

Lending a Hand(book)

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Once you've hired your first employees, you then need to consider what policies will apply to your employees - how many sick days, are lunch breaks paid or unpaid, who is eligible for group health insurance? Many businesses develop their policies on an ad hoc basis; deciding such matters as they arise. From a legal standpoint, however, most restaurants could benefit from issuing a formal set of written personnel policies or an employee handbook.

In employment relations, as in other areas, the best offense is a good defense. An employee handbook is the first step in establishing a "paper trail" in the event of an investigation by an administrative agency or court proceeding. One of the best ways that a restaurant can defend itself against a discrimination or harassment suit is to demonstrate that the restaurant has a clear equal employment opportunity policy known to all employees and consistently followed. Under some state laws, a business with only one employee can be subject to wrongful discharge or harassment claims. A handbook makes it known to everyone that a company is aware of, and in compliance with, its obligations under the law.

An established set of rules guides employee expectations and reduces uncertainty. When employees are not sure of the policies that apply to them, or when policies are applied inconsistently, it may lead to litigation and, in some cases, may cause employees to seek union representation. If decisions regarding company policies are left to individual managers, there is an increased likelihood of inconsistent treatment and perceptions of unfairness. With a handbook, employees can no longer claim that they do not know the rules; yet, as a word of caution, it also means that employees can and will demand that management also play by the rules.

For many employers, creating a handbook is simply a matter of organizing and reissuing the dozens of memos that have circulated dealing with vacations, overtime, etc. Reissuing these policies in handbook form offers a restaurant the opportunity to present the policies, and in particular, its fringe benefit package, in the most favorable light. Management should carefully review each of the policies before reissuing them. Management should also have front-line supervisors review the policies to make sure that they

are enforceable in their respective areas. Supervisors should be trained on how to implement any new or revised policies and should be able to communicate these changes to employees and answer employee questions.

Any handbook should begin with an "at will" statement, putting employees on notice that either the restaurant or the employees may terminate the employment relationship at any time and for any reason. The "at will" disclaimer is necessary to prevent courts from holding that the policies constitute a contract or implied contract of employment, thereby allowing employees to be discharged only "for cause." Also, businesses should consider identifying the first ninety (90) days of employment as an introductory period. Even though employees may be "at will," courts and administrative agencies recognize that employees in an initial evaluation period have a lesser expectation of continued employment.

Other minimum requirements for any handbook include an equal employment opportunity policy and sexual harassment policy, a description of employee benefits such as vacation, sick leave, and holidays, a discipline statement, grievance procedures ("open door policy"), a drug and alcohol policy, etc. If a restaurant has fifty or more employees, a handbook **must** incorporate information on Family and Medical Leave Act ("FMLA") rights and responsibilities.

The following are basic guidelines for drafting an employee handbook:

- . Write in plain English.
- . Draft each policy as if you assume it will be strictly enforced - do not over-promise.
- . Make sure that policies are internally consistent - outdated policies should be revoked.
- . Establish effective mechanisms and procedures to resolve employee complaints.
- . Require that employees sign an acknowledgement receipt.

Finally, any handbook should be reviewed by counsel to ensure that it has a satisfactory level of compliance with federal, state and local requirements in the areas of equal employment opportunity, individual employee

rights, labor relations, safety and health, wage/hour
and related personnel areas.