Employee handbooks are essential to defining the employment relationship between employers and employees who do not have individual contracts. Well drafted and used handbooks can help provide for a productive workforce and to limit employer liability for employee conduct. In the same way, poorly planned or used handbooks expose employers to liability for failing to establish standards for employee conduct and for disciplinary actions. This program will provide you with a practical guide to drafting the essential components of an employee handbook and how to effectively use it in the workplace, including employee leave, anti-discrimination policies, reasonable accommodation for disabilities, ensuring at-will notice, confidentiality and social media usage, disciplinary procedures and termination, and more.

- Drafting, reviewing, updating essential components of employee handbooks
- Employment status and legally binding nature of handbooks
- Compliance with equal opportunity and non-discrimination laws
- Use of social media in the workplace
- Wage and hour issues, FMLA and sick leave
- Independent contractor issues in handbooks and no outside employment concerns
- Evaluations of employee performance, disciplinary procedures and discharge
- Effective use of handbooks to limit employer liability

Speakers:

Carson H. Sullivan is of counsel in the Washington, D.C. office of Paul Hastings, LLP, where she represents employers in all aspects of employment law, with an emphasis on employment discrimination litigation and the defense of class action suits. Ms. Sullivan counsels clients on compliance with federal and state employment laws and represents clients before the Equal Employment Opportunity Commission and local human rights agencies. Before entering private practice, she served as a judicial clerk to Judge Roger L. Gregory, United States Court of Appeals for the Fourth Circuit. Ms. Sullivan received her B.A. degree, with distinction, from the University of Virginia and her J.D. degree, cum laude, from the George Mason University School of Law in 2000.
Please complete all of the requested information, print this application, and fax with credit info or mail it with payment to: Vermont Bar Association, PO Box 100, Montpelier, VT 05601-0100. Fax: (802) 223-1573

PLEASE USE ONE REGISTRATION FORM PER PERSON.

First Name: _____________________ Middle Initial: _____ Last Name: __________________________

Firm/Organization:__________________________________________________________

Address:____________________________________________________________________

City:__________________________________ State: _________ ZIP Code: ______________

Phone #:________________________ Fax #:________________________

E-Mail Address: __________________________________________________________

I will be attending:

Drafting Effective Employee Handbooks
Teleseminar
May 1, 2013

<table>
<thead>
<tr>
<th>Early Registration Discount By 04/24/13</th>
<th>Registrations Received After 04/24/13</th>
</tr>
</thead>
<tbody>
<tr>
<td>VBA Members: $70.00</td>
<td>VBA Members: $80.00</td>
</tr>
<tr>
<td>Non VBA Members/Atty: $80.00</td>
<td>Non-VBA Members/Atty: $90.00</td>
</tr>
</tbody>
</table>

NO REFUNDS AFTER April 24, 2013

PLEASE NOTE: Due to New Hampshire Bar regulations, teleseminars cannot be used for New Hampshire CLE credit

PAYMENT METHOD:

☐ Check enclosed (made payable to Vermont Bar Association): $ ____________________

☐ Credit Card (American Express, Discover, MasterCard or VISA)

Credit Card #__________________________________________________ Exp. Date______

Cardholder: ______________________________________________________
Please note: This form is for your records in the event you are audited

Sponsor: Vermont Bar Association

Date: May 1, 2013

Seminar Title: Drafting Effective Employee Handbooks

Location: Teleseminar

Credits: 1.0 General MCLE

Luncheon addresses, business meetings, receptions are not to be included in the computation of credit. This form denotes full attendance. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust CLE hours accordingly.
EMPLOYEE HANDBOOKS: ESSENTIAL COMPONENTS AND PRACTICAL DRAFTING TIPS

Carson H. Sullivan  
Paul, Hastings, LLP – Washington, D.C.  
(o) (202) 551-1809  
carsonsullivan@paulhastings.com

© 2013, Paul Hastings LLP
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II. THE ESSENTIAL COMPONENTS</td>
<td>1</td>
</tr>
<tr>
<td>III. TIME OFF AND LEAVE PROVISIONS</td>
<td>7</td>
</tr>
<tr>
<td>IV. OTHER PROVISIONS TO CONSIDER</td>
<td>9</td>
</tr>
<tr>
<td>V. SOME TRICKY STATE LAWS</td>
<td>10</td>
</tr>
<tr>
<td>VI. NEXT STEPS – WHAT TO DO AFTER YOU’VE CREATED YOUR NEW HANDBOOK</td>
<td>11</td>
</tr>
</tbody>
</table>
I. INTRODUCTION

Before you begin creating or revising an employee handbook, be it for your company or for your client, there are certain things you should know and take into consideration:

- No two handbooks are the same. What works for one company may not work for another.

- The project is never a small one. Inevitably, the project will take more time and energy than you estimated. Set realistic expectations early – it’s not something you can deliver in a day.

- For multiple state handbooks, multiply your efforts and costs.

- If your handbook is intended to cover employees in multiple states, you should engage counsel barred in those states. There are too many state laws that may be missed if you do not do so.

- Consider the medium. Will your handbook be posted on an intranet, or will it be delivered in hard copy? It is better to know this from the start.

