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**RICHARDS**  
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Highlights from presentation on:

# Employee Handbooks

Top Policies for Consideration and Review

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## **Employment at Will & Employee Handbook Receipt**

- Handbook receipts should not contain language similar to what would appear in an employment contract.
- Stay away from wording that requires or mandates that employees sign off that they “promise to abide by all provisions” of the handbook.
- Instead, each employee would sign off that they understand that their employment is at will and that Company policies, benefits and rules are subject to change or elimination at any time with or without notice.

## **Equal Employment Opportunity & Nondiscrimination**

- If an applicant or employee claims discrimination, your Company will be subject to investigation by the Department of Workforce Development – Equal Rights Division.
- You will be expected to provide investigators with your written policy regarding equal opportunity for examination; it is a routine part of any investigation.
- They will look for not only your declaration of equal opportunity, but for a clear procedure for employees to follow regarding unlawful harassment complaints. Employers are expected to provide an avenue for resolution of these types of issues.

### **Additional related information:**

- In May 1992, the Wisconsin legislature enacted a “Smoker’s Rights” law. An employer cannot discriminate against an individual based upon use or nonuse of lawful products (tobacco, alcohol, etc.) off the employer’s premises during nonworking hours.
- Wisconsin law specifically prohibits employers from making an employment decision based on an arrest or conviction record of an applicant or employee except under very limited circumstances. An employer may terminate an employee or not consider an applicant that has been convicted of a crime if it substantially relates to the position. It is unlawful for an employer to base an employment decision on an individual’s conviction record unless: (1) the conviction substantially relates to the circumstances of the particular job; or (2) the individual is not bondable because of the conviction and the job requires bondability.

## **Unlawful Harassment Prohibited**

It is important for your Company to state in writing that it will not discriminate against individuals and maintains zero tolerance for any form of unlawful

**harassment of its employees, customers, suppliers or clients. It is equally important to set forth an effective complaint procedure for resolving those complaints.**

- **Define and describe unlawful harassment**
- **Require employees and witnesses to report it**
- **Be sure there is more than one member of management to report to**
- **Heightened awareness and ease of reporting for minors**
- **Ensure investigation**
- **Require cooperation in investigation**
- **Never promise complete confidentiality**
- **Forbid Retaliation**
- **Discipline statement**
- **Employee rights (The EEOC requires that employers inform employees of their right to bring a complaint with the agency.)**

### **Sample policy language – Unlawful Harassment Prohibited**

The Company is committed to providing a work environment in which employees, customers and suppliers are treated with courtesy, respect and dignity. As part of this commitment, the Company will not tolerate any form of unlawful harassment, verbal or physical, with regard to an individual's race, color, religion, creed, age, sex, national origin, ancestry, handicap status, veteran status, sexual orientation, marital status, arrest or conviction record or any other discriminatory basis prohibited by federal and/or Wisconsin law.

Of the types of unlawful harassment found in a workplace, sexual harassment is one of the most publicized. For purposes of this policy, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature. Sexual harassment can take many forms, including inappropriate jokes, innuendoes, comments, conversations, cartoons, pictures, pranks, intimidation, inappropriate touching and similar behavior. It may even include derogatory statements not directed to the targeted individual but taking place within his or her hearing.

Any behavior is considered sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Any employee who becomes aware of an incident of unlawful harassment (whether you are the victim, you witness an incident or are told about an incident), must report it to the Human Resources Manager or Vice President of Employee Relations immediately. Remember that incidents of unlawful harassment will not be tolerated should they involve customers and/or suppliers as-well-as employees.

While the Company encourages you to communicate directly with the alleged harasser, and make it clear that the harasser's behavior is unacceptable, offensive or inappropriate, it is not required that you do so.

All complaints of sexual harassment or unlawful harassment of any kind will be investigated promptly; and, where necessary, immediate and appropriate action will be taken to stop and remedy any such conduct. Employees are required to participate and cooperate fully with management during such investigations. The Company will proceed with due regard for the privacy of everyone involved; however, in order to perform a thorough investigation, complete confidentiality cannot be guaranteed.

