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Municipal Association  
of South Carolina

Clerks and Treasurers Institute

**Employee Handbook  
Do's and Don'ts**

September 11, 2024  
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*South Carolina's Labor & Employment Law Firm*

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**Employee Handbooks**

Why does a municipality need an employee handbook?




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**General Advice**

- Less is more
- Is the number of pages in your handbook greater than the number of employees?
- Do not have to explain "why" policy is being adopted

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## Adopting Handbook/Policies

- Do not adopt by ordinance
- Adopt by resolution or accept as information




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## Adopting Handbook/Policies

- Here are just a few of the things that have happened that may have made your handbook out-of-date just in 2024:
  - Constitutional Carry (effective March 7, 2024)
  - The Pregnant Workers Fairness Act (effective June 27, 2023, but final regulations were issued on April 15, 2024, and went into effect on June 18, 2024)
  - New FLSA salary basis rule went into effect July 1, 2024
- If your County's employee handbook is searchable, search for the word "Myspace"
- Both law and everyday life change rapidly. Consider whether having an employee handbook that can only be modified by ordinance makes sense in our constantly evolving world

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## At Will Employment

- True or False:
  - South Carolina is an "at will" state
    - True. 49 states, including South Carolina, are "at will" states.

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### At Will Employment

- At Will Employment means, essentially, that either the employer or the employee may end the employment relationship without giving either notice or reason.
- What employees aren't at will?
  - Employees who have a contract of employment for a definite period of time
  - Employees who cannot be terminated without cause

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### Disclaimer

- What should be on the first page?
  - A disclaimer
- What one word must describe the disclaimer?
  - Conspicuous
- Why does the disclaimer need to be conspicuous?
  - Prevents the handbook from being a contract

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### Disclaimer

- **Disclaimer** (Handbooks are not contracts)  
§ 41-1-110, states that a disclaimer is conspicuous if it is:
  - On the first page of the handbook
  - in ALL CAPITAL LETTERS AND UNDERLINED
  - Signed by employee

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**Must Have Policies**



**1. Equal Employment Opportunity**

Sometimes referred to as an "EEO" policy

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**EEO Policy**

- Equal Employment Opportunity

The City provides equal opportunity to all applicants for employment and administers hiring, conditions and privileges of employment, compensation, training, promotions, transfer and discipline without discrimination because of race, color, religion, sex, gender identification, sexual orientation, pregnancy, childbirth, or related medical conditions (including, but not limited to, lactation) disability, genetic information, age, or national origin. The City also prohibits retaliation against employees who have reported discrimination in good faith. Any employee who believes that he has been discriminated against in violation of this policy should report the matter to the \_\_\_\_\_ [administrator or manager/mayor/council].

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**EEO Policy**

- Why should your policy promise to provide equal opportunity related to those characteristics?
  - Because those are the characteristics protected by federal and state anti-discrimination laws
- Why should your policy prohibit retaliation?
  - Because those same federal and state anti-discrimination laws also prohibit retaliation

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## Federal Anti-Discrimination Laws

- Title VII of Civil Rights Act of 1964
  - Race
  - Sex (including sexual orientation, gender identity and pregnancy)
  - Religion
  - Color
  - National origin

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## Federal Anti-Discrimination Laws

- Age Discrimination in Employment Act (ADEA)
  - ≥40 years
- Americans With Disabilities Act (ADA)
  - Reasonable accommodation
  - Interactive process
- Genetic Information (GINA)
- Pregnant Workers Fairness Act (PWFA)

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## Retaliation

- Harassment because of opposition to unlawful conduct is illegal.
- Harassment because of participation in an investigation into unlawful conduct is illegal.

WORKPLACE RETALIATION

Workplace retaliation is when an employee faces adverse action after raising or in a protected activity. Those adverse actions may include:

- Termination
- Demotion
- Transfer
- Failure to promote
- Reduction in pay or benefits




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**Must Have Policies**



2. Anti-Harassment

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**Anti-Harassment Policy**

- Must prohibit all harassment
- Must prohibit retaliation
  - Why? Because those same federal and state anti-discrimination laws also outlaw harassment and retaliation for reporting discrimination or harassment
- Must have a procedure for reporting, including alternate reporting based on different potential harassers

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**Must Have Policies**



3. Family and Medical Leave Act  
(if you have 50 or more employees)

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### FMLA Policy

- The FMLA was updated extensively in 2008 and 2010
- Please be sure that your handbook has been updated in the last 14 years
- See the MASC model policy if you need a current version of this policy

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### Policies to Consider



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### Employment

- Hiring/Recruiting
  - Preference for promoting from within is fine but should not promise that internal candidates will be preferred over external ones
- Nepotism/Employment of Relatives
  - Prohibit family members from supervising one another or working together at all if they handle money
  - Prohibit family members of elected officials from working for the municipality

