

EMPLOYMENT HANDBOOKS
AND
LIMITING LIABILITY IN THE ON-LINE WORKPLACE

An employment handbook is an effective means for an employer to limit her liability in the event of workplace-related litigation. Providing employees with a handbook that explains company policy can be used as an affirmative defense in lawsuits ranging from wage and hour issues to sexual harassment and age discrimination.

Such a handbook should clearly and simply state a company's policies and effective compliance with the respective laws concerning these issues, the responsibilities and duties an employee owes, and the rights and expectations of the employee in the workplace.

Handbooks have developed an even greater importance with the advent of smart phones and social media. In considering the implementation of an employment handbook, an employer should be acutely aware of her right to restrict and monitor electronic communications in the workplace including, emails and text/picture messages.

Considering the ubiquitous computer and cellular telephone use in the workplace, personal and professional lines can be blurred and difficult to gauge for employers. Legal issues are compounded when company property, such as a computer or cell phone, is used for personal online activities or text/picture messages. Recently the Supreme Court, in *City of Ontario, California v. Quon*, 130 S.Ct. 2366 (2010), while not making a hard rule concerning privacy and an employee's use of company property for personal use, ruled that the presence of a signed "acceptable use policy" lawfully allowed an employer to monitor communications on such company devices.

So what does this mean for employers? Do employees have any expectation of privacy with electronic communications in the workplace? Can an employer enforce restrictions against personal emails in the workplace? These questions are not easily answered but the prudent course of action for an employer is to have a plain and well written, "use policy" that her employees should read and sign. Such a policy should state what constitutes proper use of company equipment, underscore an employer's right to monitor communications on company equipment, and quell speculation as to whether an employee may use such equipment for personal use.

Such a policy, among many other important considerations for a properly drafted employment handbook, will limit an employer's liability by providing him with a black and white, signed, and understood statement of policy. This helps limit litigation and, equally importantly, control an employee's expectations while at work.

If you would like to learn more about this or other important U.S. employment topics please do not hesitate to contact us by email or telephone. We remain at your entire disposal to answer any questions you may have and to assist you with your employment handbook. We will work with you to find solutions tailored to your needs.