

# **AVOIDING LEGAL PITFALLS WHILE DRAFTING EFFECTIVE EMPLOYEE HANDBOOKS**

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**I. Hypothetical Case Study #1: The Absent Absence Policy.**

An employee stops coming into work. The employee does not call. No one knows where the employee is. What do you do?

- Does your handbook have a job abandonment policy (how many no call-no-shows)?
- What is your handbook's attendance policy?
- If you terminate the employee for not coming into work, will the employee still qualify for unemployment compensation?
  - What does your handbook say?
  - Did the employee sign off on receipt of the handbook (or even better sign off specifically on the attendance policy)?
  - Did the employee violate the attendance policy?
- What happens if you do not have a clear attendance policy?
  - Unemployment compensation?
  - Different employees being treated differently?
  - What is your standard for discipline or termination?
  - What about an employee who claims they stopped coming in to work due to harassment or unsafe working conditions? Does your attendance policy speak to this? What about your whistleblower and harassment policies?
- Your ability to defend claims stemming from what is a commonplace problem is driven almost entirely by the drafting of your handbook.

## **II. Preliminary Considerations Regarding Handbooks.**

### **A. What Is The Purpose Of Handbooks?**

1. Serves as a communication tool to employees.
2. Sets expectations.
3. Protects employers by establishing policies that help employers make consistent decisions regarding employees.
4. Compliance with laws.
5. A well-written handbook helps to reduce the likelihood of legal claims and helps reduce the chance of legal liability.

### **B. Decide Which Policies To Include.**

1. Gather current policies.
2. Make sure policies reflect actual practice.
3. Identify policies you wish to add.
4. Only include policies you intend to follow.
  - a. Failure to do so causes confusion.
  - b. Failure to do so may create legal liability.
  - c. Failure to do so may lead to discrimination claims.
5. Incorporate any requirements from local ordinances (For example, the city of Madison has more expansive protected class categories).
6. Employees have the right to engage in protected concerted activity for mutual aid and protection under the Municipal Employer Relations Act (MERA). Be careful not to include policies that might be interpreted to interfere with those rights.

For example, a policy prohibiting all employees from speaking negatively about the District on social media, is likely prohibited by MERA (in addition to the First Amendment).

7. Handbooks must be consistent with a district's board policies. Handbooks should not afford employees any more or less rights than board policy. Handbooks should not create new obligations for the district as an employer. Handbooks should be updated when board policy changes. Handbooks may be modified mid-year, as long as changes are provided to teachers and the changes do not conflict with individual teacher contracts.

8. Districts that do not fulfill the requirements contained in their board policies, handbook provisions, individual employment contracts, or applicable statutes risk having their decisions to discipline, discharge, nonrenew, or lay off an employee overturned. *See Scheckel v. Sch. Dist. of Wauzeka*, No. 92-3121 (Wis. Ct. App., Feb. 10, 1994) (unpublished decision).
9. In most cases, the handbook should explain that in the event a board policy conflicts with the handbook, the board policy should control. Similarly, the handbook should explain that in the event an individual contract (if any) conflict with the handbook, the individual contract shall control.
10. Not every board policy related to employment, needs to be included in the handbook. Instead, in the disclaimer statement and acknowledgment page, the handbook can explain that the handbook is not an exhaustive listing of applicable policy.

### **III. Hypothetical Case Study #2: The Policy that Is Never Enforced.**

A District has a policy in its handbook that prevents employees from taking more than 5 sick days to care for an employee's sick child. In reality, this policy is never enforced. A male paraprofessional requests from his immediate supervisor a 6<sup>th</sup> non-consecutive sick day to care for his sick child (who for purposes of this hypothetical does not have an FMLA-qualifying serious health condition). The Director of Pupil Services questions the validity of this need, points to the handbook and says that the employee can't stay home a 6<sup>th</sup> day. He also states, "Can't the kid's mother stay home?" The employee is frustrated because he knows female paraprofessionals have been allowed to take additional sick leave to care for their children. The employee suspects discrimination.

