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labor@joneswalker.com

Following is the final installment of our three-part series on employee handbooks. For your convenience and ease of reference, we have included the previously published portions. If you have any questions, please do not hesitate to contact any of our Labor and Employment attorneys at (504) 582-8000.

AN EFFECTIVE EMPLOYEE HANDBOOK

By: Robert B. Worley, Jr. and Antonio D. Robinson

PART I

1. Reasons to Have a Handbook

There is no law that requires you to have an employee handbook. Additionally, if you have a handbook, it doesn't necessarily follow that you will be in a better position to prevent or defend a lawsuit. So why go to the trouble?

First, every employer has employment policies and procedures, some in writing and maybe some not in writing. If you don't have a handbook, your policies probably are scattered all over the company in the form of memos to your employees or notices on your bulletin boards. They also may be in a binder collecting dust on a shelf in some manager's office. Some of your policies about how to deal with particular situations and issues may even be left to someone's memory about how things have always been handled.

The danger inherent in all these scenarios, of course, is that nobody really knows what your policies are, and the way you've always handled things is actually pretty inconsistent—which increases your risk of exposure to employee lawsuits.

Wouldn't it be better to have all your policies memorialized in an employee handbook? Wouldn't your employees be better informed about your policies, procedures, rules, and expectations? And wouldn't it be better for your supervisors and managers to have a single source to make sure their personnel decisions and actions are consistent with your policies and practices?

If you take the time to consolidate your personnel policies in a thoughtfully crafted handbook, you'll do a better job of making sure your employees know the rules and what's expected of them, and your supervisors will do a better job of keeping you out of trouble. Although an

employee handbook will not guarantee success in preventing or winning a discrimination lawsuit, you'll certainly be a lot better off with a thoughtfully and carefully written handbook than with a bunch of memos and notices strewn about or a set of unwritten policies and procedures that no one seems to remember the same way.

So—all things considered—it's much better in this day and time to have a handbook than not to have one, but only if it's thoughtfully and carefully crafted.

2. Contents for the Handbook

Again, there's no law that requires your handbook to contain any particular policy or procedure—with the one exception of the Family and Medical Leave Act (FMLA) policy noted below. Nevertheless, there is a broad range of subjects that are commonly included in employee handbooks. Consider including the following:

- brief history of the company;
- a statement of the company's purposes or goals;
- an equal employment opportunity or nondiscrimination statement;
- an explanation of normal work hours, meal periods, and breaks;
- the policy on absenteeism and tardiness;
- safety rules;
- information on health, life, dental, and/or other insurance;
- a list of holidays;
- leave of absence policies, like sick leave, FMLA leave (the FMLA requires you to have an FMLA policy in your handbook *if* you have a handbook), bereavement leave, personal leave, military leave, and jury duty leave;
- e-mail and telephone policies;
- a statement about the company's monitoring (electronically or otherwise) of employees while they are at work;

- a progressive discipline policy, including an explanation of the termination policy;
- an explanation of the pension and/or profit-sharing plan;
- your vacation policy;
- a workplace harassment policy;
- a smoking policy; and
- a drugs in the workplace/drug testing policy.

Again, what you include is up to you. Many of the items listed here (and others you may think of) may be subject to federal and/or state regulations. Therefore, it is essential that you obtain legal advice in putting together your handbook.

3. Mandatory Contents (If You Have a Handbook)

If an employer is going to have a handbook, there are certain policies that should be included in the handbook to help minimize an employer's exposure to employee lawsuits.
These policies include:

- Statement Regarding At-Will Employee Relationship;
- Equal Employment Opportunity (EEO) Statement;
- Affirmative Action Policy for Certain Government Contractors and Subcontractors;
- Policy Regarding Sexual and Other Types of Harassment in the Workplace;
- Internet Access/E-Mail/Voice Mail Policy; and
- Family and Medical Leave Act.

