



802 Company Policies 101

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Purpose of Company Policies

- Communicate legally required policies (EEO, sexual harassment, family and med leave, etc.)
- Communicate expectations, rules and other requirements to employees
- Communicate benefits
- Uniform and consistent treatment of employees
 - Reduce risk of disparate treatment
- Provide employees with a reflection of employer's philosophy
- Reduce liability

Statutory Issues

- Federal legislation that affects employer policies and procedures
 - The Age Discrimination in Employment Act
 - Title VII of the Civil Rights Act
 - The Employee Polygraph Protection Act
 - The Employee Retirement Income Security Act
 - The Equal Pay Act
 - The Fair Labor Standards Act
 - The Immigration Reform and Control Act
 - The National Labor Relations Act
 - The Occupational Safety and Health Act
 - The Worker Adjustment and Retraining Notification Act
 - The Family and Medical Leave Act
 - The Fair Credit Reporting Act

Statutory Issues (cont'd)

- Additional legislative requirements for employers with government contracts or who receive governmental assistance
 - The Drug-Free Workplace Act
 - The Vocational Rehabilitation Act
 - The Vietnam Era Veterans' Readjustment Assistance Act
 - Executive Order No. 11246 (aff. action reqts.)

Statutory Issues (cont'd)

- State laws and regulations; local ordinances
 - Required parental leave and/or family leave time
 - Different standards for employment discrimination claims
 - Wage/hour requirements in excess of federal requirements (overtime, work schedules, meal and rest periods)

Communication of Policies

- Employee handbook
 - Favored by most employers
- Stand-alone written policies
- SOPs
- Email
- Training (formal or informal)
- Unwritten or informal policies

Effective Dissemination of Policies

- Mere existence of policy may not be enough to protect employer from liability
- Effectively disseminate policies
 - Handbooks
 - Other methods of publication
- Written acknowledgement
- Jackson v. Cintas, 391 F. Supp. 2d 1075 (M.D. Ala. 2005)

Define the Audience

- Types of policies depend on:
 - Size of workforce
 - Organization and geographical distribution of operations
 - Job classifications of employees
 - Labor union

General Drafting Considerations

- Clarity of language
- Compliance with legal requirements
- Consistency with actual practice
 - If policies are routinely ignored, employees may have reasonable expectation that they will continue to be ignored.
- Avoid conflict with at-will relationship

General Roadmap

- Introduction
- Equal Employment Opportunity
- Hours-of-work
- Benefits
- Work safety and/or conduct rules
- Acknowledgement/receipt form
- Optional policies

General Roadmap (cont'd)

- Additional topics for managers/supervisors:
 - Hiring policies
 - Overtime pay
 - Reporting procedures
 - Guidelines for evaluating, counseling and disciplining employees
 - Instructions regarding employee complaints

Sample: Introductory Section

As a new employee, your first 90 days of continuous service is considered as an introductory period. The purpose of this introductory period is to provide the new employee with a learning period and to give the Company an opportunity to become familiar with the employee in order to determine whether the employee is a "good match" with the Company.

During the introductory period, supervisors normally conduct written performance evaluations and private conferences after 30, 60, and 90 days of continuous service by the new employee. However, these reviews may be more or less frequent, at management's discretion. These reviews rate ability to perform the job, cooperativeness, attitude, dependability, and other factors which make a good and valuable employee.

Upon the successful completion of the introductory period, the starting date for seniority purposes will be the first day of employment with the Company.

In addition, employees who are transferred into a new department will have an introductory period in that department for 90 days. Each employee who is on transfer will be evaluated by his/her supervisor, according to the description of the review process.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Company Policies as Contracts

- Some courts have found policies and handbooks to be “employment contracts”

Effect of Disclaimer

- Some courts have held that policies/handbooks containing language disclaiming their contractual nature is a complete defense to employee’s breach of contract claim

Disclaimer / Employment-at-Will

- This is to acknowledge that I have received a copy of ABC Company's Employee Handbook. I understand that the Handbook is not intended to be and does not constitute an employment contract. Instead, I understand that, because business conditions change frequently, this handbook is general statement of company guidelines. Further, I understand that ABC may modify any of the provisions of the handbook at any time.
- I have entered into my employment relationship with ABC voluntarily. I understand that I am employed on an at-will basis. Nothing in this handbook alters my status as an at-will employee. As an at-will employee, I understand that I am not employed for any specified length of time. I understand that this means that either the Company or I may terminate my employment at any time, with or without cause.
- I understand that no representative of ABC, other than its President, has any authority to make any agreement that changes my status as an at-will employee, to offer me employment for any specified period of time, or to offer me any particular terms or conditions of employment. I also understand that any agreement changing my at-will employee status must be in writing and signed by the President.
- Employee Signature: _____