- Because the policy was never enforced, it becomes ammunition for the first employee that feels "wronged" by its enforcement.
- If the District's "defense" is that it planned to enforce the policy universally going forward, it better be sure it did not grant any more exceptions, particularly to female employees, after that employee's request.
- Prior to the District enforcing the policy, the employer should have explained to all employees that the policy was going to be enforced going forward.
- How much information does an employee want to know about why an employee is absent? This is part of the PTO v. Sick leave debate. Both approaches can work, but only if enforced consistently.
- The Director of Pupil Services needs training on discrimination and equitable enforcement of policies.

#### **IV. Organizing And Drafting Tips.**

- A. Use a table of contents.
- B. Organize policies by subject matter.
- C. Consider using a binder and placing each policy on separate pages, that way each policy can easily be replaced when it is updated.
- D. Use a positive and professional tone.
- E. Use plain language (eliminate complex or legal terms).
- F. Maintain discretion (for example, the handbook should give the employer discretion to discipline and terminate the employment relationship and the handbook shouldn't claim to list all possible reasons for termination of the employment). Avoid a lock-step progressive discipline policy that must be followed prior to termination. This diminishes an employee's at-will status.
- G. Don't try to include every policy or procedure, sometimes less is more.
- H. Include the contact information for who employees can contact if they have any questions; be prepared to change this information if this contact employee changes.
- I. The handbook may be a potential exhibit - for or against you.
- J. Review it on a regular basis. Laws change and so too do your practices. Make sure your handbook reflects what you are actually doing. This is especially important if you use a policy service that sends regular updates to the district. These updates could also require changes to the handbook.

#### **V. Hypothetical Case Study #3: The Policy that Changes.**

A growing school district switches to a third party FMLA administrator hoping to ease the administration of FMLA. The District disseminates to all employees a new FMLA policy (prepared by the third-party administrator) through email. The District does not modify the employee handbook, which it disseminated in hard copy. The handbook contains an out-of-date FMLA policy that requires employees to request FMLA leave through their immediate supervisors and not the third party administrator. A custodian often takes unexpected intermittent FMLA leave and each time notifies his immediate supervisor (the Director of Buildings and Grounds) of the reason for the leave. The custodian never notifies the third party administrator. In the absence of FMLA, these absences would be unexcused, and he would accrue enough unexcused absences for termination under the attendance policy.

- Are the absences excused or unexcused?
- Should the employee be terminated, or would that be FMLA interference/retaliation?
- How could the District have rolled out the new policy more effectively? This is a good example of why using a binder with policies on separate pages makes handbooks easier to update. How could electronic distribution help?
- What could the Director of Building and Grounds have done to limit potential liability?
- Is the third party FMLA administrator liable?

Loosely based on: *Archev v. AT&T Mobility Servs. LLC*, No. CV 17-91-DLB-CJS, 2019 WL 1434654 (E.D. Ky. Mar. 29, 2019).

## **VI. How Many Handbooks Should You Have?**

- A. Some employers use one handbook for all types of employees. This tends to make the handbook a bit larger as there are policies that will apply to some employees but not others. On the other hand, having multiple handbooks can get unwieldy, because when policies change that apply to all handbooks, employers must remember to update all handbooks.
- B. You will want to consider how your handbook(s) will treat the following common types of employees:
1. Support Staff.
  2. Professional Staff.
  3. Administrators with contracts under Wis. Stat. § 118.24. Do their contracts cover all relevant policies, or is there a need to reference certain policies in a handbook?
  4. Administrators and supervisors that do not qualify for contracts under Wis. Stat. § 118.24 and do not otherwise receive an employment contract. (For example, a Director of Building and Grounds).
  5. Substitute employees.
  6. Coaches and Extracurricular Advisors.
- C. All employees need to be made aware of the policies relevant to all employees, like the harassment policy. Even if you do not cover each of these categories in a handbook, be sure that you have a method for providing them with relevant information.
- D. A handbook must be very explicit with regard to the classifications of employees to which it applies. It should also include definitions for any terms that it repeatedly uses throughout (*e.g.*, “full-time employee,” “discipline,” “work week,” etc.).

- E. “School year employees” should be defined. Does this term mean the school fiscal year July 1 to June 30? Or does this mean employees that are regularly scheduled to work only during 9-10 months a year?
- F. Part-time employees should be defined consistently in terms of scheduling, but also in terms of benefits. Part-time employees might work 6 hours, 5 days a week or 8 hours, 4 days a week. What benefits would each of these employees qualify for?

