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ONLINE EMPLOYEE HANDBOOK CHECKLIST

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To date, no federal or state court has addressed the issue of online handbooks. Nonetheless, courts in most jurisdictions have established, albeit in the print context, four general rules for handbooks and policies: (i) disclaimers must be conspicuous; (ii) certain policies must be disseminated to employees (e.g. harassment, EEO, at-will and, in some states, wage/time-off benefits); (iii) employees must be given notice, and in some states actual notice, of revisions; and (iv) employers must be able to prove compliance with these rules.[1] Although online handbooks will be a question of first impression for the courts, it is likely they will apply the same rules--the question will be how to achieve these objectives in the online context. This question involves legal and intranet technology issues. Therefore, it will be necessary for legal counsel and the company's intranet experts to work together to achieve compliance. Moreover, as technology changes, the means to accomplish these objectives also will change. Therefore, the individuals responsible for maintenance of the online handbook will need to make adjustments accordingly. What follows is a checklist for review with the intranet experts.

1. DISCLAIMERS MUST BE CONSPICUOUS

a. Access to Handbook Requires First Screen to Contain:

Disclaimer: At-will status, no implied contract, right to deviate/change, supercedes all previous, benefit plans control (see format below) with a link to the full at-will policy.

Note: As discussed below, the disclaimer screen also should reference the EEO policy and prohibition against harassment with links to both policies. The link should require the employee to return to the disclaimer before proceeding.

b. Format Requirements for the Disclaimer (1st Screen):

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[1] Exact requirements vary according to state law. See Multistate Employee Handbook/Disclaimer Outline.

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If possible, disclaimer should fit on one screen.

Note: If not possible, then scrolling v. multiple screens will need to be considered. Multiple screens should be marked "Page ___ of ___."

Color contrasted from other screens
Contrasting typeface--bold, block, contrasting color, etc.
Borders
Effective date or revision date should appear on a header or footer

c. **Add Disclaimer Language to Select Provisions Throughout Handbook, as Necessary (e.g., Employee Performance, Conduct and Other Expectations, Benefits).**

Note: Each section of the CP&L Employee Handbook was drafted to avoid liability and preserve management discretion without reliance on the initial disclaimer. Nonetheless, the format differences of an online version may weigh in favor of more explicit disclaimers in some sections.

d. **Consult with Intranet Expert to Identify Other Possible Means to Make Disclaimers Conspicuous.**

2. **EMPLOYEES MUST BE GIVEN NOTICE, AND IN SOME STATES ACTUAL NOTICE, OF CERTAIN POLICIES (HARASSMENT, EEO, AT-WILL AND, IN SOME STATES, WAGE AND TIME OFF BENEFITS) AND REVISIONS TO ALL POLICIES**

a. **EEO and Harassment Policies Should Be Referenced in the Disclaimer with Links to the Full Policies.**

Note: The link should return the employee to the disclaimer before proceeding.

b. **Access to Handbook Requires Second Screen to Contain List of Revised Policies.**

Note: Decisions will need to be made whether to list all policies revised since their respective effective dates (maybe with recent revisions highlighted), or list all revisions within set period (e.g., 1 year), or list all revisions within calendar year, etc.

c. **Consider Requiring Access to Handbook to Require Scrolling or Clicking Through Table of Contents.**

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Note: This feature would allow listing all policies with effective and last revision dates and would eliminate the need for the list of revised policies (see above). Revised policies should be highlighted.

d.   **<u>Consider Placing Promptors and Links Between Certain Policies (e.g., policies referencing disciplinary action, termination, etc. should have links to related provisions such as at-will employment, applicable leave provisions should have link to FMLA provision, etc.)</u>**

e.   **<u>Contemporaneous Automatic E-mail Notification of All Revisions</u>**.

f.   **<u>Consult with Intranet Expert to Identify Other Means to Ensure Actual Notification of Certain Policies</u>**.