Sample Policy courtesy of Costangy Brooks & Smith LLC

Right to Modify

I have read and understand that this handbook does not create a contract of employment, and I agree to read the employee handbook that I have received. *Further, by my continued employment, I acknowledge acceptance of employment on the terms and conditions contained in this handbook and expressly consent to those terms even though it may result in a reduction of benefits from prior handbooks, policies, or practices.*

Employee Signature: _____

Sample Policy courtesy of Costangy Brooks & Smith LLC

Equal Employment Opportunity Policy

This Company is an Equal Employment Opportunity Employer and makes all employment decisions without regard to race, color, religion, sex, gender, national origin, citizenship, age, or disability. Opportunity for employment with this Company depends solely on qualification and performance.

The Company's policy of equal employment opportunity and nondiscrimination extends to recruitment, employment, advancement and promotion, compensation and benefits administration, training and development, and other personnel actions.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Open Door Policy

Misunderstandings or conflicts can arise in any organization and should be resolved before serious problems develop. Most incidents will resolve themselves naturally. Should a situation persist that you believe is detrimental to you or to the Company, however, the Company encourages you to feel free to discuss it with your manager as soon as possible. If the problem is still not resolved or is awkward or sensitive circumstances prevent you from discussing your problems with your supervisor or immediate manager, you may go to his or her manager or the human resources department.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Harassment Policy

- Not just sexual harassment
- Define harassment
- Clear reporting structure
- No promises of confidentiality
- Address supervisory harassment
- Assurances of no retaliation
- Follow up from complaining employee

Sample Harassment Policy

It is ABC Company's policy that all employees shall have the opportunity to work in an atmosphere and environment free from any form of harassment or retaliation based on race, color, religion, gender, sex, national origin, age, or disability.

Any employee who feels that he or she has suffered any form of harassment or retaliation should immediately report the alleged conduct to his or her supervisor or manager so that a confidential investigation of the complaint can be undertaken. Alternatively, the employee may report the alleged conduct to the Human Resources Manager or Plant Manager. Any employee who wishes to discuss the matter with a manager of the same sex will have someone provided to them.

While verbal reports are anticipated, an employee reporting these types of behaviors will be asked to make a written report providing as much detail as possible concerning who has engaged in the behavior, when, where, and exactly what was done or said.

Any individual found by the Company to have harassed another employee will be subject to appropriate disciplinary action ranging from a written warning in his or her file up to and including termination.

Employee Signature: _____

Sample Policy courtesy of Costangy Brooks & Smith LLC

Conduct Rules

- Purposes
 - Consistence
 - Standard-setting
 - Avoid unreasonable expectations
 - Assist in defense of unemployment claims
 - Preserve flexibility

Disciplinary Policies

In order for all of us to function efficiently as a team, we must conduct ourselves according to basic rules and good conduct. It would be impossible to cover every possible situation in work guidelines. If you ever have a question regarding rules or procedures that apply to you, please ask your supervisor or anyone in management. It will be the supervisor's responsibility to take disciplinary action against an employee. Our rules are designed to help us work together; they are really a matter of common sense and courtesy toward others. Of course, the Supervisor will always consider the overall work record of the employee and the circumstances of each particular situation.

From a practical perspective, generally, disciplinary matters deal with four (4) major areas: absenteeism and tardiness, work performance, misconduct, and safety. As you well know, there are certain types of misconduct that are simply intolerable in the work area. The following are examples of conduct that may result in immediate termination:

* * *

Misconduct of a lesser degree, unless the overall work record of the employee warrants otherwise, will normally result in progressive discipline with some type of warning, either written or verbal, provided prior to discharge. With regard to administering discipline, supervisors will always take into account the overall work record of an employee, the circumstances of a particular situation, and the past disciplinary record of the employee.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Conduct Rules (cont'd)

- Attendance
- Misconduct
- Progressive Discipline
- Personal Appearance/Dress Code
 - Discrimination issues
 - First amendment issues for gov't employers
- Safety
- Drug & Alcohol
- Smoking

Attendance/Punctuality

ABC Company expects employees to be at work at the start of their shift each day they are scheduled to work. Employees are considered tardy if they have not clocked in by the start of their shift, or if they have not called in within thirty (30) minutes prior to the start of their shift. Failure to call in during your shift may result in discharge. Discipline for tardiness will follow the progressive discipline policy.