## **VII. Preserving At-Will Status in a Handbook.**

- A. Wisconsin is an at-will employment state, unless this status is changed by law, policy, contract, or handbook. Either employees or employers may terminate employment at any time without any prior notice for any reason so long as the reason is a legal reason.
- B. However, courts may interpret certain handbooks as either express or implied contracts if the handbook contains provisions through which a court could reasonably infer that the employer and the employee intended to bind each other by the handbook. *Ferraro v. Koelsch*, 124 Wis. 2d 154, 166-70, 368 N.W.2d 666 (1985). If courts find that a handbook creates a contract, the district can be sued for breach of contract based on the terms of the handbook.
- C. Provisions that can erode at-will employment status?
  - 1. Promises or suggestions of employment longevity, security, or continued employment. (These types of statements are often found in the introduction or welcome section of handbooks).
  - 2. References to “probation” or “trial” periods. (Or conversely reference to “permanent” employment status).

Handbooks often state something such as “Your first 90 days with the District will be a probationary period. During this time, your performance will be monitored to determine your competency and your ‘fit’ in the job. Your probationary status may be extended by the District. You can be terminated at any time during this period.”

- a. This language suggests that when the employee “passes” the probationary term, he has achieved a new status or cannot be terminated at will.
- b. This language also suggests that once the employee passes probation, he has established that he is competent and a good fit for the job. Employers should avoid this, because you have the right to assess the employee’s competency, etc., throughout employment.

3. Use of the terms “cause” or “just cause” regarding termination of employees.
  4. Progressive discipline policies need to build in discretion to skip steps as necessary, including implementing immediate discipline/termination.
  5. The required statutory grievance procedure adopted under Wis. Stat. § 66.0509(1m). What will the standard of review be under the procedures? Use only as required for employee terminations, discipline, and workplace safety. Be sure to define these terms clearly to not include verbal coaching or reductions in force. Determine which, if any, contract non-renewals will be covered by this policy. Will only non-renewals for misconduct and performance reasons be covered?
  6. Seniority provisions. Provisions that state or imply that length of service is the determining factor in employment decisions can bind the employer in making employment decisions, including reduction in force decisions. Districts should maintain the right to use whatever legal criteria they choose in making employment decisions (seniority, performance, skill set, etc.).
  7. Signed agreement provisions. Handbooks often include a “sign off” section indicating that the employee acknowledges having received and read the handbook. However, a provision that the employee agrees to be “bound by” or to “abide by” all of the policies and rules stated in the handbook can potentially create an argument that if the employee in fact abided by the provisions of the handbook, then they will remain employed.
- D. To avoid a court deeming a handbook to be a contract, districts should include a clear disclaimer that the district can change terms in the handbook unilaterally without notice and that the handbook is not intended to be a contract.
- E. Even for employees that have an individual employment contract, districts want to be sure that the handbook is not treated as an additional contract. The handbook needs to remain a more flexible and detailed document than a contract.

#### **VIII. Hypothetical Case Study #4: At-Will?**

A paraprofessional signs a handbook that expressly states that the employee is “at-will.” However, later on, the handbook contains a “performance management policy” that explains how the District will handle student/parent complaints about staff and subsequent investigations. The paraprofessional is fired and sues claiming the District failed to follow the policy prior to his termination. Does the policy alter the parties’ at-will relationship?

- Does the policy contain language that is permissive or does the policy language indicate that the District is obligating itself to certain procedures?

- Does the policy reference the at-will nature of the employment relationship, and if so is that reference intended to change the employment relationship?
- Courts are looking to see if the policy language could support a reasonable inference that the parties intended to change their at-will employment relationship.
- What language could the policy and handbook contain that would help employees understand that the policy does not modify the at-will relationship?

Loosely based on: *Bukstein v. Dean Health Sys., Inc.*, 2017 WI App 54, 377 Wis. 2d 688, 903 N.W.2d 130.