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a. At-Will Employee Statement

Employers should include language in their handbooks confirming that all employees are employed at will, meaning that their employment is not guaranteed for any specified duration. This statement should be direct and to the point, such as:

> Nothing contained in this handbook is intended to create, nor creates, an expressed or implied employment contract. Your employment relationship with the company is voluntary on the part of both the company and you, and either party may terminate that relationship with or without notice or cause.

This at-will language should appear in bold, large type at the beginning of the handbook and on the acknowledgment/signature page of the handbook.

By making the employment-at-will policy a part of the handbook, disgruntled employees (and their lawyers) should be discouraged from filing a "wrongful discharge" or "breach of employment contract" lawsuit.

b. EEO Statement

One of the first policies contained in the employee handbook should be a reaffirmation of the company's policy of nondiscrimination in all matters relating to employment practices and procedures. The policy should state that the company provides equal employment opportunities without regard to race, color, age, sex, national origin, religion, disability, or veteran status. The policy should also state that the company's commitment to equality extends to all personnel actions including: recruitment, advertising, or soliciting for employment; selection for employment; determining rates of pay or other forms of compensation; performance evaluation; upgrade; transfer; promotion; demotion; selection for training or education; discipline; suspension; termination; treatment during employment; and participation in social and recreational programs.

c. Affirmative Action Policy

If an employer is a government contractor or subcontractor with 50 or more employees and the contract is $50,000.00 or more, Executive Order 11246 requires that the employer develop written Affirmative Action Plans

for females and minorities, disabled persons, special disabled veterans, and Vietnam era veterans. Also, in accordance with Executive Order 11246, such government contractors are required to include in their equal employment opportunity policy statement (discussed above) that the company has implemented Affirmative Action Programs and invites qualified individuals with disabilities, special disabled veterans, and Vietnam era veterans to identify themselves if they wish to do so. The policy should also provide that the Affirmative Action Plans are available for employees to review. Such policy must be reaffirmed annually and posted on the employee bulletin board.

d. Sexual and Other Types of Harassment Policy

About three years ago, the United States Supreme Court issued two decisions that effectively require that employers adopt strong antiharassment policies. *Burlington Industries, Inc. v. Ellerth*, 118 S.Ct. 2257 (1998); *Faragher v. City of Boca Raton*, 118 S.Ct. 2275 (1998). In these two cases, the Supreme Court outlined an affirmative defense for employers in the unfortunate situation where a supervisor is accused of harassing an employee. Consistent with the defense outlined by the Supreme Court, an employer may escape liability if it can show:

1. it exercised reasonable care to prevent and promptly correct any harassing conduct; and

2. the employee failed to take advantage of any preventative or corrective opportunities offered by the employer.

A strong antiharassment policy is extremely helpful in establishing both elements of this defense. The policy should include:

1. a clear statement that harassment of any type is forbidden;

2. illustrative examples of harassing conduct;

3. a procedure for reporting complaints of harassment, including specific individuals to receive complaints (upper management—not first line supervisors) and possibly a 1-800 number; and

4. an antiretaliation provision.

Also, considering that the employer's immediate supervisor is often the alleged harasser, the policy should list managers, other than the supervisor, to whom an employee can complain.

e. Internet Access/E-mail/Voice Mail Policy

In order to reduce the potential of liability from lawsuits alleging sexual harassment, defamation, and invasion of privacy, employers should create and implement a clear e-mail, voice mail, and Internet policy to reduce employees' expectations of privacy as well as set clear boundaries for employee conduct with respect to electronic communications. The policy should specify that the communications systems are the property of the employer and are subject to monitoring at any time, with or without notice, at the sole discretion of management. The following is a list of elements that should also be contained within an electronic communications policy, subject to the employer's specific needs:

1. Your policy should notify your employees that your e-mail system is intended for business use and that you reserve the absolute right to review, audit, and disclose all matters sent or received over your systems or placed into its storage.

2. Your policy should state specifically that employees are prohibited from using your system to send or receive any improper communications, e.g., any material that is derogatory, defamatory, obscene, or otherwise inappropriate for the workplace.