- If you are updating a handbook, how old is it? The older it is, the more likely a complete overhaul is necessary. Sometimes starting from scratch is easier than trying to “fix” an out of date handbook.

II. THE ESSENTIAL COMPONENTS

A. The “Preliminaries” – What to Include in the Preface or General Introduction

1. “This is not a contract.”

2. “This handbook is not a contract of employment and it not intended to create any express or implied promises to employees or to guarantee any fixed terms.”

3. Consider putting this statement, or a similar statement on the footer of every page.
4. Employment-at-will.

- “These guidelines do not in any way alter the employment-at-will relationship that exists between the Company and its employees. Employment-at-will means that either the employee or the employer may terminate the employment relationship for any reason, at any time, with or without notice.”

5. Reserve the right to modify or change.

- “The Company reserves the right to add, modify, or delete provisions of this Handbook at any time, without advance notice. We will attempt, however, to notify employees of any such changes.”

6. Point to other sources of information.

- “This Handbook may not be the only place employees will find descriptions of standards, employee benefits, practices and policies. To the extent any provision of this Handbook conflicts with any terms in other such comprehensive documents, or federal, state or local laws, the terms of the applicable comprehensive document and/or the law will apply. When in doubt, employees should consult with their supervisors or the Human Resources Manager.”

7. Supersedes all previous handbooks.

- “The policies and procedures described herein supersede all prior handbooks, memoranda or other policy announcements that conflict with what you will find here.”

8. Acknowledgement – how will employees acknowledge receipt?

- “All employees are required to read and sign the employee acknowledgement form provided with your copy of this Handbook indicating that they have read and understood this Handbook. You must return this form to [include name or position] within three (3) business days of your receipt of this handbook.”
B. Employment-at-Will

1. Although you stated it in the Preface or General Introduction, repeat it again in a stand-alone section.

2. Make sure to note that the employment at-will relationship cannot be modified other than in writing, signed by the employee and a high level executive.

   • “The employment-at-will relationship between an employee and the Company may not be modified other than by a written employment contract signed by the employee and the [high level executive]. Any statement or promise made by any other Company supervisor or other employee will not change this policy or create an agreement.”

C. Equal Employment Opportunity

1. Include all federal protections.

   • “It is the established policy of the Company not to discriminate against any individual employee on the basis of race, color, religion, national origin, sex, age or disability.”

2. Don’t forget to check state and local laws.

   • Examples include sexual orientation, gender identity, marital status, personal appearance, political affiliation, to name just a few.

   • If your company is only located in one state, or a very small number of states, you may decide to list all protected characteristics under state and local law.

   • As an alternative, you might state “or any other state or local laws prohibiting discrimination.”

3. Consider a separate ADA statement.

   • “The Company provides reasonable accommodations for qualified individuals with disabilities in accordance with the
Americans with Disabilities Act (ADA) and the [insert applicable state statute.]

- “Employees who are qualified individuals with disabilities covered by the ADA and/or applicable state and local disability laws, and who require reasonable accommodations should discuss potential accommodations with [Insert title or individual]. It is the employee’s responsibility to notify the Company of the need for a reasonable accommodation and to provide medical documentation upon request. Medical information will be kept confidential.”

4. It is critical to include a specific reporting mechanism; do not rely on reports to “management.”

- Consider management effectiveness.

- Consider HR effectiveness.

5. It is critical to include a non-retaliation statement.

D. Professional Conduct/Prohibition Against Harassment

1. Generally a lower standard than federal law.

2. Provide examples. “Such prohibited conduct includes, but is not limited to:

- Verbal: graphic or suggestive comments directed at an individual’s dress, body, sex, age, race, color, national origin, religion, disability [include all protective categories under applicable law]; repeated sexual innuendos, racial or sexual epithets, derogatory slurs, off-color jokes, propositions, threats, or suggestive or insulting sounds or obscene language; offensive voicemail messages, questions about another’s sex life or experiences, or repeated unwelcome requests for dates;

- Visual/Non-verbal: derogatory posters, cartoons or drawings; suggestive objects or pictures; leering; obscene gestures;
● Physical: unwanted physical contact including touching, grabbing, groping or fondling; interference with an individual’s normal work movement; assault; and

● Other: making or threatening reprisals as a result of a negative response to harassment; threats, demands or suggestions that an employee’s work status is contingent upon his or her toleration of, or acquiescence to, sexual advances.”

3. Include a specific reporting mechanism and non-retaliation statement, or combine so that reporting mechanism and non-retaliation statement from EEO section apply.

E. Electronic Communications/Technology Resources Policy

1. What is your personal use policy?

2. E-mail and other technology is property of the Company. No right to privacy.

3. Prohibition of improper uses of technology.

● “Under no circumstances may employees use the Company’s resources to transmit, receive, or store any information that is discriminatory, harassing or defamatory in any way (e.g., sexually-explicit, discriminatory, or otherwise offensive messages, jokes or cartoons).”

4. Consider a separate policy for social networking usage, which governs how employees represent themselves and their association with the company on websites such as Facebook, LinkedIn, etc.