It is your obligation to notify your supervisor, as far as possible in advance of your scheduled workday, whenever you will be late or absent, to state the reason for such lateness or absence, and to advise when you expect to return to work. If your supervisor is not available when you call, you must leave a message. The message should include a telephone number where you can be reached. If you are physically unable to make a personal call, you must have someone else call for you. Obviously, following these steps does not excuse the absence, but failure to comply with them can result in a violation of the attendance standard.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Drug/Alcohol Policy

The procurement, possession, sale, distribution, use or being under the influence of alcohol, drugs/controlled substances is strictly prohibited while on the premises or facilities of the Company. The only exception is the taking of prescribed drugs under the direction of a licensed physician. Violators shall be subject to immediate disciplinary action, including termination.

A. All applicants for employment will be required to submit to a pre-employment drug screen. When an employee is involved in a workplace accident, or when a supervisor has a reasonable suspicion of drug use based on the employee's job performance, absenteeism, behavior and/or appearance, the employee may be tested. Employees may also be selected for random drug screening

B. Refusal to undergo such testing and/or evaluation shall be grounds for disciplinary action including discharge.

C. Employees who have an alcohol or drug problem are encouraged to seek help through a rehabilitation program. Requests for treatment and/or participation in a rehabilitation program prior to being directed by the Company to take a drug test will not jeopardize an employee's job security and/or promotional opportunity.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Conduct Rules (cont'd)

- Solicitation
- Company bulletin board
- Use of telephones
- Computer and email usage
- Visitors in workplace
- Workplace monitoring
- Workplace violence protection

Statement on Unions

ABC Company is a union-free business. We appreciate the support from our employees and our customers and hereby reaffirm our commitment to treat employees with respect and dignity, as well as to provide an open line of communications to all levels of management. We believe any employee concerns can be best addressed through frank discussion in an atmosphere of mutual respect and cooperation, without the involvement of outsiders. We value employees as individuals and we want to be responsive to their concerns and issues.

We believe that unions do not serve any useful purpose as their desire is to obtain union dues, fees, fines and assessments from employees through creating a perception that employees need representation. Unions typically do this by raising issues in the workplace, which they purport to solve. Actually, unions have no such power. We believe problems are best solved by us working together. Under the law, the union has no power to make the Company do anything it does not feel is in its best interests. Rest assured, ABC is committed to providing its employees with job security and a bright future with our Company. Unions do not offer us any help in achieving this goal.

If anyone ever asks you to sign a union card or participate in any union activity, we want you to know that you have the legal right to refuse such attempts and to discuss any questions you may have with someone in management to be sure that you have the facts on the subject.

Sample Policy courtesy of Costangy Brooks & Smith LLC

SOLICITATION AND DISTRIBUTION

Employees are not permitted to solicit for any purpose during their working time. Examples of solicitation are:

- membership or subscription for any public or private enterprise
- gifts
- purchase of products
- office pools

This solicitation rule applies only to working time. The rule does not apply to non-working time, such as lunch hour breaks, coffee breaks, and before or after work.

You may not pass out any petition or notices or other printed material among employees during working time. Also, you may not distribute any literature, pamphlets or other material in a work area, on work time or non-work time. You may, however, distribute literature in non-working areas such as lunchrooms, rest rooms, and coffee break areas. Persons not employed by the Company are forbidden from coming onto the property of the Company without permission to solicit or distribute any material. If you know of such an activity, you must report it to your supervisor immediately.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Bulletin Board

Important information will be posted on the official Company bulletin boards. These bulletin boards are for Company business only. It is a violation of Company rules for anyone to post any notices there or to deface or remove any notice posted on those bulletin boards. Such violation is subject to disciplinary measures under Company rules. Notices can be posted by employees on the bulletin board located at _____ . However, employees are required to check with Human Resources regarding posting periods and to ensure that postings do not violate ABC's harassment policy.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Access to Property Off Duty

For employee safety, except during a reasonable period of time before and after work hours, an employee is not to remain at or return to the building for any purpose unless the employee is either on duty or scheduled for work. Exceptions will be allowed for the purpose of attending to Company business, such as picking up paychecks or submitting insurance forms, etc.

Non-employees are not allowed on Company property unless on official Company business. Trespassing is prohibited.