## **IX. Contents Of The Handbook.**

### **A. Introduction.**

1. Welcome statement.
2. District's philosophy (vision/mission/culture).
3. Opening disclaimer.
4. Contract disclaimer. A clear and forthright disclaimer that a handbook is not a contract can be a complete defense to a breach of contract claim based on the handbook (absent other language that undermines the disclaimer). *Workman v. United Parcel Serv., Inc.*, 234 F.3d 998 (7th Cir. 2000).
5. At-will employment affirmation. An employee handbook that establishes a just cause standard for dismissal, among other factors, can create a binding contract for employment subject to the terms outlined in that contract. *Ferraro v. Koelsch*, 124 Wis. 2d 154, 368 N.W.2d 666 (1985).
6. These are policies or guidelines only.
7. District has the right to modify or delete policies in the handbook without notice (but as a practical matter, districts should strive to provide notice when feasible).

### **B. General Employment Policies.**

1. Equal Employment Opportunities.
  - a. Disability accommodations.
  - b. Religious accommodations.

2. Anti-Harassment.
  - a. Define harassment to cover all protected bases, not just sexual harassment.
  - b. Such a policy is critical to the defense of any harassment claim.
    - i. You must include an effective complaint mechanism.
    - ii. Do not require the victim to confront the harasser.
    - iii. Give the victim options of whom to report the behavior to. Make sure these people are properly trained.
    - iv. Do not promise confidentiality.
    - v. Do not set rigid time frames in which you will investigate and resolve the issue.
    - vi. Provide adequate notice of specific Title IX sexual harassment procedures.
  - c. State that no retaliation will be tolerated by witnesses, participants, or victims of harassment or discrimination and that the employee should report any further harassing behavior or retaliation.
3. Check what your handbook says about new employees and orientation.

If your handbook states that new employees will receive specific training and increased feedback during the initial period of employment, then you risk legal issues if you do not follow through on those statements.
4. Train your administrators and supervisors on these policies, so they enforce them consistently and accurately.

**C. Hypothetical Case Study #5: What Anti-Harassment Policy?**

A teacher sues the District where she works for sexual harassment under Title VII. The District intends to rely on the *Ellerth/Farragher* defense that the District exercised reasonable care to prevent and promptly correct any harassing behavior, and the victim-teacher unreasonably failed to take advantage of any preventative or corrective opportunities provided by the District to avoid the harm. The District points to its employee handbook which contains an anti-harassment policy, with proper, easy to follow reporting instructions for harassment. (The District had its law firm draft this policy). The teacher never reported the harassment under this policy. The teacher says that she never received the handbook or training on the handbook.

- If the District can't point to harassment training sign-in sheets and an acknowledgment page signed by the employee, the employer might have a hard time obtaining a no probable cause and/or summary judgment on this claim. The District will have to rely on testimony from administrators and supervisors that saw the teacher receive the handbook and saw the teacher at the training. This turns the case into a "he said, she said" dispute that will likely require a fact finder to determine credibility.
- Make sure the signed acknowledgment of the handbook is filed in the all employees' personnel files.
- Make sure to track attendance at training seminars and provide for make-up trainings (potentially by recording the initial training and allowing the absent employee to ask an administrator any questions he/she might have after watching the recording).

**D. Compensation Policies.**

1. Employee classifications.
  - a. Full-time.
  - b. Part-time.
  - c. Temporary.
  - d. 12-month Employees.
  - e. 9-month Employees.
2. Specify who are exempt and who are non-exempt with respect to overtime pay.
3. FLSA Safe Harbor Provision (employees must give employer notice of improper deductions or payment of wages, and employer will promptly correct as appropriate).
4. Work week and business hours.
  - a. When does work week start? Relevant to overtime calculation.
  - b. Overtime policy? Who grants permission to work overtime? Make it clear that overtime is possible, and that hours of work are subject to change.
  - c. You may state that overtime hours must be pre-authorized, but you cannot refuse to pay an employee for working unauthorized overtime. Instead, you may address unauthorized overtime as a discipline issue.

5. Timekeeping policies.
6. Pay period.
7. Pay day.
8. Paycheck deductions.
9. Payroll advances (if permitted).
10. Meal and rest periods.
  - a. Less than 30 minutes must be paid.
  - b. To be unpaid, a break must be free from duties and employees must be free to leave workplace.
  - c. Employers have the discretion to mandate that employees take a full 30-minute lunch break. If employees clock in early, they are paid for the break, but it becomes a potential disciplinary matter.
11. Lactation breaks.
12. Travel.
13. Expense reimbursement.
14. Tuition or continuing education reimbursement (should have an individual contract with an employee if employee is required to pay this reimbursement back if the employees leaves within a certain time period).