F. Prohibition Against Drug and Alcohol Use

1. The goal is to provide a safe and healthy workplace for all employees.

● “While on Company premises and while conducting business-related activities off Company premises, no employee may use,
possess, distribute, sell, or be under the influence of alcohol or illegal drugs.”

2. Explain that violations may lead to disciplinary action.

3. Does your company require drug testing?

4. Alcohol – decide whether it is allowed in social settings.

5. If you have an Employee Assistance Program, consider the following:
   - “Employees with questions or concerns about substance dependency or abuse are encouraged to use the resources of the Employee Assistance Program.”

6. Be sure to consult local laws regarding medical marijuana.

G. Wage and Hour Compliance

1. Eligibility for overtime, description of exempt and non-exempt, and description of the workweek:
   - “Consistent with federal and state wage and hour laws, each Company employee is designated as either “non-exempt” or “exempt” based on the job duties he or she performs and method by which he or she is paid. These designations dictate an employee’s eligibility for overtime pay.”
   - “Exempt employees are not eligible for overtime pay. Non-exempt employees are entitled to receive overtime pay for each approved hour worked in excess of 40 [check state laws] hours per workweek. The workweek runs from [check state laws].”

2. Rest periods and meal breaks.

3. Make sure it is clear that approval to work overtime is required.
   - “Non-exempt employees must obtain approval in advance from their supervisors before working overtime.”
• “It is Company policy that a non-exempt employee may not waive his or her right to overtime pay or receive compensatory time off in lieu of overtime pay.”

4. Consider specific training for your managers and employees on this issue.

5. Pay Deductions and Corrections

• 29 C.F.R. § 541.602; safe harbor language – improper deductions will be corrected.
• Be sure to check local and state laws regarding permissible deductions.

III. TIME OFF AND LEAVE PROVISIONS

A. Holidays

1. Many employers provide a list of the holidays they observe.

2. If your handbook is distributed in hard copy, consider including this information in an appendix or addendum so that it can easily be updated year to year.

B. Vacation

1. Be sure to include when employees become eligible and how it accrues. Consider whether unused days roll over year to year, and whether you will pay accrued vacation upon termination.

2. Note – many states require pay out of accrued vacation time upon termination, but the majority of states leave it to the employer. However, you may be bound by what you include in your handbook.

3. A review of state “use it or lose it” law is critical for every state where you have employees.
C. Sick Leave

1. Consider one “time off” policy for vacation and sick leave.

2. Be specific as to procedures for “calling in sick.”

3. Consider including a sick leave request form.

4. Consider requiring a doctor’s note for absences of more than two days.

5. Note – there is an emerging trend towards requiring employers to provide a certain number of paid sick days. Be sure to check your state and city or county requirements. And, if such laws apply, ensure that your human resource department adequately tracks these days.

D. Family and Medical Leave

1. Does your company employ more than 50 employees within a 75 mile radius? If so, include the following:
   - Eligibility Requirements
   - Qualifying Circumstances for Leave
   - Employee Notice Requirements
   - Length of Leave
   - Medical Certification
   - Benefits While on Leave
   - Reinstatement Provisions

2. Consider an Appendix for Specific Procedures:
   - How and when to make the request/consider including the form.
● What should be included in health care provider’s statement/consider including the form.

● Note that you may require a second opinion at the Company’s expense.

● Procedures for returning to work.

● Failure for returning to work after leave is grounds for termination.

3. It is critical to check state laws. Many differ substantially from the federal FMLA.

E. Military Leave

1. Make sure your policy is USERRA compliant.

2. Review state laws as well.

IV. OTHER PROVISIONS TO CONSIDER

A. Summary of Benefits

B. Nepotism Policy

C. Prohibitions on Dating in the Workplace

D. No Outside Employment

E. Non-Disclosure and Confidentiality Policy

F. Requirement to Update Personal Information

G. Description of Evaluation Process and Performance Evaluations

1. Don’t over-promise

2. Always use language like “generally” or “typically.”

H. Conflicts of Interest/Code of Ethics Standards
I. Inclement Weather and Emergency Closings

J. Visitors in the Workplace

K. Business and Travel Expenses

L. Employee Conduct and Work Rules

M. Safety and Security

N. Use of Bulletin Boards/Posting Sites

O. Dress Code

P. Political Contributions

Q. Employee Referral Program

R. Environmental/“Green” Policy

S. Return of Property Required at Termination

T. Public Company
   1. Stock options
   2. Insider trading

U. Foreign Companies
   1. Foreign Corrupt Practices Act
   2. No kickbacks
   3. Privacy issues

V. SOME TRICKY STATE LAWS

A. Time Off to Vote

B. Jury and Witness Duty

C. Paydays
D. School Activities Leave

E. Smoke-free Workplace

VI. NEXT STEPS – WHAT TO DO AFTER YOU’VE CREATED YOUR NEW HANDBOOK

A. Distribute it (or point to the intranet site) with a cover letter/e-mail.

B. Keep records of distribution and acknowledgment.

C. Train HR and business leaders on your policies and/or the changes.

D. Don’t forget to update when necessary! Laws change, as may your policies.