These rules will be strictly enforced. Violations will be considered grounds for disciplinary action, up to and including discharge.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Conduct Rules (cont'd)

- Union organizing rights
- Off-duty conduct
 - moonlighting

Anti-Nepotism

Employment of persons related by blood or marriage is prohibited where one of the employees will be in a position to exert influence over any condition of employment of the other employee or where the positions of the two related employees might create an appearance of impropriety. However, if the desired positions of the relatives are totally separate, the hiring of relatives shall be at the discretion of the Company. Current employees who subsequently become related are also subject to the above policy.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Dating Policy

It is the policy of this Company that management employees will not date or socialize with subordinate. This policy is to protect the Company from allegations of favoritism or harassment.

A manager who dates a subordinate will be immediately terminated.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Benefits and Leave Policies

- Family and Medical Leave Act
- Family and medical leave for smaller employers
- Personal leaves of absence
- Short-term and long-term disability

Benefits and Leave Policies (cont'd)

- Military leave
- Vacation and paid time off
- Holidays
- Jury duty

FMLA Policy

The Family and Medical Leave Act (FMLA) provides a means for employees to balance their work and family responsibilities by taking unpaid leave for certain reasons.

In order to be "eligible" for FMLA leave, an employee must have worked at least 12 months (which do not have to be consecutive) for Primus; and, must have worked at least 1,250 hours during the 12 months immediately preceding the date of commencement of FMLA leave.

The FMLA provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12 months for the following reasons:

1. Birth and care of the employee's child or placement for adoption or foster care of a child with the employee;
2. To care for an immediate family member (spouse, child, parent) who has a serious health condition; or
3. For the employee's own serious health condition.

Under FMLA, the company must maintain group health benefits that you were receiving at the time leave began during periods of FMLA leave at the same level and in the same manner as if you had continued to work. In some circumstances, you may be required to make a premium payment. Under most circumstances, you may elect or Primus may require the use of any accrued paid leave (vacation, sick, personal, etc.) for periods of unpaid FMLA leave.

FMLA Policy (cont'd)

FMLA leave may be taken in blocks of time less than the full 12 weeks on an intermittent or reduced leave basis.

Taking intermittent leave for the placement for adoption, or foster care of a child is subject to approval by management.

Intermittent leave taken for the birth and care of a child is also subject to the management's approval except for leave relating to the pregnancy that would be leave for a serious health condition.

When leave is foreseeable, you must provide management with at least 30 days notice of the need for leave or as much notice as is practicable. If the leave is not foreseeable, then notice must be given as soon as practicable. Primus may require medical certification of a serious health condition from the your health care provider, and may require periodic reports during the period of leave of the your status and intent to return to work, as well as "fitness-for-duty" certification upon return to work in appropriate situations.

When the you return from FMLA leave, you is entitled to be restored to the same or an equivalent job. An equivalent job is one with equivalent pay, benefits, responsibilities, etc. You are not entitled to accrue benefits during periods of unpaid FMLA leave, but you must be returned to employment with the same benefits at the same levels as existed when leave commenced.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Benefits and Leave Policies (cont'd)

- Miscellaneous Employee Benefits
 - 401(k)
 - Health insurance
 - COBRA
 - Life insurance
 - Workers compensation insurance

Jury Duty

The company supports jury duty as an important community service. If you receive a jury summons notification, contact your direct manager and the Human Resource Department immediately

If you elect to serve on the jury, you will be reimbursed for the time actually spent on the jury or time that you were required to be at the courthouse. Reimbursement will be an amounts equal to your straight time hourly pay up to 8 hours minus your actual Jury duty pay for that day.

Additionally, if you are subpoenaed as a witness in a civil or criminal proceeding in which you are not a party to the action, you will be paid your regular pay, minus your actual witness fee.

However, you will not be paid witness service pay for any absence related to any proceeding in which you are a party to the action, unless otherwise required by law.

Sample Policy courtesy of Costangy Brooks & Smith LLC

Working Conditions and Hours

- Paydays
- Timekeeping
- Employee classifications
- Overtime
- Rest and meal periods
- Emergency closings

Disclosures and Employment Records

- Background screening and reference checks
- Probationary period
- Access to personnel files
- Performance evaluations
- Records retention

Protection of Company Property and Information

- Nondisclosure policy
- Confidentiality agreements
- Non-competition agreements
- Access to information
- Media relations
- Use of company property
- Return of company property

Business Ethics Policies

- Conflicts of Interest
 - Personal financial interests
 - Outside employment
- Whistle-blowing
- Gratuities
- Business entertainment
- Employment of relatives

Business Ethics Policies (cont'd)

- Record retention and destruction
- Inside information
 - Insider trading prohibition
 - Trading policy