3. Your policy should relieve your employees of any possible expectation of privacy in their use of your system.

4. Include your employees' use of online message boards in your policy. You can be held liable for information your employees post on message boards, even those not sponsored by your company. Your policy should inform your employees that posting unlawful information (for example, insider trading information) or messages that violate company policy will subject employees to disciplinary action.

5. Your policy should be accompanied by a form that employees are required to sign to acknowledge their agreement as a condition of employment that you have an absolute right to monitor their use of your system and access any information contained in your system.

6. Your policy should be consistent with your no solicitation/no distribution of literature rule. Your policy should include all solicitations and distributions for charitable, personal, business, or other purposes. Without mentioning it, the reference to "other" solicitations will allow you to prohibit union solicitations as long as your policy is consistently applied.

7. Your policy should contain a warning that deleting a message from your e-mail system may not fully eliminate the message from your system.

8. Your policy should clearly state that any violation will result in disciplinary action up to and including discharge.

Remember, even with a strong policy statement allowing your company to monitor your employees' e-mail and Internet use, actual monitoring of electronic communications should be limited to situations where your monitoring is necessary to protect your business purposes. You should use the least intrusive method of monitoring your employees' communications and minimize intrusion into personal communications. To reduce the risk of defamation or invasion of privacy claims by your employees, limit distribution of information obtained from monitoring employee e-mail to managers who have a legitimate need to know.

PART II

f. Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) requires that employers provide employees with general information on their rights under the FMLA. This information must be permanently posted on the employee bulletin board and, if not included in an employee handbook, an FMLA Fact Sheet must be given to every employee. (To obtain an FMLA Fact Sheet, please contact the Jones Walker attorney with whom you work.)

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Additionally, an employer's FMLA policy should include the following:

1. Generally explain employees' rights and obligations under the FMLA.

2. The policy should specify that employees are eligible for up to 12 weeks of unpaid leave of absence during each rolling 12-month period. If this is not included in the policy, it is assumed that the employee is entitled to 12 weeks of unpaid leave during each calendar 12-month period, which conceivably would allow an employee to take 24 consecutive weeks—12 weeks at the end of one calendar year and 12 weeks at the beginning of the next calendar year.

3. The policy should specify whether medical certification and recertification during the employee's leave of absence is required.

4. The policy should specify whether employees will be required to use all available paid leave during their FMLA leave.

5. The policy must also specify whether an employee returning from medical leave is required to present a current medical certification that the employee is able to return to work.

4. Other Common Policies

a. Fraternization Policy

An antifraternization policy should first clearly express that it is not the employer's intent or desire to interfere with or regulate personal behavior of employees outside the workplace. The policy should also express that the employer's purpose is to ensure that personal relationships between employees stay outside the workplace and do not interfere with or disrupt business operations or jeopardize working relationships with other employees. The policy should clearly define the individuals to whom it applies, such as employees working in the same location or department, employees in a direct or indirect supervisor/subordinate relationship, one or

more of these or other categories of employees, or all employees. The policy should also define the conduct to which it applies so that employees are aware when their conduct implicates the policy.

Most antifraternization policies require any violating employee to report the violation to a supervisor or human resources personnel. Employers should always provide more than one reporting route in the event that the individual to whom violations are to be reported is one of the offending employees. The policy should also make clear that employees who are in violation of the policy and fail to properly report their personal relationship may be subject to disciplinary action up to and including discharge.

b. Nepotism Policy

Typically, antinepotism policies prohibit employees who are related from working in the same department or working in a direct or indirect reporting or supervisor/subordinate relationship with one another. An antinepotism policy should contain the same elements as an antifraternization policy.

c. Drug Testing Policy

An effective drug and/or alcohol testing policy should contain the following substantive elements, at a minimum:

1. A statement expressing the policy's purpose and indicating that it is reasonably employment-related;

2. A clear statement of the conduct prohibited;

3. An express condition that written consent to drug and alcohol testing is required for the affected employees, including a description of the types of testing and when and under what circumstances the company will require such testing;

4. A confidentiality provision assuring employees that all results will be handled confidentially and disseminated only on a need-to-know basis; and