The Company will take disciplinary action against any employee who is found in violation of this policy or who retaliates in any way against anyone who has raised any concern about unlawful harassment or discrimination against another individual.

Employees may also file a charge alleging unlawful harassment and violation of Company policy with the EEOC or its state equivalent within 300 days of the last act of unlawful harassment.

## **Disability Accommodation**

- **Disability discrimination is unlawful for any size employer under the provisions of the Wisconsin Fair Employment Law.**
- **The Federal Americans with Disabilities Act also makes disability discrimination unlawful; however, it applies to employers with 15 or more employees.**

### **Sample policy wording – Disability Accommodation**

The Company adheres to all provisions of the federal and Wisconsin Americans with Disabilities Acts (ADAs). We want to consider all requests for leaves of absence due to disability and we have a duty to reasonably accommodate a person with an impairment that is of long-term duration or a permanent nature.

An employee who is absent because of illness, injury or disability may be required to provide a doctor's note certifying that s/he is able to return to work without limitations or that outlines capabilities in a clear fashion when limitations exist so that reasonable accommodations can be determined with regard to the individual's essential job functions.

On a case-by-case basis, we will determine what is reasonable to accommodate an individual who requests such a leave or applies for a position while maintaining the ability to successfully run the business.

## **Employee Classifications & Benefit Eligibility**

- **Define classes of employees, i.e. full-time, part-time, temporary, agency**
- **May want to address exempt versus non-exempt status**
- **Identify specific eligibility points**
- **Do not use the term “permanent”**
- **If you prorate benefits – specifically define how that works**
- **When do benefits terminate, with or without notice**
- **Subject to change**
- **Don’t overstate benefits; conditions of employment (including benefits) are subject to change or termination at the sole discretion of the Company.**

**One important reason to define employment classifications is for the purpose of offering and administering benefit plans on a fair and consistent basis (an ERISA requirement). Be sure to indicate classifications that are ineligible for benefits.**

**In 2007, 2 landmark court cases deemed that a contractual obligation existed to pay benefits as set forth in a personnel policy that existed while an individual was employed.**

**While employers do not need to define “full-time” employees as those who work more than 30 hours per week, Wisconsin insurance law mandates that insurance carriers regulate that health insurance is offered to all employees who work a minimum of 30 hours a week.**

**Use common sense with regard to temporary employees. Classifying an employee as temporary (agency or direct-hire) for a long period of time in an attempt to minimize the cost of benefits isn’t wise. These employees may have a legal claim to the same benefits you provide to regular “full-time” employees.**

## **Training, Introductory or Initial Hiring Period - Not Probationary Period**

- **It is important that employers not give an employee (and the courts) the impression that s/he has attained greater rights or employment protection by completing a “probationary period.”**
- **If you include a new hire handbook policy for the purpose of communicating that a performance evaluation will be scheduled after a training period or after a certain number of days, the operative terms should be “orientation,” “trial” or “training” period.**

## **Timekeeping**

- **In Wisconsin, both exempt and non-exempt employees are supposed to keep time records.**
- **No breaks are mandated by law for adults (minors are a different matter); however, if an employer gives a break that is less than 30 minutes in length, it must be paid.**
- **Be sure to establish a procedure for employees to get payroll mistakes corrected; the Wage & Hour Division will not pursue an employee claim until after the employee has attempted resolution by following Company policy.**

## **Wages & Salaries**

- **Court cases have arisen when employers list various “grey” factors as the basis for increases.**
- **For example, an employer decides to give an employee only 1% and a co-worker 4%. The handbook says increases will be based on performance. The employee getting 1% has a better performance evaluation than the one with 4%. The first employee files a suit based on this criteria.**
- **The best wording here is “a number of discretionary factors.”**

### **Sample policy language – Wages & Salaries**

Initial compensation and subsequent increases for employees are based on a number of discretionary factors. Wage and/or salary reviews are generally conducted annually to coincide with the Company’s fiscal year.

## **Confidentiality**

- **Identity Theft**
- **HIPAA**
- **Non-Compete Agreements**

### **Sample policy language - Confidentiality**

Upon accepting employment with the Company, you agree not to disclose or use any confidential Company information. This includes, but is not limited to information concerning the Company’s financial status, business practices, employee records and vendor data. Your employment with us assumes an obligation to maintain confidentiality, even after you leave our employment.

