he or she has had problems on the job or that the job performance has not been satisfactory.

Take notes.

Be as courteous to the employee as possible.

Explain fully any benefits that the employee is entitled to receive.

APPENDIX A

Federal Anti-Discrimination Statutes

CIVIL RIGHTS ACT OF 1964 - TITLE VII

Prohibits discrimination against any applicant or employee in compensation, terms, conditions and privileges of employment on account of RACE, COLOR, RELIGION, SEX or NATIONAL ORIGIN, covering any employer with 15 or more employees.

PREGNANCY DISCRIMINATION ACT

Amends Title VII to provide that prohibited discrimination based on gender includes pregnancy, childbirth, or related medical conditions. Pregnant employees must be treated the same as other employees in all aspects of employment.

AGE DISCRIMINATION IN EMPLOYMENT ACT

Prohibits discrimination in the hiring, compensation, termination, terms, conditions, and privileges of employment of individuals 40 years or older, based on age. The Act does not prohibit mandatory retirement for bona fide executives or those in high policy-making positions, who are at least 65 years, and are entitled to a retirement income of at least \$44,000.00 yearly or employees who have reached the age of 70 and are serving under contracts of unlimited tenure at institutions of higher learning. The Act covers all employers engaged in an industry affecting commerce who have 20 or more employees.

AMERICANS WITH DISABILITIES ACT

Prohibits employment discrimination against individuals with disabilities, requiring employers to hire workers with disabilities if, absent the disability, the worker would be otherwise the most qualified applicant for the job. The Act applies to employers with 15 or more employees.

Other Federal Employment Related Statutes and Regulations

FAIR LABOR STANDARDS ACT OF 1938

FLSA establishes the minimum wage and requires that employees be paid overtime at the rate of one and one-half times their regular rate of pay for any hours worked over 40 per week, unless they are exempt employees as defined by the FLSA. Coverage applies to public and private employers engaged in the production of goods for commerce.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

OSHA requires than an employer provide its employees with a work place that is free from recognized hazards likely to cause death or serious injury and to comply with industry

health and safety standards. Coverage applies to any private employer who has employees and is engaged in a business affecting interstate commerce.

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

ERISA was enacted to protect the interests of employees and beneficiaries in employee benefit plans and employee welfare plans applies to any employer engaged in interstate commerce, who establishes or maintains a plan, fund or program that provides retirement income to workers or results in the deferral of income by employees until or past retirement or their termination, welfare benefit plans such as life and health insurance.

IMMIGRATION REFORM AND CONTROL ACT OF 1986

IRCA is an amendment to the Immigration and Nationality Act and prohibits employment of persons not legally entitled to work in the U.S. Employers must verify employment by requiring new hires to produce specific documents that prove their identity and legal status to work in the U.S. Both employer and employee must complete an INS form I-9. Employers who hire employees without documentation are subject to penalties.

FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires employers to provide up to 12 weeks of unpaid leave in a 12 month period, to eligible employees for the birth, adoption or foster care placement of a child, to care for a spouse, child or parent who has a serious health condition and to care for oneself due to a serious health condition. The statute applies to employers who employ more than 50 employees.

EQUAL PAY ACT OF 1963

The EPA requires that men and women in the same establishment receive equal pay for equal work which is defined as ...jobs the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions. This Act is an amendment to the FLSA and covers all employers subject to the FLSA, as well as those employees who are exempt from the FLSA's overtime provisions, such as executive, administrative, professional and outside sales employees.

DRUG-FREE WORKPLACE ACT OF 1998

Applies to federal contractors with contracts of \$25,000 or more to certify that they will maintain a drug-free workplace.

CONSUMER CREDIT PROTECTION ACT

Prohibits an employer from discharging any employee because the employee's earnings have been subject to garnishment for any one indebtedness.

JURY SYSTEM IMPROVEMENT ACT

Protects employees from discrimination for their attendance or scheduled attendance in connection with jury service.