3.   **SYSTEM SHOULD BE DESIGNED TO PROVE COMPLIANCE**

a.   **<u>System Features, Such as First Screen Disclaimers, Notification of Revisions, etc., Should Be Well-documented and In-house Expert Should be Designated to Serve as Company Representative/Expert if System is Challenged.</u>**

b.   **<u>Archive Hardcopies (or back-up tapes, etc.) of All Versions (original and all revisions)</u>**.

c.   **<u>Track Who Visits the Site (disclaimer page, others(?))</u>**.

d.   **<u>Consult with Intranet Expert to Identify Other Means to Prove Compliance</u>**.

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ONLINE EMPLOYEE HANDBOOK OPTIONS

OPTION	ADVANTAGES	DISADVANTAGES
ONLINE HANDBOOK ONLY	1. Eliminates cost of printing and distributing print version. 2. Eliminates delay in disseminating revisions.	1. Employees without access to computer terminals will not have access to certain policies which the law requires employee notification of (e.g., harassment, EEO, at-will disclaimers and, in some states, wage payment, benefit (time-off) notification). 2. Employees without access to a PC/e-mail will not receive actual notification of revisions sent by e-mail--actual notification is required in some states for the revisions to be effective. 3. Employees (who do not have laptops or home PCs with access) will not have access to information that may be needed during off-duty hours (e.g., inclement weather, call-in (attendance/tardiness), leave, attire, etc.) 4. Some policy content/format revision will be necessary to bring online handbook into compliance with various state law requirements on the conspicuousness, actual notification, etc. of disclaimer information.

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OPTION	ADVANTAGES	DISADVANTAGES
ONLINE HANDBOOK SUPPLEMENTED BY: Revised Employment Application with Enhanced At-Will Disclaimer	1. Gives employees actual notice of at-will status, no implied contract, no at-will modification by personnel policies, practices, procedures, etc.; gives company proof of employees' actual notice.	1. Cost associated with revision and printing and administrative burden of replacing old forms currently in stock with new ones. (Note: This may be mitigated by fact that revision is already being made to invitation to self-identify per new OFCCP regulations.) *See also Online Handbook Only Disadvantages Nos. 2 and 3.*
-And, one of the following- Revised Code of Conduct to include Enhanced At-Will Disclaimer, Complete Harassment/EEO Policies - *-OR-*	1. Gives employees actual notice of key policies; gives company proof of employees' actual notice of key policies. 2. Eliminates need for stand alone policies/acknowledgments or abbreviated policy pamphlet (see below).	1. Cost associated with revision and printing and administrative burden of replacing old codes currently in stock with new ones. 2. Lengthens Code of Conduct. 3. Length and detail of harassment policy may be disproportionate to other Code of Conduct sections. *See also Online Handbook Only Disadvantages Nos. 2 and 3*
Abbreviated Key Policies Pamphlet (e.g., at-will, EEO, harassment, others (?) etc.)	1. Gives employees actual notice of key policies. 2. Gives all employees access to policies that may be needed while employee is off-duty. 3. The content of these policies is unlikely to change; therefore, cost of subsequent revision is not a significant factor.	1. Cost. 2. Administrative burden of ensuring distribution during orientation. 3. Depending on selected contents *Online Handbook Only Disadvantages Nos. 2 and 3.*

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OPTION	ADVANTAGES	DISADVANTAGES
ONLINE HANDBOOK WITH PRINT VERSION AT TIME OF HIRE ONLY	1. Gives employees actual notice of key policies. 2. Gives all employees access to policies that may be needed while employee is off duty.	1. Employees may be given outdated policies from the outset. The likelihood of this will increase over time unless the company periodically updates the print version. 2. Unless employees receive actual notice of online revisions, these revisions may not be applicable to these employees. 3. Confusion may result from employees referencing outdated printed copies. Courts likely will construe this against the company. At a minimum, printed version should be clearly and conspicuously marked to warn of possible electronic revisions.

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