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## Employment

### Employment Status

- Many municipalities employ a mix of full-time, part-time, and temporary employees
- It can be helpful to describe in the handbook each of these types of employment status
- Also, the policy may make a general statement that certain types of employees are not eligible for benefits
- It is important the policy not give the impression that employees who work over a certain number of hours will be accorded a certain status

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## Employment

### Probationary Period

- It is advisable for new employees to be deemed "probationary" for some period of time after hire, typically six months
- All the anti-discrimination laws previously discussed still apply to probationary employees
- However, Courts do take into consideration when employees in their probationary period are terminated versus those who have been employed for longer periods of time

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## Employment

- Outside Employment
  - Require authorization
  - Prohibit working for anyone else while on the municipality's time
- Conflicts of Interest
  - Make sure employees are aware of the Ethics Act
  - Consider scheduling training with the State Ethics Commission if you believe employees are not up to speed on the Act

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**Employment**

- **Political Activity**
  - Should state that political association is unrestricted
  - Require employees who run for office to take unpaid leave until after the election
  - If the employee wins an election to partisan office, employment ends
- **Public Records**
  - Prohibit destruction or removal
  - Consider prohibiting using personal devices for municipal business

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**Employment**

- **Workplace Privacy**
  - Should state that employees have no expectation of privacy while at work
- **Computer/Internet Use**
  - Should restrict employees from engaging in improper actions online
  - Should state that internet usage that is obscene, harassing or unlawful – even if engaged in outside of work – can result in discipline or termination

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**Employment**

- **Drug Free Workplace**
  - Should forbid employees from using illegal drugs, whether at work or not, and from showing up to work under the influence of drugs or alcohol.
  - Policy satisfies notice requirements under the federal and state drug-free workplace acts.
- **Drug & Alcohol Testing**
  - Random testing for safety sensitive employees and CDL drivers
  - Reasonable Suspicion for all employees

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## Wages and Hours of Work

- Hours of Work
  - Describe "normal" work hours but state that those hours vary based on position
- Overtime
  - Prohibit working "off the clock" and prohibit working overtime without prior approval
- Compensatory time
  - If you pay "comp time" instead of overtime, it has to be at time and a half and should only be provided to hourly non-exempt employees
  - Consider "flex time" for exempt employees

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## Wages and Hours of Work

- Payment of Wages
  - Time and place of payments
  - Deductions, including deductions for misused or lost equipment
  - Forfeiture provisions
  - Municipal equipment/property is an "advance on wages"



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## Performance Evaluations

- Not required by law
- If you do them, you have to actually do them
- Require employees to sign

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### Benefits & Leave

- Leave is not required by law, but everyone provides it
  
- Annual Leave/Sick Leave/PTO
  - Consider expressing in hours, not days
  - State how much can be accrued
  - State whether or not leave is paid at termination, and if it is, under what circumstances

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### Benefits & Leave

- Holidays are not required by law, but everyone provides them
  
- Military Leave – “as provided by law”
  
- Jury Duty – permitting service is required by law, but not paying employees for it
  
- Bereavement Leave “up to x days/hours”

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### Benefits & Leave

- Physical Disability and Personal Leave
  - This can be used if employees do not have FMLA rights
  
- Reasonable Accommodations Policy
  - Describe circumstances that might call for an accommodation, how to request one, and the interactive process generally
  - This policy can also address pregnancy accommodations and lactation

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**Safety**

- Job Safety
  - Safety committee
- Worker's Compensation
  - Require reporting any and all injuries
  - State that no employee will be retaliated against for filing a claim

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**Miscellaneous**

- Personal Appearance
  - If you have a dress code, be sure to avoid unintentional discrimination as to race, sex or gender identity
- Smoking
  - You can prohibit it on municipal property, but you cannot discriminate based on an employee being a smoker

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**Miscellaneous**

- Remote Work
  - Avoid a total ban because of the potential it may be required as a reasonable accommodation for a disability
  - Provide for monitoring and make sure it is enforced
- Artificial Intelligence
  - Can be covered in your computer/internet policy but may need to be addressed

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## Employee Conduct

- Discipline
  - Does not have to be progressive
  - List examples of misconduct
    - "Any other reason that, in the City's sole discretion, warrants discipline."
  - Require disciplinary notices to be signed

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## Grievance Procedure

- Municipalities are not required to have a grievance procedure, but if adopted, the procedure must substantially comply with S.C. Code of Laws § 8-17-110, *et seq.*
- Consider
  - Form of government
  - Size of municipality

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Gee, I wish there was some kind of model handbook online that municipalities in South Carolina could use to make their own employee handbooks.

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**Model Employee Handbook**  
for South Carolina Municipalities

- [https://www.masc.sc/sites/default/files/uploads/human-resources/model\\_employee\\_handbook.pdf](https://www.masc.sc/sites/default/files/uploads/human-resources/model_employee_handbook.pdf)

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## Questions?

When somebody writes, "call if you have any questions," Do they really mean ANY questions? Because I'm really wondering about platypuses.



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