UNITED STATES BANKRUPTCY CODE

Prohibits employers from terminating the employment of, or discriminating against, any individual who has filed for bankruptcy or been adjudicated bankrupt.

EMPLOYEE POLYGRAPH PROTECTION ACT OF 1998

Requires all private employers engaged in or affecting commerce to follow guidelines when requesting, administering or acting on the results of a polygraph test.

WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT

WARN requires employers with 100 or more employees nationwide to provide workers with 60 days advance notice of a plant closing or mass layoff which will cause within a 30 day period an employment loss of 50 employees in the case of a closing, or loss of 1/3 of the work force and at least 50 employees, or will affect 500 or more employees.

OLDER WORKERS BENEFIT PROTECTION ACT

Amends the ADEA and provides for an equal benefit or equal cost principle in employee benefits and imposes strict limits on the use of Releases and Waivers in age discrimination cases.

RETALIATION

Applies to claims made under most federal statutes and regulations. This is a separate claim which arises when an employee files a charge of discrimination and subsequently is terminated.

State Statutes and Regulations

NORTH CAROLINA EQUAL EMPLOYMENT PRACTICES ACT

Provides that it is the public policy of the State of North Carolina to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap. Coverage applies to all employers who regularly employ 15 or more employees.

NORTH CAROLINA HANDICAPPED PERSONS PROTECTION ACT

Prohibits discrimination against any qualified handicapped person with regard to employment. The Act defines qualified handicapped person as one who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation. Coverage applies to any employer with 15 or more full-time employees within the State of North Carolina.

NORTH CAROLINA WAGE AND HOUR ACT

Like its federal counterpart, the FLSA, this Act regulates minimum wages and overtime pay. Additionally, the Act provides that every employer notify its employees orally, or in writing at the time of hiring, of the promised wages and the day and place of payment.

RETALIATORY EMPLOYMENT DISCRIMINATION ACT

REDA makes it unlawful for an employer to discriminate against an employee because the employee has exercised or threatened to exercise his rights under the Workers' Compensation Act, the Wage and Hour Act, OSHA or the Mine, Safety and Health Act.

Other Employment Related State Statutes and Regulations

BLACK LISTING

Makes it unlawful for an employer to black list a discharged employee by preventing or attempting to prevent, orally or in writing, that employee from obtaining employment with any other employer.

PARENTAL LEAVE FOR SCHOOL INVOLVEMENT

Provides that employers shall grant four hours leave per year to any employee so that the employee may attend or otherwise be involved in their child's school.

DISCRIMINATION OF PERSONS WITH SICKLE CELL TRAIT OR HEMOGLOBIN C TRAIT

Prohibits discrimination of employment against any individual who possess either the sickle cell trait or hemoglobin C trait.

CONFIDENTIAL INFORMATION ON COMMUNICABLE DISEASES

Protects information and records, whether publicly or privately maintained, which identify a person who has the AIDS virus infection, or who may have a communicable disease or condition.

HIV INFECTION

Makes it unlawful to discriminate against any person having the HIV infection in determining suitability of continued employment unless the continued employment would pose a significant risk to the health of the employee, his co-workers or the public.

MILITARY PERSONNEL

Any member of the North Carolina National Guard who is called to active duty is entitled to reinstatement upon the termination of his duty.

JUROR PROTECTION

Makes is unlawful for an employer to discharge or demote an employee because he has been called for jury duty or is serving as a grand or petit juror.

RIGHT TO WORK

Membership or non-membership in a labor organization may not be a condition of employment in the State of North Carolina.

Miscellaneous Claims in the Employment Context Arising Out of Alleged Wrongful Discharge

INTENTIONAL/NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

An employee must show that there was extreme and outrageous conduct which occurred in the workplace which is intended to and does in fact cause severe emotional distress.

DEFAMATION

Employers who are not careful to preserve confidentiality face potential liability for defamation, a tort that is relatively easy to prove. The most likely way for an employer to incur liability for defamation is through answering reference checks. To avoid this problem, many employers have adopted a neutral reference policy, meaning they provide only information such as dates of employment and positions held.

MALICIOUS PROSECUTION

In discharging employees involved in theft, employers are often faced with the decision of whether to initiate criminal proceedings. If the employer decides to initiate criminal proceedings, the employer is exposed to some risk, no matter how small, that it may someday be liable for the tort of malicious prosecution. Potential liability for malicious prosecution should make employers carefully consider the wisdom of initiating criminal proceedings and should only initiate criminal proceedings when they are confident of their investigatory process.

ASSAULT/BATTERY/TRESPASS/INVASION OF PRIVACY

These claims arise when an overzealous employer goes beyond what is reasonably necessary to its legitimate business interests in the investigation of an employee. As a general rule, an employer should always use the least invasive investigatory technique and hold its every action up to the test of reasonableness.

APPENDIX B

Sample Employee Handbook Provisions

ACKNOWLEDGMENT

I have received my copy of the employee handbook of (Name of Company) (hereinafter The Company) and understand that it is my responsibility to read it carefully so that I clearly understand the information that is included. Should I have any questions concerning the employee handbook, I agree to contact (Name of Manager or Managers) (hereinafter the Managers). Any verbal or even written assurances which are in conflict with or inconsistent with the information provided in the handbook are not binding or are superseded by the handbook.

I understand that this handbook is not inclusive. Furthermore, The Company has the right to change policies and procedures at any time with or without notice.

I understand that my employment with The Company is an at will employment. That is, my continued employment is not guaranteed and can be terminated by either party for any reason at any time. The employee handbook is not to be considered a contract of employment.

Date: _____

Name: _____

EQUAL OPPORTUNITY STATEMENT

We are an equal opportunity employer. Qualifications for employment and promotion are based solely upon your ability to perform the job and also upon your dependability and reliability once hired. Race, color, religion, sex, national origin, and age are not considered in hiring, employment benefits, or advancement opportunities. The only factors that will affect the hiring decisions are bona fide occupational qualifications.

MANAGEMENT RIGHTS

The Company retains the exclusive right to hire, direct and schedule the working force; to plan, direct and control all operations; to discontinue, reorganize or combine any department or branch of operations; to hire, terminate and lay off employees; to announce rules and regulations; and in all respects, carry out the ordinary and customary functions of management. It is The Company's intent to grow and prosper, but it is recognized that all policies, benefits, procedures and/or operating methods are subject to change or discontinuation at the option of management.

HARASSMENT/ANTI-DISCRIMINATION POLICY

A. General Policy and Guidelines

This statement of corporate policy has been developed to ensure that all employees are able to work in an environment free from any kind of discrimination or harassment, including sexual harassment.

It has been a long-standing policy of The Company that all of its employees should be able to work in an environment free from all forms of harassment or discrimination, including sexual harassment.

B. Harassment in General

Comments or conduct directed at an employee's age, race, ethnic background or disability which have the purpose or the effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile work environment will not be tolerated.

C. Sexual Harassment

As part of our continuing affirmative action efforts and pursuant to the guidelines of the Equal Employment Opportunity Commission (EEOC) on sexual harassment, we reaffirm its long-standing policy. Accordingly, no employee in The Company shall engage in sexual activity or sexual harassment of any other employee either in The Company or outside of The Company, including travel for business purposes.

The Company has adopted the EEOC's definition of sexual harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature are considered to be sexual harassment when:

- submission to such conduct is made either directly or indirectly a term or condition of employment;
- submission to or rejection of such conduct is used as the basis for employment decisions which affect an employee;

Or

- such conduct has the purpose or the effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile work environment.