If you are questioned by someone outside the Company and you are concerned about the appropriateness of giving them certain information, you are not required to answer. Instead, as politely as possible, refer the request to the Human Resources Manager. No

one is permitted to remove or make copies of any Company paperwork (records, reports, etc.) without prior approval of the Human Resources Manager. Disclosure of confidential information will be considered a performance problem and may lead to disciplinary action, as-well-as other possible legal action.

## **Substance Abuse / Drug & Alcohol Testing**

- **Pre-employment testing**
- **Reasonable suspicion testing**
- **Post work-related injury testing**
- **Random testing**
- **Company sponsored events / entertaining customers; drink responsibly and professional conduct**
- **Report the use of prescription drugs with adverse effects**
- **Abuse of prescription drugs prohibited**
- **Company transport**
- **Refusal to submit to a test**
- **Viewed collection**
- **Suspend without pay pending receipt of test results**
- **Rehabilitation as a condition of continued employment**
- **Costs of rehabilitation**
- **Follow-up alcohol and/or drug tests**
- **Non-discrimination and reasonable accommodation with respect to recovering alcoholics and addicts**

## **Attendance & Punctuality**

- **In 2006 a Wisconsin law was enacted that specifies that unemployment compensation may be denied from a discharged employee for failure to notify the employer of absenteeism or tardiness given specific criteria.**
- **In order for benefits to be denied under this law, the discharge must be for unacceptable attendance, and**
  - **the employee must have been absent at least 5 times without notice in the 12 months before the date of the discharge, or**
  - **tardy at least 6 times without notice in the 12 months before the date of the discharge.**
- **The employer policy must specify what being absent and tardy means, how employees should provide notice of absences or tardiness and that s/he will be terminated for failing to do so.**
- **The employer must provide a written copy of its policy to each employee and be able to provide written proof that each employee received it.**
- **The rule must uniformly to all employees.**
- **Lastly, the employer must give the employee at least one warning for failing to notify the Company of absences or tardiness in the 12 months before the date of the discharge.**

- **When this law applies the employee is not eligible to receive benefits until 6 weeks have elapsed after the week of the discharge and s/he has earned wages in covered employment equal to at least 6 times the weekly benefit rate that would have been paid had the discharge not occurred.**
- **Once the claimant has re-qualified, s/he is eligible to receive benefits based on the work performed prior to the discharge. However, if you are a contributing employer (paying a quarterly UI tax), your account is not charged for benefits paid based on work performed for you before the discharge. If you are a reimbursable employer (billed monthly for UI benefits paid rather than paying a quarterly UI tax), you are liable for your portion of the benefits paid after the claimant re-qualifies.**

## **Bulletin Boards**

**If an employer allows employees to put personal items on Company bulletin boards (or place bulletins or advertisements representing outside organizations on bulletin boards), they must allow a union to do the same.**

## **No Solicitation / No Distribution**

**It is important to limit the Company’s exposure to the potential for union solicitation. As long as you don’t allow employees to solicit things like Avon and Pampered Chef at work, you don’t have to allow them to solicit for a union (with the exception of the lunch room and parking lot - NLRB ruling).**

### **Sample policy language – No Solicitation / No Distribution**

With the exception of the Company’s support of certain charitable organizations, it is the Company’s policy that there shall be no solicitation during working time. Additionally, employees may not distribute literature in working areas at any time. “Working areas” includes all areas of the premises except the lunch room and parking lot.

## **Workplace Relationships**

- **Avoid marital status discrimination**
- **If you allow married employees, can’t prohibit dating**

### **Sample policy language – Workplace Relationships**

The Company prohibits relatives being placed in a superior-subordinate relationship that may create even the “appearance” of favoritism.

If a relative of a current Company employee is hired, efforts should be made to avoid creating opportunities where favoritism, or even the appearance of favoritism, may affect organizational effectiveness and/or workplace morale.

Employees are prohibited from engaging in any conduct that may create a conflict of interest or the appearance of a conflict of interest.

