

What should be included in a Staff Handbook

Taylor Walton will be holding free employment law workshops at the end of February/ beginning of March in relation to what should be included in a staff handbook and its legal implications.

The workshops are designed for employers who do not have an in-house HR resource. Employers often purchase “off the shelf” staff handbooks from a variety of organisations, usually at considerable cost, when many of the policies contained in the handbook may have no relevance to the employer.

In our workshops, we will be exploring the types of policies which may be included as part of the staff handbook and identifying which policies are relevant to particular business needs. For many employers, the handbook may not need to contain detailed policies which may only serve to complicate matters and “trip up” the employer if they overlook a particular aspect of a policy hidden at the back of the handbook. For example, does the employer need have a complicated redundancy policy other than the statutory requirement to follow a fair consultation process. Policies should be as simple as possible and written in plain English so that they can be understood by both the employer and the employee.

There are some essential policies which need to be included in the staff handbook. An employer must have disciplinary and grievance procedures but these do not need to be complicated as long as they meet the latest ACAS Code of Practice on disciplinary and grievance procedures. A failure to comply with the ACAS Code could lead to an Employment Tribunal increasing the level of compensation in a successful unfair dismissal claim by up to 25%. Therefore, it is important that employers regularly review their procedures to ensure that they are compliant with the Code.

The handbook should distinguish between contractual and non-contractual terms. An employer will usually want to make the staff handbook non-contractual in order to be able to amend the handbook without seeking the agreement of staff which would be the case if they were contractual. The disciplinary procedure should be non-contractual otherwise employees with less than 2 years' service (ie without the right to claim ordinary unfair dismissal) could argue that failing to comply with every aspect of the disciplinary procedure amounts to a breach of contract. Whereas, the employer may wish to make its health and safety policy contractual.

In view of the above, it is important that policies which are intended to be non-contractual expressly state that they are not intended to have contractual force. This should be stated in the handbook and in the contract of employment.

Even though the employer may make it clear in its contract of employment and handbook which policies are contractual and non-contractual that is not the end of the story. Problems can arise where non-contractual policies can become contractual by what is known as implied incorporation often as a result of custom and practice. For example, if the staff handbook states that the employer will only pay discretionary occupational sick pay when in reality it usually pays occupational sick pay, this is likely to become a contractual term.

There have been a series of legal cases where the courts have had to establish whether the contents or parts of the staff handbook have been incorporated into the employee's contract of employment. This can be a complicated process as the court will have to assess what actually happened in previous years. This inevitably becomes difficult and time consuming for the employer particularly if managers have applied the policies in the handbook in different ways.

The employer needs to communicate the details of the handbook to the employee. The employer cannot simply rely on its staff handbook if it was never drawn to the attention of the employee. A staff handbook sitting on the shelf in the managing director's office is of little use if the staff have no knowledge of its existence. As part of the induction process, it is good practice to verbally inform the new employee about the policies contained in the handbook highlighting the policies which are particularly relevant to them. The employer's policies can be sent by email to the new employee with a request that they acknowledge receipt of the handbook. The employer will then have at least a record of it being sent to the employee which can be placed on the employee's file.

At our workshop, we will be exploring further the above issues as well as considering the requirement for new policies to cover more recent issues in the workplace such as social media, home working and stress at work. The dates of the workshop are as follows:

- 21 February 2017 (Taylor Walton Luton Office)
- 28 February 2017 (Taylor Walton St Albans Office)
- 2 March 2017 (Taylor Walton Luton Office)

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