The following are some examples of conduct that may be considered sexual harassment and, therefore, are prohibited by this policy:

- repeated, unwelcome and offensive sexual flirtations, advances or propositions;

- continued or repeated verbal abuse of a sexual nature;
- continued or repeated graphic verbal commentaries about a person's body;
- display of sexually suggestive objects or pictures;
- continued or repeated suggestive sexual comments or remarks;
- continued or repeated insults, humor or jokes about a person's sex or traits relating to sex;
- continued or repeated touching, pinching or brushing a person's body.

Sexual harassment does not refer to occasional socially acceptable compliments. It refers to behavior that is unwelcome, personally offensive or sufficiently severe, or repeated that it alters the conditions of employment and creates an abusive working environment.

D. Administration

Employees who feel that they have been discriminated against or who have been subject to harassment, including sexual harassment (or any employee with direct knowledge of such incidents) must immediately report such incidents to _____. If you report in writing, please mark your envelope personal and confidential.

All information will be held in strict confidence and will be disclosed only on a need-to-know basis if necessary for the investigation and resolution of the matter. Allegations of sexual harassment made in good faith will not be subject to disciplinary action, whether or not they can be substantiated.

In determining whether the alleged conduct constitutes harassment, including sexual harassment, the totality of the circumstances, the nature of the harassment and the context in which the alleged incident or incidents occurred will be investigated promptly and thoroughly. Any employee found to be in violation of this policy will be subject to disciplinary action which may include reprimand, suspension or dismissal.

DISCIPLINARY POLICY

The Company reserves the right to use a system of warnings or progressive discipline when and if The Company determines that it would be helpful and appropriate under the circumstances. The Company may follow one or more of the steps discussed below if it chooses to do so. Employees should not expect a warning prior to termination in all cases.

The following are only a few examples of the reasons for employee discipline which includes termination. This list is for illustrative purposes only to provide employees with some examples and it is not inclusive.

A. Prohibited Conduct

1. Habitual tardiness or absenteeism (more than five unexcused absences or tardiness in one year);
2. Insubordination or refusal to carry out directions given by a superior;
3. Incompetence in work standards and performances;

4. Unauthorized use of Company property;
5. Willful violation of safety rules;
6. Theft, i.e., taking anything from The Company premises without permission from the Managers;
7. Damage to property of The Company or of a co-employee;
8. Fighting or other acts of violence on The Company premises;
9. Possession of, or use of, materials capable of intoxication during scheduled work periods;
10. Reporting for work while under the influence of alcohol or drugs, or when physical and/or mental capacities are impaired;
11. Falsifying or causing another to falsify time cards, records, reports or other documents of any kind;
12. Possession of a firearm or weapon on the premises at any time;
13. Violation of The Company's Sexual Harassment Policy;
14. Violation of the Company's Code of Conduct/Ethics Policy;
15. Violation of the Company's Confidentiality Policy;
16. Use of profane language.

B. Attendance

In order to properly maintain a reliable work force and productivity, the following policy on absenteeism will be enforced:

1. Any employee failing to call in prior to starting time more than ___ times per month will be subject to disciplinary action and/or termination (no call/no show).
2. Any employee not reporting to work and failing to call in after ___ days will automatically be subject to termination.
3. When calling in to report that you will be absent, you should report to your _____ or you must leave a message and a number where you can be reached.

C. Tardiness

In order to schedule work for the day to maintain productivity, the following policy on tardiness will be enforced:

1. Any employee tardy for work more than ___ times in any given month will be subject to disciplinary action and/or termination.
2. Circumstances beyond your control will be considered if you are tardy.
3. When calling in to report that you will be tardy, you should report to _____, or you must leave a message and a number where you can be reached.

In addition to the above-listed work rules, there are other rules and product/quality standards established by The Company and common understanding which shall continue to be enforced. It is our intention to make every effort to avoid unwarranted disciplinary actions or discharges. It is the goal of The Company to enforce rules and/or performance standards fairly, equitably and consistently. Failure to meet The Company's rules/standards may result in progressive problem correction steps or immediate termination according to

the frequency, seriousness and circumstances of the situation.

