THE MOST IMPORTANT DOCUMENTS TO PROTECT YOUR ORGANIZATION

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DEFENSIVE EMPLOYMENT PRACTICES

I. UNDERSTANDING AND DEFINING THE EMPLOYER/EMPLOYEE RELATIONSHIP.

A. Traditional Rule.

Absent an agreement to the contrary, the traditional rule regarding employer/employee relationships in Michigan is that the relationship exists at the will of the parties. Such a relationship is commonly referred to as "at-will" employment. At-will employment is characterized by being of indefinite or unspecified duration whereby the employer or employee can terminate the relationship at any time, for any reason with or without cause and with or without prior notice. In fact, if an at-will relationship is established, an employer can avoid liability even if the discharge is arbitrary and capricious. Generally, an employer wants to establish an at-will employer/employee relationship.

B. Reducing Wrongful Discharge Liability.

Every employer/employee relationship should be documented and evidenced in writing. Such a writing can take the form of an employment application, formal employment agreement, at-will statement, letter agreement or memorandum of agreement. Accordingly, each employer/employee relationship should be documented as follows:

1. The agreement should be in writing and signed by both the employer and employee prior to the commencement and/or

performance of any employment related duties by the employee.

2. The agreement should specifically state that the nature of the relationship is "at-will" and may be terminated by either party at any time, for any reason, with or without cause and with or without notice.

3. The agreement should specifically state that the nature of the employment relationship cannot be modified except in writing signed by the employer. In most instances the employer should specifically identify an authorized individual who has authority to modify the employment relationships.

4. The agreement should specify that the employee was provided with no oral assurances other than those contained in the written documentation.

5. The agreement should contain an express statement that the employer may unilaterally modify any of the terms of employment.

6. The agreement should contain an alternative dispute resolution agreement.

7. The agreement should contain a provision limiting the statute of limitations.

8. The agreement should contain a provision providing for the reimbursement of attorney fees in the event that an employee is unsuccessful in a claim against the employer.

9. The agreement should establish remedies and limit damages for breach or termination.

10. