

# **Writing the Employee Handbook in Ontario**

## **Introduction**

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## **WHEN DO YOU NEED AN EMPLOYEE HANDBOOK?**

The employment relationship is often described as a contractual relationship between parties for employment services. There is more to the employment relationship than the terms of contracts between an employer and an employee, but it is a relationship that is built on the development of a set of expectations and interests that develop over time and in relationship to the nature and context of the work being performed.

Given the vast array of different kinds of work and workplaces that exist in our culture, it is difficult, if not impossible, to make any meaningful generalizations about the nature of employment relationships. That is not to say, of course, that it is impossible to identify the legal aspects of employment relationships; but it is to remind us that merely identifying the state of the law with respect to the nature and extent of employers' and employee' obligations and rights in the workplace cannot ever fully capture the dynamic nature of employment relationship.

Good work environments are the result of a shared understanding of employers and employees respective rights and obligations. Workplaces in which employers and employees understand and live up to their respective obligations are frequently more constructive and productive.

It is not unusual for many employers to assume that employees know and understand what is expected of them, even when these expectations are not communicated to them in

any direct manner. In these circumstances, employers believe that the existence of an employment contract is sufficient to define the nature of the parties' obligations. The difficulty with this is that employment contracts are most often created at the commencement of the employment relationship, and tend to have a limited scope outlining matters such as salary, position, hours of work, benefits as well as employer and employee rights and responsibilities on the termination of the employment relationship. As the employment relationship develops and changes occur in the workplace, the terms of an initial employment contract may no longer apply. This may create confusion if a dispute arises between the parties as to the terms and conditions of employment, which may then result in a breakdown of the employment relationship.

One way to provide employees with a clear understanding of what is expected of them is through the creation of written policies and procedures contained in an employment handbook. An employment handbook provides employers with a mechanism for communicating their expectations, and for setting codes of conduct in the workplace. This is important in small, medium and large workplaces as it provides employers with a means of communicating their expectations to employees directly and clearly, and provides employees with clear expectations of what to expect from the employer in the workplace.

An employee handbook gives employers an efficient and effective means of communicating with employee's about the nature of their expectations and, if used properly, is a means of receiving employees input and feedback on the creation and

implementing of policies and procedure in the workplace. Obviously, in some workplaces, an employee handbook may be unnecessary. When there are a small number of employees and the employer/owner is present in the workplace and able to convey information to the employees in a simple and direct manner, there may be no need for an employee handbook. However, even in small workplaces where communication is not a problem, it may be useful to have written policies for employees to ensure that they are given information on how the workplace functions and their roles in ensuring that it continues to do so in an appropriate manner.

It goes without saying that in larger workplaces, or workplaces where it is difficult to communicate directly with the employees, it is extremely useful for employers to have an employee handbook. What a handbook does is provide an efficient mechanism for communicating expectations regarding the culture in the workplace and the conduct that is appropriate to fostering this culture. The benefit of having such a handbook is that all parties in the employment relationship have a shared understanding of what is expect of them, and a means of ensuring that the climate remains positive and productive.

Thus, the simple answer to the question about when employers need an employee handbook is that the handbooks are useful in those circumstances where it is important to ensure that all employees receive information regarding the nature of the culture of the workplace and their role in maintaining and sustaining a healthy, productive and happy work environment.

# ADVANTAGES AND DISADVANTAGES OF AN EMPLOYEE

## HANDBOOK

### 1. *Advantages*

Some advantages of an employee handbook are as follows:

- They provide an opportunity for employers to identify and specify their expectations of employees;
- They create a mechanism for clearly communicating those expectations to employees;
- They create an opportunity for employees to examine the nature of the employment relationship and to ensure that they are complying with their legal obligations;
- They create opportunities to examine conduct in the workplace and to create policies that lead to a healthy, more productive work environment;
- They ensure that all employees are held to the same standards;
- They provide the means of communicating with employees and receiving feedback on employees' satisfaction on the existing environment;
- They provide clarity and fair and transparent means of dealing with disputes; and
- They can assist in reducing legal liability through the consistent application of workplace policies.

## **2. Disadvantages**

Although it is clear that there are many advantages to be derived from the use of effective, well-developed employee handbooks, there are also potential disadvantages to the use of such handbooks. These are as follows:

- To be effective the employee handbook must be updated on a regular basis, which requires the allocation of resources;
- To be effective the handbook must be clearly drafted and must reflect the particular circumstances of the workplace for which it has been created. This may be expensive for an employer as it requires time and energy to ensure that the contents of the handbook match the actual expectations and realities that exist in the workplace;
- The contents of the employee handbook must be clearly communicated to the employees, which may require regular education sessions regarding both the contents of and any changes to the handbook;
- The employer is required to apply the handbook consistently, and employers will be held to the standards that are created in the handbook;
- Legal liability for the employer may increase if the handbook is vague, badly drafted, poorly communicated to or inconsistently applied to employees.

## **CONTRACT OF EMPLOYMENT VS. EMPLOYEE HANDBOOK**

As has been outlined above, there is a distinction between a contract of employment and an employee handbook. This distinction has both a legal and a practical effect. Legally, the parties to an employment situation are bound by the terms of the employment contract between them, and will be held to the terms and conditions of employment outlined in the contract. Employment contracts may be written or verbal, and frequently are restricted to matters such as salary, starting date, hours of work, benefits and provisions for ending the employment relationship.

It is not unusual in the context of an employment relationship that the terms and conditions of employment change with changes in the workplace and society, and that both parties fail to take the time to clarify or amend employment contracts to meet the changing needs of the workplace.

It is important to note that a contract of employment is legally binding on the parties, and in the event of a dispute regarding the terms and conditions of employment, the parties will be held to the terms of the contract. The practical effect of this is that when disputes arise regarding the nature of the contract of employment these disputes may become costly, if there is no means of verifying the parties' agreement on their respective rights and obligations arising from the contract.

An employee handbook on the other hand, is best viewed as an addendum to an employment contract. It is a mechanism by which an employer can outline in detail its expectations with respect to policies and procedures in the workplace with respect to a wide range of matters that are frequently not outlined in the employment contract. In order for an employee handbook to have any legal effect it must be incorporated into the employment contract and employees must be made aware of the contents of the handbook, as well as any changes that are made to the handbook over time.

With respect to the employee handbook, the handbook has no legal effect if it is not incorporated into the employment contract or collective agreement. If there is no clear evidence that the employees have been provided with a copy of the handbook, been made aware of the contents of the handbook and their rights and obligations arising from the handbook, it will be difficult to enforce the terms and conditions set out in the handbook. Practically speaking, this means that it is critical for employers to ensure that employee handbooks are not only clearly drafted, but that a mechanism exists to ensure that employees are provided with copies of the handbook as well as opportunities to receive education about the contents of the handbook.

## **SUMMARY**

As can be seen from these brief introductory remarks there are a number of issues that should be addressed by an employer who is considering creating and implementing an employee handbook in the workplace. It is critical that employers understand the advantages and disadvantages of engaging in such a process, as well as the processes that will lead to the successful creation of such a policy.

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