D. Disciplinary Procedures

The Company may implement the following progressive disciplinary procedures in some circumstances.

1. Step One: If an employee's performance is unsatisfactory and supervisory counseling does not correct the problem, the initial oral and written warning steps of the progressive discipline procedure should be followed.
2. Step Two: If the problem has not been corrected after the oral and written warning, an employee whose performance is unsatisfactory will have such documented by the supervisor. A Notice of Written warning will be signed by the employee and placed in the employee's personnel file. The Employee will then be placed on a three-month probationary period during which time regular coaching sessions and reviews of performance will be held by the supervisor.
3. Step Three: An employee whose performance fails to improve satisfactorily by the end of the three month probationary period will be subject to immediate termination.
4. Step Four: Some performance problems, if serious, may also result in disciplinary action, which may be imposed concurrently. Examples of this include, but are not limited to, such attitude problems as failure to follow instructions or failure to take corrective action upon supervisory criticism.

Depending upon the nature and severity of the violation, or combination of violations, the normal problem correction procedure steps may be accelerated and a more extensive corrective action step imposed, up to and including discharge.

EMPLOYEE OBLIGATIONS

A. Accidents and Injuries

The Company is very safety oriented and is proud of the insured safety rating. Even under the most ideal situations an accident may occur. If you should get injured on the job you must report it immediately to one of the Managers who will fill out an accident report and arrange, if necessary, for medical treatment. It is very important that you report any injury to one of the Managers immediately as any delay may make it more difficult for the insurance company to process your claim. The Company cannot stress enough how important it is to follow these procedures set forth by the insurance company.

B. Personnel Records

It is the employee's responsibility for keeping The Company up to date on changes of name, address, telephone number, marital status, number of dependents, insurance beneficiary and person to contact in case of emergency. Note that the Company may not be used as a home address or personal telephone number.

C. Personal Phone Calls (optional)

Personal phone calls are to be limited. An excessive amount of emergency calls will indicate that the employee has a problem that should be brought to the attention of _____.

D. Personal Appearance and Conduct (optional)

Employees are expected to present a neat and clean appearance at all times. Extremes in grooming or dress will not be allowed since personal appearance reflects the image of the Company and influence clients, family and visitors alike.

E. Best Efforts (optional)

Employees are expected to devote their entire work time and best efforts to the performance of their job tasks. They are expected to exhibit a positive and supportive attitude towards the organization and the directions given them, in addition to being ready, willing, and able to work during all times they are scheduled for duty.

F. Inclement Weather (optional)

In the case of inclement weather, employees are expected to report to work if possible. An employee who cannot report to work should notify _____ as soon as possible and, in all cases, prior to 8:00 a.m. Absences due to inclement weather are considered unpaid excused absences, but may be counted as vacation leave. In the event that an employee does not have sufficient vacation leave against which to count the excused absence, the employee's pay will be docked for the absence but such absence will not be counted as unexcused.

Any questions regarding any policy, rule or regulation contained in this employee handbook should be directed to _____.

OTHER RECOMMENDED PROVISIONS

Social Networking Policy, Confidentiality/Ethics Policy, Weapons Policy, Violence in the Workplace Policy, Leave of Absence Policy, Substance Abuse Policy and Consent for Drug Testing.

NOTE: The above provisions are not exhaustive and from time to time may need to be modified in the event that there are changes in the law. You should always consult with your attorney before distributing an employee handbook.

APPENDIX C

Selected Interview Questions

- What were the circumstances concerning your leaving?
- What do you expect to get from this position?
- What did you like about your last job? Dislike?
- Why do you think you would be a good employee for the company?
- What do you expect from the company that hires you?
- What is your greatest accomplishment?
- What is your greatest failure? What did you learn from it?
- What do you plan to be doing five years from now?
- How does this job relate to your plans?
- What would you do if your supervisor made a decision with which you strongly disagreed?
- If I called your last/present boss, what would they tell me about your work?