

Employee Handbooks

It is important and advisable for employers to have an employee handbook. They offer guidance to employees on the employer's policies and procedures and can be an effective aid in managing your employees. However, the language of an employee handbook can form the basis of an implied contract if not worded properly. According to Massachusetts law, if the employment handbook meets certain criteria, then the terms contained within the handbook can be enforceable as an implied contract. While most "at will" employees may be fired at any time, for any reason, an "at will" employee with an implied contract may sue for specific performance of the terms in the handbook, and if the employer is not abiding by the terms in the handbook, may lose a breach of implied contract claim.

Human Resource professionals should be aware of the six factor test used to determine whether an employee handbook will be judicially interpreted as an implied contract. In order to ensure that there is no implied contract, employers should do the following:

1. Employers should retain the right to unilaterally alter or modify the terms of the handbook
2. The language should suggest that the handbook is for "guidance" as to the employer's policies
3. There should be absolutely no negotiations regarding the language
4. There should be no term of employment stated in the handbook
5. The employer should not call any special attention to the document
6. Finally the employee should not be given an opportunity to sign or mark the document in any way; otherwise it may be seen as assenting to the terms or acknowledging an understanding of the terms

If you are unsure as to whether your handbook passes the six-factor test, if you have other questions concerning your employee handbook or you do not have an employee handbook at all, please feel free to contact me. I am available to assist you with any employment law related needs you may have.

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Sincerely,

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