**E. Hypothetical Case Study #6: Payroll Deductions.**

The District has a policy in its handbook that states, “Teachers will be liable if they do not return all non-disposable district-owned school supplies at the end of the year. A written payroll deduction must be filled out and attached to the police report, if any district-owned supplies are stolen.” At the end of the year, a teacher did not return his Chromebook, so the District deducts the value of the Chromebook from the teacher’s paycheck. The teacher does not sign a payroll deduction form and complains that the deduction is improper. The District fires the teacher for refusing to sign a payroll deduction form.

- Is this policy legal?
  - No, in fact Wis. Stat. § 103.455 specifically says “No employer may make any deduction from the wages due or earned by any employee...for defective or faulty workmanship, lost or stolen property or damage to property, unless the employee authorizes the employer in writing to make that deduction...”

- Furthermore, this authorization can only be obtained by the employee after the loss but before the deduction.
- Also, how does the District even know that the Chromebook is stolen? Might the teacher have taken it home to work over the summer?
- Is the termination legal?
  - No, the teacher is protected from adverse employment actions for asserting his/her rights under this statute.
- What's the solution for the District?
  - If the teacher is stealing from the District, discipline, termination, calling the police, and filing an action in small claims court are all legal options. The District can even ask the teacher to agree to the deduction to avoid the District bringing the teacher into small claims court. What the District can't do, is exercise self-help.

Loosely based on: *Esther Peterson v. TCAT Corporation*, ERD Case No. CR201200326 (LIRC Apr. 30, 2015).

#### **F. Hypothetical Case Study #7: Collecting Money from Employees.**

A District has a tuition reimbursement benefit in its handbook. It provides up to \$5,000 a year for employees to obtain credits to improve skills relevant to their job duties. If an employee leaves employment with the District within 3 years after completing the credits, the employee must repay the employer, on a graduated basis (all the money within one year, 2/3rds of the money within 2 years, 1/3<sup>rd</sup> of the money within 3 years). An employee receives \$15,000 from the employer and then leaves the District's employ, still owing approximately \$10,000 to the employer. The employee's final paycheck cannot cover that amount, and the employee never signed a payroll deduction form. How can the District collect?

- Handbooks provide guidance to current employees. Further, the handbook disclaims that it is not a contract, which weakens any breach of contract claim by the District.
- However, the employee was likely unjustly enriched by taking the money and not paying it back, so the District might be able to go to court. \$10,000 is the exact threshold for going to small claims court, which can be a simpler process for a District than going to regular civil court. However, the District will still have to collect the money from the employee which is not always easy. If the employee has few assets, no other job, and other debts, the employer might not actually be able to get the money back.

- What is the better approach? A separate signed contract for tuition reimbursement and repayment. This contract should explain that it does not change an employee’s at-will status and creates no expectation of continued employment. The contract should require the employee to provide permission to deduct any amounts still owing to the employer from his/her final paycheck. The contract can also require the employee to pay the interest and costs, including attorney’s fees, incurred by the employer to collect any amounts owed under the contract. Language whereby the District will refuse to release an employee from an employment contract before the money is reimbursed can help collect the debt (at least until the expiration of that contract).
- These same issues arise when employers include in handbooks liquidated damages for breach of contract. If the handbook only applies to current employees and is not a contract, it should not be used to create obligations that extend past the employee’s employment. Separate contracts should be drafted for these obligations, or these obligations should be incorporated into existing employment contracts. *See Shockley v. PrimeLending*, No. 18-1235, 2019 WL 3070502 (8th Cir. July 15, 2019) (a handbook that could be unilaterally modified by the employer did not create a binding contract to arbitrate with an employee merely by providing the handbook to the employee).

**G. Standards of Conduct.**

1. Performance reviews (keep this discretionary). Districts can create their own performance reviews in addition to Educator Effectiveness.
2. Discipline/Termination.
  - a. Progressive.
  - b. Reserve right to skip steps.
  - c. Avoid any sort of “cause” standard.
  - d. Avoid providing a purported exhaustive list of conduct that could lead to discipline/termination. Employees will always surprise you.
3. Attendance.
  - a. Who to notify of absences?
  - b. When to notify by?
  - c. Is texting or leaving messages accepted?