5. The consequences for refusing to submit to a test, adulterating a specimen, or testing positive.

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Employers may wish to implement multiple types of drug testing. Louisiana, unlike some other states, does not specifically prohibit any particular type of drug testing, the most common of which are:

1. Pre-employment;
2. Post-accident;
3. Reasonable suspicion or cause; and
4. Random.

Louisiana also encourages employers to adopt drug and alcohol abuse treatment plans by offering a tax credit to employers who do so. La. R.S. 47:6010. To qualify for the tax credit, the employer's plan must meet the following requirements:

1. The plan must cover crisis intervention, including assessment, diagnoses, and referral, in-patient detoxification services, nonhospital residential alcohol and drug treatment services, outpatient alcohol and drug treatment services, and family codependency treatment;

2. The contributions and benefits under the plan, whether applicable to individual employees or a group of employees, must not discriminate in favor of highly compensated employees or their dependents;

3. The plan must not include any eligibility requirement or any limitation on benefits based on prior or existing alcohol and/or drug abuse or health conditions; and

4. Reasonable notification of the availability and terms of the plan must be provided to eligible employees.

The benefit to the employer is a credit against its state income tax in the amount of 5% of the qualified treatment expenses for substance abuse paid or incurred by the employer during the taxable year, with the exception of preemployment medical examination or drug testing costs.

d. Workplace Violence Policy

Although employers may not be able to entirely eliminate the potential for workplace violence, a written policy containing the following elements may not only reduce that potential but may also provide employers with a defense against lawsuits arising out of workplace violence:

1. A clearly expressed "zero tolerance" position on workplace violence;

2. A nonexclusive list of behaviors that may be viewed as violence and that may be a violation of the policy;

3. An unequivocal statement that employees who engage in any violent behavior may be subject to immediate disciplinary action, up to and including discharge;

4. A provision requiring employees to report any suspected or potential violation of the policy, whether the violent behavior is only threatened or actually carried out;

5. The consequences for failing to report policy violations;

6. An assurance that all reports of potential or actual violations will be promptly investigated and that corrective action will be taken, if necessary;

7. An antiretaliation provision for employees who report or participate in an investigation of workplace violence; and

8. Information where offenders and victims may get immediate help (i.e., 911, local law enforcement, on-site security, rehabilitation and counseling services, etc.).

e. <u>Smoking Policy</u>

Many employers may not know that Louisiana law prohibits employers from discriminating against an individual with respect to discharge, compensation, promotion, any personnel action, or other condition or privilege of employment because the individual is a smoker or nonsmoker. It is also unlawful to require as a condition of employment that an individual abstain from smoking or otherwise using tobacco products outside the course of employment. La. R.S. 23:966. However, employers are allowed to adopt a policy regulating workplace use of tobacco products.

Louisiana has also enacted the Office Indoor Clean Air Act, which requires that all employers adopt, implement, and maintain a written

smoking policy. The policy must be announced to all employees and posted on the employer's premises. The policy must provide, at a minimum, that any nonsmoking employee may object to the employer about smoke in his or her office workplace. Upon receipt of such a complaint, the employer must attempt, by using already available means of ventilation or separation or partition of office space, a reasonable accommodation between the smoking and nonsmoking employees. Moreover, any areas where smoking is prohibited must be clearly identified. La. R.S. 40:1300.21.

f. Policies Concerning Unions

Employers should never inquire about the union membership of a prospective employee. The United States Supreme Court has determined that an applicant may have the right to sue an employer under the National Labor Relations Act if the employer inquires about union membership prior to employment, even if the applicant is being paid by a union to help organize other employees. *NLRB v. Town & Country Electric, Inc.* Of course, the employer may refuse to hire the applicant for legitimate reasons unrelated to union affiliation, such as failure to follow instructions on the application or violating the employer's moonlighting policies, among others. Thus, an employer who would like to avoid unionization may have an appropriate management official read a statement to all new employees stating facts, opinions, and examples relating to union activity. For example, an employer may begin with a general statement of its position regarding unions, such as:

> It is my pleasure to welcome you to the Company and to let you know that we are looking forward to you working for the Company. Before you actually begin work, I have an important statement I would like to read to you concerning the Company's position on unions. We do not have a union here at the Company and do not want one in the future. We want you to understand that the Company opposes unions based on the fact that unions have caused problems at other companies with strikes and picket lines and that the Company does not believe that strikes and picket lines are in the best interest of the employees. The Company believes in treating employees fairly and will put forth its best effort to make this the best possible place to work for all employees. If you ever have any problems, whether

> they relate to work or not, you should feel free to discuss them with your supervisor or any other member of management at any time.

Of course, if an employer has had specific experiences with unions, such as a successful election or a loss of production time due to a strike or picket, the employer may wish to generally reference those experiences in the statement. Finally, an employer may provide information to new employees about what to do when approached by an organizer, such as:

> If anyone promoting a union ever approaches you and asks you to sign a card or any other document, we recommend you politely refuse. That person may be an outside union organizer or even one of your fellow employees here at the Company. Your signature on the dotted line is a serious matter with legal consequences, so do not let anyone pressure you or take advantage of your friendship to get you to sign something without first letting you get all of the facts. If you ever want the facts about unions, you have the right to ask your supervisor or any other manager at the Company. We believe that you will find the work here at the Company rewarding, and we are glad to have you as a member of our team.

This type of statement to new hires includes only the employer's facts, opinions, and examples of union organizing and its effects, which is consistent with the free speech rights of employers regarding unions.

g. Solicitation Policy

A no-solicitation policy should never specifically reference unions but should generally describe the prohibited conduct. The policy should specify the temporal and geographic limitations on the prohibited conduct. For example, the policy should state that employees are not allowed to solicit or distribute literature during working time or on the employer's property. The policy should also clearly reserve the right to use bulletin boards for management only. Likewise, if the employer allows employees to engage in certain types of solicitation or distribution, the policy should clearly explain what conduct is permitted.

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h. Policies Regarding Workweeks, Pay Periods, and Paydays

By law, all employers must establish their regular workweek consisting of seven (7) consecutive days, but you have the discretion to decide on what day you want your workweek to start and on what day you want it to end. So, most employers decide what their workweek will be and stick with it. And your handbook should specify what it is.

Next, your handbook should specify what your pay period is. Most employers pay semimonthly or biweekly (*i.e.,* every other week). Whatever your pay period is, your handbook should specify it.

And, perhaps most importantly, your handbook should inform employees what day is payday. Whatever day it is should be specified in your handbook. And your handbook also should inform employees when they will be paid if the regular payday falls on a holiday or weekend. In most cases, this will be the last business day before the holiday or weekend. Whatever the day, your handbook should state it.

i. Overtime Policy

By law, all employees are classified as either exempt or nonexempt for overtime purposes. Nonexempt employees are entitled to overtime compensation (one-and-one-half times their regular hourly rate) for all hours worked in excess of 40 in a workweek. Exempt employees are not entitled to overtime compensation. Therefore, your handbook should include a clear, concise statement about who gets overtime and who doesn't.

j. Payment for Vacation and Sick Leave Upon Termination

Your handbook probably will include separate sections dealing with vacation and sick leave. In addition to spelling out how much vacation and sick leave you provide, how employees can use vacation and sick leave, etc., your vacation and sick leave policies should include a statement concerning what happens to an employee's vacation and sick leave when employment terminates.

In Louisiana, employers are required by law to pay former employees all compensation due by the next regular payday but no later than 15 days following termination or resignation. Therefore, your handbook should include a statement that employees are paid for all unused

vacation upon the termination of their employment. This informs employees what to expect and, perhaps more importantly, helps prevent costly mistakes by your accounting or payroll department.

The same rules do not apply to sick leave. Therefore, your handbook also should include a clear statement that unused sick leave is not paid to employees upon the termination of employment—unless, of course, it's your *voluntary* policy to pay terminating employees for unused sick leave.

k. Benefits Policy

Let your summary plan descriptions describe your benefit plans. Don't try to do it in your handbook. Don't even list the benefits you provide in your handbook without a qualifying statement such as the following:

> At the present time, we offer eligible employees the opportunity to participate in the following benefit plans: [insert list of plans]. Summary Plan Descriptions (SPDs) describing each benefit plan offered, the benefits available, and the eligibility requirements are distributed to all eligible employees. Each plan is subject to change or termination by the Company at any time. For information concerning benefit plans available at any particular time and the benefits available and the eligibility requirements under each plan, please consult the Human Resources Department.

Nothing more need be said about benefits in your handbook.

PART III

l. Severance Pay Policy

Some employers include severance pay policies in their employee handbooks. Severance pay is covered by ERISA. Therefore, just like your 401K plan, if you adopt a severance policy, you have to have a plan document and a summary plan description and you have to file a form 5500

with the Internal Revenue Service every year. A handbook severance policy is not a substitute, and the penalty for noncompliance can be stiff. If you have a severance plan, it's all right to mention it in your handbook, but just as is the case with your other benefits, your handbook should simply refer your employees to the Human Resources Department or to their summary plan description for further information concerning your severance plan.

m. Military Leave Policy

Under Louisiana law, employees should not be discriminated against because of military leaves of absence. The statute imposes no duty on the number, frequency, or duration of training duty. The employees seeking leave should give the employer reasonable advance notice. The employees are also allowed a reasonable rest time. There is not a requirement that military leave be paid leave. However, if an employer has a policy, pattern, or practice of compensating an employee who takes military leave, the employer must compensate all employees who take military leave.

The act prohibits an employer from refusing to hire, rehire, promote, or terminate people because of their membership in or application for service in the military. After active duty, employees have the right to be reemployed by their pre-service employer, provided they apply within a certain time after separation from active duty. Note, there are many exceptions to this notice requirement. If an employee does the following things, an employer must take that individual back within 10 days following the employee's application for reemployment:

1. gives the employer advance written and verbal notice of the service;
2. takes less than five years' total military leave; and
3. submits an application for reemployment within certain deadlines.

If an employee has given an employer notice of his or her desire to continue insurance coverage when he or she enters service in the military, the employer must maintain the employee's insurance as long as the employee gives the employer the money that would have been deducted from his or her compensation for insurance coverage.

If an employee sustained a disability during his or her duty such that he or she can no longer perform the functions of his or her pre-duty position, the employer must employ this individual in another position that "will

provide like seniority, status and pay or the nearest approximation thereof consistent with the circumstances of the case."[1]

Because the act requires employers to restore employees to their pre-leave status, employees who take military leave do not forfeit any benefits they have already accrued under an employer's retirement plan and do not have to requalify for participation in the plan upon returning from leave. Additionally, employees on military leave continue to vest and accrue benefits under the employer's retirement plan as if they were not on leave. However, employees cannot get more than four years of military service credit on any retirement system or employee benefit plan an employer has.

If the employee is reemployed under this act, an employer cannot fire the employee without cause for one year after the reemployment. Thus, in contrast with Louisiana's "normal" at-will employment relationship, an employee who returns to work from military leave has a one-year employment contract.[2]

Under federal law, an employer is required to grant up to five years of unpaid leave to employees who are members of or join the military. Note: regular National Guard and military reserve training are not counted toward this five-year limit.

Like the Louisiana act, in theory, employees must give an employer a certain amount of notice of their leave, but in practice, it is difficult to claim an employee forfeited his or her rights under this act by failing to provide adequate notice.

The act applies to all employers, regardless of how many employees you have. When employees return from their military leave, they must be given the job they would have had if they had not taken any military leave. In other words, if an employee comes due for a promotion while on military leave, you must give him or her that promotion upon reemployment — the "escalator" position. But, there are exceptions to this general requirement.

1. An employer does not have to take back an employee that has been dishonorably discharged.

2. Note, this act also has a retaliation provision that prohibits employers from taking any adverse employment action against individuals who try to enforce any of the protections afforded by this act. This retaliation provision applies to all employees, not just those who serve in the military.

Depending on whether an employee's leave lasts more or less than 90 days and whether the employee is capable (or can become capable) of performing the essential tasks of his or her job, you might be able to return him or her to:

- the escalator position or a position of equivalent seniority, status, and pay;
- the job that most closely approximates the escalator position;
- the employee's job before taking leave or a job with equivalent seniority, status, and pay; or
- the job that most closely approximates the employee's original job.

If an employee becomes disabled during his or her military service, the employer must provide reasonable accommodations to allow him or her to perform the escalator position, an equivalent position, or the job that most closely approximates that equivalent position.

Like the Louisiana act, employees who take military leave do not forfeit any benefits. The act also requires employers to allow employees who take more than 30 days of military leave to continue coverage on the employer's health plans, at the employee's expense, for up to 18 months.

Like the Louisiana act, an employer cannot fire an employee who returns from military leave for a specified period of time after the leave ends. The duration of this prohibition depends on the length of the employee's leave, generally whether it is more or less than 180 days.

n. Jury Duty Policy

Both Louisiana and federal laws provide that employees serving or called to serve on jury duty cannot be discharged due to their service. Employees who believe they have been discriminated against on the basis of their jury service can seek to obtain court-appointed counsel.

o. Maternity Leave Policy

Unlike the FMLA, Louisiana law provides that employees are eligible to take leave on account of pregnancy, childbirth, and related medical conditions from their first day of work. Pregnancy, childbirth, and related medical conditions are treated as any other temporary disability. No employer is required to provide a female employee disability leave on account of normal pregnancy, childbirth, or related medical condition for a period exceeding six weeks.

Under the law, unless the following are based on a bona fide occupational qualification, it is unlawful for an employer to:

- refuse to promote;
- refuse to select a female for a training program leading to promotion, providing she can complete the training program at least three months prior to the anticipated date of departure for her pregnancy leave;
- discharge; or
- discriminate with respect to compensation or in terms, conditions, or privileges of employment.

Employers must permit employees to take a leave on account of pregnancy for a "reasonable period of time" not to exceed four months. A "reasonable period of time" equals that period in which the female employee is disabled on account of pregnancy, childbirth, or related medical conditions. The employee can use any accrued vacation leave during this time. Additionally, this leave and FMLA leave run concurrently.

The equivalent federal law prevents disparate treatment on the basis of pregnancy, childbirth, or related medical conditions and mandates that "women affected by pregnancy, childbirth, or related medical conditions will be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability to work. . . "

p. Workers' Compensation Policy

Adverse employment actions may not be taken against an employee who files a workers' compensation claim. This means that an employer cannot refuse to employ or discharge an employee who has asserted a claim for workers' compensation benefits. However, an employer does not have to hire or retain an applicant or employee who does not meet the qualifications of the position.

q. Bereavement Leave Policy

Employers can include a bereavement policy that allows employees to take time off due to the death of an immediate family member if they immediately notify their supervisor. Typically, three days' paid leave will be granted to allow the employee to attend the funeral and make any necessary arrangements associated with the death. An employee may, with

the supervisor's approval, use any available paid leave for additional time off as necessary.

r. Disciplinary Policies

"Progressive Discipline" is a term of art in the employment law field. It means what it suggests, that employees should be disciplined over time before they are terminated. Most employees are employed "at will," meaning that their employer is free to terminate them at any time for any reason (as long as it is not an unlawful reason), just as the employees are free to leave. The policy should make an exception that certain offenses can give rise to immediate termination, which will allow the employer some flexibility in determining the discipline.

5. Emerging Policies

a. Cell Phone Use Policy

Legislatures throughout the country are considering prohibiting the use of cell phones while operating vehicles, which should alert employers about the potential liability associated with cell phone use during work hours by employees. Despite the enactment of such laws, employers may still face liability if employees injure themselves or others while using a cell phone during the course and scope of their employment. For example, a Virginia company was sued when its employee killed a pedestrian with her car while talking on her cell phone about the client meeting she had just left.

Because of the potential liability, every employer should consider adopting a written policy regarding the use of cell phones for work purposes. The policy should clearly delineate whether cell phone use is permitted during work hours. If cell phone use is encouraged or required, then the policy should limit the duration of the use and describe the situations when use is permitted. The policy should also implement safety precautions when cell phone use is required.

b. Workplace Domestic Violence Policy

Recently, the Attorney General for Louisiana issued a set of findings that prompted his issuance of guidelines for workplace domestic violence policies. Although domestic workplace domestic violence policies are novel, the failure to adopt a written one could result in an employer facing legal liability. For instance, a Pennsylvania woman filed a lawsuit against her employer for failure to protect her from her husband, who shot her while she was at work. Among her many complaints, the woman alleged that her

employer was negligent because it failed to implement and enforce a workplace domestic violence policy.

To help reduce the potential liability, some employers are adopting workplace domestic violence policies. The policy should include all the elements of the workplace violence policy with some additional provisions, such as a nonexhaustive list of accommodations for an employee fearing workplace domestic violence.

6. What Not to Adopt in Your Handbook

As indicated above, from the standpoint of defending a discrimination lawsuit, you are better off with a good handbook than no handbook at all, but you're probably better off with no handbook than with a bad handbook. Since it's inevitable that your handbook will be an exhibit, either for or against you, in any employment-related lawsuit, it's important to make sure what you include in your handbook won't come back to bite you. In this regard, here are a few things to avoid like the plague:

1. Always avoid the use of any language that might imply a promise of long-term employment, permanent employment status, or continued employment as long as the employee performs satisfactorily. Why? Because this kind of language implies that the employment relationship is something more than at-will.

2. For the same reason, you should avoid references to a "probationary" period of employment. Using this term can imply that once an employee completes his or her "probationary" period, he or she is entitled to permanent employment and is something more than an at-will employee.

3. If you have a "probationary" period of employment, your handbook should state very clearly that the employee's job isn't guaranteed for the duration of the probationary period and that the completion of the probationary period doesn't entitle the employee to a "permanent" position or employment for any length of time.

4. You also should avoid stating that employees will be terminated or discharged only "for cause." Although such a promise by an employer is legally unenforceable in Louisiana, it is misleading to employees and could be an

invitation to a lawsuit if you terminate an employee for a reason other than "good cause."

Although such representations, like an implied promise of permanent employment, are unenforceable in Louisiana, juries don't like employers that don't keep their promises; they could use a broken handbook promise as an excuse to nail you in a discrimination case even if there's no direct evidence of a discriminatory motive.

Please feel free to contact us should you have any questions related to your handbook or other policies.

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

H. Mark Adams
Jones Walker
201 St. Charles Ave., 47th Fl.
New Orleans, LA 70170-5100
ph. 504.582.8258
fax 504.582.8015

Sidney F. Lewis, V
Jones Walker
201 St. Charles Ave., 47th Fl.
New Orleans, LA 70170-5100
ph. 504.582.8352
fax 504.589.8352

Labor, Employment & Employee Benefits Practice Groups

H. MARK ADAMS[1]
JENNIFER L. ANDERSON
JOHN C. BLACKMAN
TIMOTHY P. BRECHTEL
LAURIE M. CHESS
SUSAN K. CHAMBERS[2]
HELINA S. DAYRIES
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VIRGINIA WEICHERT GUNDLACH
PAULINE F. HARDIN
CORNELIUS R. HEUSEL
THOMAS P. HUBERT
CLYDE H. JACOB III[3]
MARY ELLEN JORDAN
ALAN F. KANSAS[4]
JOSEPH F. LAVIGNE
SIDNEY F. LEWIS V
CHARLOTTE MARQUEZ
EDWARD F. MARTIN
STEPHANIE C. MOORE[5]
MARGARET F. MURPHY
RUDOLPH R. RAMELLI
SHELLEY M. SULLIVAN
ANTONIO D. ROBINSON
ROBERT B. WORLEY, JR

[1] Also admitted in Mississippi
[2] Also admitted in West Virginia
[3] Also admitted in Virginia
[4] Also admitted in Texas
[5] Also admitted in Tennessee