## **Insurance Plan Continuation - Wisconsin Continuation & COBRA**

- **Wisconsin Continuation Law applies to all employers who maintain an insured group health plan in the state of Wisconsin, regardless of size.**
- **Federal COBRA continuation requirements apply to most employers that have 20 or more employees on at least 50 percent of their typical business days during the preceding year.**
- **Wisconsin law only mandates continuation of health insurance.**
- **Federal law extends to dental and vision as well.**
- **Wisconsin law mandates that all covered employers extend the right to convert the group life insurance policy to an individual policy at the employee's cost.**
- **While administrative procedures regulated by the 2 laws are similar in some ways, they also have provisions that are very different. When both laws apply to the group coverage and there is a provisional difference, the law most favorable to the insured will apply.**
- **For example, with regard to a qualifying event, an employer is given 5 days under Wisconsin law to issue notice to qualifying beneficiaries and 2 weeks under federal law. An employee is allowed only 30 days to tender the first premium payment under Wisconsin law (as opposed to a maximum of 105 days under federal law).**

## **Medical Leave of Absence**

- **Define who is eligible to request medical leave**
- **Describe how the employee can request medical leave**
- **Coordination with FMLA policy statement**
- **Wisconsin Fair Employment Act and Federal Pregnancy Discrimination Act**
- **Address how the leave will affect benefits**
- **Address confidentiality**

## **Military Leave of Absence**

- **Federal and Wisconsin law**
- **Must show employer orders as-soon-as reasonably possible**
- **Must enter the military service directly from employment with the Company**
- **Employees may use accrued paid off, but are not required to**
- **Called up for more than 31 days, offer COBRA for 24 months**
- **Must successfully complete active duty service**
- **Must apply for and be available for re-employment within the timeframe specified by law**
- **Length-of-service based benefits - credit for the time away**

## **Family and Medical Leave**

### **Family & Medical Leave of Absence (FMLA)**

- **Federal FMLA**
- **Wisconsin FMLA**
- **Caring for a spouse (or domestic partner) with a serious medical condition**
- **Caring for a child with a serious medical condition**
- **Caring for a parent with a serious medical condition**
- **Qualifying exigency - spouse, son, daughter or parent is on active duty or has been notified of an impending call or order to active duty in the Armed Forces. A qualifying exigency includes, but is not limited to, the following examples: (1) short-notice deployment, (2) military events and related activities, (3) childcare and school activities, (4) financial and legal arrangements, (5) counseling, (6) rest and recuperation, (7) post-deployment activities, and (8) additional activities agreed to by the employer and employee.**
- **Caring for a member of the armed forces (spouse, child, parent or “next of kin”) who is undergoing medical treatment**
- **Define serious health Condition**
- **Run the Wisconsin and Federal FMLA concurrently:**
- **Eligible employees**
- **Employer notice responsibilities**
- **Employee notice responsibilities**
- **Certification guidelines and deadlines**
- **Required forms**
- **Substitution of accrued leave**
- **Intermittent leave**
- **Return-to-Work:**

## **Vacation**

**In Wisconsin, employers may either payout unused vacation or not payout unused vacation; however, they must have a written policy that explains whether they do or not.**

### **Sample policy language - Vacation**

**If you have unused earned vacation days upon the termination of your employment with the agency, you will be paid for that time.**

## **Time Off to Vote**

**In Wisconsin, employees are entitled up to 3 hours' leave to vote. Employees must request such leave before election day. Pay can be deducted for the time away from work. The employer may decide when the leave is taken.**

### **Sample policy language – Time off to Vote**

If an employee is unable to vote before or after normal work hours, s/he may request time off from work without penalty to vote. The employee must notify his/her Managing Member of the need to take time off before election day. The Company may designate the time of day the employee is excused from work for this purpose.

## **Communication Systems Usage**

- **Maintain and ensure employer access to equipment and information**
- **Ensure legal use by employees; zero tolerance for unlawful harassment; zero tolerance for theft - downloading copy-written materials as-well-as inappropriate use of personally identifiable information**
- **Protect confidential information**
- **Prohibit unauthorized software installations**
- **No expectation of privacy**
- **No unauthorized access**
- **Immediate notification of breaches**
- **Address social media**
- **Address using electronic devices while driving**

### **Sample policy language - E-mail, Internet and Other Electronic Communications**

The Company maintains equipment and communication systems; including, but not limited to the following: computers, copiers, telephones, fax machines, e-mail, voicemail and Internet; that employees may use when performing work as defined by their duties. Acceptable use of the equipment and communication systems benefits the Company's business and is not detrimental to efficient completion of the employee's job duties and responsibilities.

Company equipment and communication systems may not be used at any time to solicit others for union, political or religious causes; to solicit for outside companies and organizations; or to solicit for any reason that is not related to the business operations of the agency or to its support of certain charitable organizations. The equipment and communication systems may not be used for illegal or activities. Never allow family members or friends to use Company equipment and communications systems.

If your job allows access to employee records, under no circumstances should this information be used, disclosed or sent across any Company communication system for non-work related reasons. Under no circumstances may confidential information

regarding Company business relationships or financial records be sent across any Company communication system for non-work related reasons. Under no circumstances should software or music be installed, uploaded or downloaded with an agency computer without prior authorization; this includes the installation of Instant Messaging (IM) software.

Incidental and occasional personal use of Company equipment and communication systems is permitted, however, please know that personal messages and information will be treated no differently from other business-related messages and information.

The Company reserves the right to review, audit, intercept, access and disclose any messages created and/or transmitted on Company equipment and communication systems. All messages sent and/or received on the e-mail system, through voicemail or by other electronic means are not private and are considered Company records, and the Company reserves the right to access those records at any time. Deleting an e-mail or voicemail message does not guarantee that it has been erased from the system; backup copies are retained.

Employees are prohibited from using the Company equipment and communication systems to send and receive sexually explicit images or messages. Obscene, profane or offensive materials may not be accessed or transmitted using any Company equipment or communication system. Using Company communications equipment or systems to send or receive messages that contain ethnic slurs, racial references or anything that would constitute unlawful harassment of others is not permitted. Company equipment and communication systems should not be used in a way that would be disruptive or offensive to others or harmful to morale.

No employee is authorized to retrieve or read any e-mail or voicemail not sent to him or her without prior approval or express permission.

The use of an office telephone for an occasional personal call is permitted; please use this privilege wisely. Cell phone use (including texting) should also be kept to a minimum. Taking non-work related pictures with your personal phone at the office and sending them to others is prohibited.

Violations of this policy should be reported immediately to your immediate supervisor or the Human Resources Manager.

### **Sample policy language - Social Media**

If your position and/or your duties and responsibilities with the Company delineate authorization to speak on behalf of the Company, please use this authority wisely. The Company President will set policy with regard to appropriate public communication. Please review appropriate topics with the Company President before distributing any communication on behalf of the Company.

Incidental and occasional personal use of Company computers is permitted; however, anything other than occasional participation in any form of social media for personal reasons during work time will be considered a performance problem.

The Company urges employees to exercise personal responsibility whenever they participate in forms of social media. The lines between public and private, personal and professional are blurred in online social networks. If you identify yourself as a Company employee, be mindful of that the content of your message is consistent with all Company policies and procedures. Whether you publish to a blog or some other form of social media, make it clear that what you say there is representative of your own personal views. You must make it clear that you are speaking for yourself and not on behalf of the Company. Citing or referencing customers, business partners or suppliers is strictly prohibited.

Be mindful that you are personally responsible for the content of what you publish and there may be negative consequences to what you publish; defamation suits from individuals and companies have become fairly common. What you publish will be public for a long time.

### **Sample policy language - Use of Electronic Devices While Driving**

Unless you use a hands-free device, the Company prohibits the use of all electronic devices (cell phones, blackberries, laptops, etc.) while driving for work-related purposes. Please pull over to a safe location to make or receive phone calls, read or respond to text messages, use your laptop, etc.

## **Work-Related Illnesses & Injuries**

### **Sample policy language – Work-Related Illnesses & Injuries**

- All work-related injuries and illnesses must be reported to your immediate supervisor immediately, regardless of the severity. We want to ensure you receive immediate and appropriate care.
- You have the right to secure treatment from the physician of your choice; however, to avoid receiving personal medical bills at home, the Company must be informed about all medical treatment for insurance purposes.
- We encourage employees to seek medical attention appropriate for the severity of injury or illness. The increasing cost of Workman's Compensation Insurance affects the organization as a whole. We encourage you to see your Family Practitioner if medical care isn't urgent or an emergency.
- If urgent medical attention is needed immediately, the Company will make arrangements to transport you to an urgent care center. Or, emergency medical attention may require a 911 call for an ambulance.

- An employee injured while working must provide a release signed by a licensed physician stating s/he is able to return to full duty. This will assure the employee and the Company that the employee is safe to resume his or her responsibilities.
- An Accident Report must be completed as-soon-as is reasonably possible following an incident [not later than twenty-four (24) hours afterward].
- All accidents will be investigated and corrective actions written to prevent reoccurrence.

### **Sample policy language - Light Duty Work**

If an employee suffers a work-related injury/illness and the injury/illness is determined to be compensable, the Company may or may not choose to place the employee in a position within his/her department that meets physical limitations imposed by the attending physician. The Company reserves the right to make the final determination as to the conditions under which any light duty work is made available and for how long an employee may perform such work.

If light duty work is offered to an employee who has sustained a work-related injury/illness, s/he may not refuse such work.

Light duty work will only be assigned if there is a favorable prognosis from the attending physician that the employee will return to full duty status in the future. Please know, however, that due to the limited number of available positions in each department, light duty assignment within the employee's own department will not always be available.

In some instances of work-related injury/illness, if no light duty work is available within the employee's regular department, the employee may be assigned to light duty work outside his/her normal work area. Employees assigned to light duty in other areas are required to follow the policies and procedures of the department to which they are assigned.

All light duty assignments are temporary and will not exceed 3 weeks. At the agency's sole discretion, at the end of any 3-week light duty assignment, an extension (with a pre-determined end date) of said light duty assignment or a different light duty assignment may be established. In addition, the agency may terminate a light duty assignment at anytime for any reason or no reason at all.

The employee is responsible for complying with all instructions and/or recommendations issued by the medical provider. Failure to do so will be deemed a performance problem.

If for any reason after the light duty assignment has commenced, the employee claims to be unable to perform duties that appear to fit within the limitations outlined by the attending physician, the employee will be sent home and will be asked to follow-up with

his/her medical provider for reevaluation. The employee will not be assigned further light duty work until such reevaluation is completed and new instructions are issued by the medical provider which can be accommodated - in the Company's opinion using its sole discretion.

## **Weapons While Performing Job Duties**

- **Policy regarding employees**
- **Policy regarding others on premises (customers, vendors, etc.)**
- **Can't prohibit weapons from vehicles**
- **Can require weapons in vehicles to be concealed from sight**
- **Can require employees to tell you they have concealed weapons in vehicle on company property**
- **Postings required for others on premises at access to property and entrances**

## **Workplace Violence Prohibited**

**Most employers have policies and training with regard to a variety of OSHA subjects in order to comply with Title 29 – Code of Federal Regulations. (Examples include: Accident Investigation; General Contractor Safety; Hazard Communication (Your Right to Know); Personal Protective Equipment; Bloodborne Pathogens Exposure Control; Hazardous Energy – Lockout / Tagout; Emergency Preparedness; Confined Space Safety; Fall Protection; Ladder & Scaffolding Safety and Motor Fleet Safety.) In addition to these regulated topics, OSHA requires employers to establish policies which address Workplace Violence.**

- **Describe workplace violence**
- **Tell employees what to do**
- **Describe urgent threats of violence**
- **Describe how to identify the potential or threat of violence – warning signs**
- **All reports of work-related threats must be reported**
- **They will be investigated**
- **Employees must participate in an investigation of any suspected or actual cases of workplace violence**

## **Emergency Evacuation – Weather, Bomb Threats, Etc.**

**OSHA requires employers to establish policies which address Emergency Evacuation**

## **Work Rules**

- **Rules which are overly-broad and do not clearly define what conduct is permissible for employees may not be enforced contrary to the National Labor Relations Act.**

- Rules that say “an employee’s wage is confidential and should not be discussed with others” violate an employee’s rights.