4. Tardiness (tied to unemployment compensation).
5. Inclement Weather (Will you pay non-exempt employees if you cancel work or send employees home?).
6. Dress Code and Grooming. Be realistic with respect to developing norms.
7. Solicitation and distribution.
  - a. Once you open a forum for distribution by employees (like a bulletin board), you will likely have to allow employees to use it for other similar purposes.
  - b. Employee use of employer email systems (likely must permit use for union business, and for concerted activity for mutual aid and protection).
8. Code of Ethics.
9. Conflicts of Interest.
10. Outside Employment.
11. Romance In the Workplace (Prohibition? Romance contracts? Omit?).
12. Nepotism.
13. Smoke Free Workplace.
14. Substance Abuse in the Workplace.
  - a. Possession.
  - b. Use.
  - c. Sale.
  - d. Under Influence.
15. Drug and Alcohol Testing. 4<sup>th</sup> Amendment Concerns.
  - a. Pre-hire.
  - b. Random. Generally impermissible under the 4<sup>th</sup> Amendment absent specific safety concerns (such as for school bus drivers subject to federal drug testing laws).
  - c. With reasonable suspicion.
  - d. Discretion to terminate or allow treatment following a positive test.

- e. The Omnibus Transportation Employee Testing Act has strict requirements for drug testing employees that use a commercial driver's license to perform their duties, including bus drivers.

16. Workplace Searches.

No expectation of privacy in desks, computers, email, etc. Necessary under the 4<sup>th</sup> Amendment. Also limits potential invasion of privacy concerns.

17. Weapons/Conceal Carry.

18. Workplace Violence.

19. Always include a catch-all provision indicating that an employee can be disciplined or terminated for reasons other than those included in a code of conduct or handbook.

## **H. Technology and Electronic Communications.**

1. Work Use.

2. Employer Property.

3. Bring Your Own Device (BYOD).

- Confidentiality concerns – establish secure protocols.
- Public Records Law concerns. Need a way to preserve records on personal devices for disclosure under FERPA, public records law, and in litigation.
  - When a discrimination complaint states that another employee was texting inappropriate content to an employee, districts will want a way to secure and preserve these texts. This is much easier to do on district-owned devices with backup functionality. A carefully worded BYOD policy might also facilitate obtaining the information, but often times, the content is deleted long before a complaint is ever filed, unless preventative measures are in place.

4. Privacy and Passwords.

- a. Establish secure protocols and be prepared to enforce the “no sticky notes with passwords on your monitors” policy).
- b. Confidentiality.
- c. Disclaim any expectation of privacy that employees might have in their use of a phone provided by or subsidized by the employer.

5. Use of Internet and personal phones.

De Minimis personal use? Ban? Consider practicality.

6. Social Media.

First Amendment concerns. MERA concerns. Do not be overly broad regarding personal use of social media.

7. Off-premises use of technology.

- a. District property.
- b. Cellphone use.
- c. Compensable or Non-Compensable Time.

## **I. Benefits.**

1. Disclaimer that the benefit policies govern if they conflict with the handbook or language that explains all benefits are subject to the terms, conditions, and determinations of the benefit provider or plan.

- **Hypothetical Case Study #8: When Handbooks Conflict with Plan Documents.**

A District modifies its long-time dental insurance benefit plan, which reduces the number of employees that are eligible for the benefit. The District's employee handbook includes a summary of the dental plan eligibility rules. The District does not update its handbook to reflect the changes in the dental insurance plan. However, the handbook does include a provision stating that the dental plan governs in the case of a conflict with the handbook. Additionally, the plan documents state that the plan is subject to amendment at any time without notice. An employee sues claiming that the employee was eligible for coverage under the handbook language.

- Does the District win this lawsuit?
- What steps could the employer have taken to potentially avoid the law suit?
- Note that in the case this hypothetical case study was based on, the court stated, "The court does not condone [the employer's] failure to update the employee handbook."

Loosely based on: *Henne v. Allis-Chalmers Corp.*, 660 F. Supp. 1464 (E.D. Wis. 1987).

2. Eligibility or waiting periods.
3. It is also good to remind employees in a handbook to notify the District of any changes to their personal status (marriage, divorce, birth of baby, etc.). Those events can impact employee eligibility for benefits.
4. Insurance.
  - a. Medical.
  - b. Dental.
  - c. Life.
  - d. Short-Term Disability.
  - e. Long-Term Disability.
  - f. HSA/HRA.
5. Wellness.
6. Retirement Plan.
7. Profit Sharing.
8. Discretionary Bonuses.
9. Flexible Spending Account/Cafeteria Plan.
10. Post-employment benefits.
  - a. Be careful when revising these benefits to ensure the district is not terminating or reducing a benefit that has vested.
  - b. However, districts can make changes prospectively to benefits that have not yet vested.
  - c. Be cautious regarding modifying sick leave payouts upon separation from employment. The wording of these provisions control how such payouts can be modified because the right to a certain amount of sick leave payout upon separation likely vests as the sick leave accrues.

**J. Leaves of Absence Policies.**

1. Holidays.
  - a. How many?
  - b. Need to work the day before and after?
  - c. If falls on weekend?

2. Vacation.

- a. How does vacation accrue or vest?
- b. Use of calendar year v. anniversary date.
- c. Requesting an approval prior to use of vacation days.
- d. How do you determine who gets to take vacation if everyone wants to take vacation at the same time (like holidays).
- e. Can vacation be carried over from year-to-year and, if so, how much? Be aware of the consequences of perpetual carryover, especially if this vacation is paid out if unused.
- f. Minimum increment of time to use vacation? Different for exempt and non-exempt?
- g. Can employees use vacation that has not yet accrued for the year? How will you collect excess vacation use from employees?
- h. Payable upon termination?
  - i. 100% or lesser amount?
  - ii. Require two-week notice?

3. Sick Leave.

- a. Maximum number of days allowed to accrue?
- b. Do extra days get paid out either annually or upon termination?
- c. Criteria to take sick leave, doctor's note required?
- d. Do you track in hours rather than days? If so, does your handbook use days instead of hours?
- d. How do you prorate leave for part-time employees? If each full time employee gets 8 days of sick leave, how many days does a part-time employee receive? What about an employee that works 8 hours a day, 4 days a week? What about an employee that works 6 hours a day, 5 days a week? This can be one reason providing sick leave in hours can be easier to administer than days. Districts could confirm hours of leave in a letter of appointment.

4. Paid Time Off (PTO).

Do you wish to use PTO instead of sick leave and vacation?

5. Other Leave Policies.

a. Will leaves count as paid time for overtime purposes (employer discretion)?

b. FMLA (state and federal). Must include in handbook by law.

c. Medical Leaves of Absence (other than FMLA).

d. Unpaid/personal leaves of absence (Potentially necessary to accommodate an employee with a disability).

e. Jury duty and witness leaves of absence.

i. Do you require employees to return to work if they only have a half-day of jury duty?

ii. Do you require employees to reimburse you for jury fees if you are paying them for a full day's work (or full week's work for salaried employees)?

f. Organ and Bone Marrow Donor Leave.

g. Military Leave.

h. Voting Leave.

i. Funeral/Bereavement Leave.

i. Different amounts of leave for different family relationships?

ii. How will you ensure fairness with respect to this policy?

j. Parental Leave (Paid or unpaid?) (Beyond FMLA?)

k. Adoption Leave (Paid or unpaid?) (Beyond FMLA?).

6. Workers' Compensation.

Require employees to report all workplace accidents.

**K. End of Work Policies.**

1. Exit interview.

2. Return of company property.

Under Wisconsin law, can't deduct from wages for lost, stolen, or damaged property unless the employee authorizes the employer to do so in writing after the loss and before the deduction.

3. COBRA and other insurance continuation.

4. References.

5. Liquidated damages for breach or release from contract during its term should *not* be included in the handbook but rather incorporated into an individual contract.

6. Particular attention should be given to consistency with respect to standards adopted for discipline, discharge, and/or nonrenewal, as well as procedures related to same in handbook provisions, individual contracts, board policies, and statutory grievance procedures.

**L. Handbook Acknowledgment.**

1. Include disclaimer of no contract.

2. Reaffirm employment at-will.

3. Require signed acknowledgment.

4. Do not have language requiring employee to "agree" to abide by the policies.

Rather, employees should acknowledge receipt, review, and understanding of the policies.

5. For online handbooks, consider using an online acknowledgment and using a program that verifies that the employee actually reviewed each page of the handbook.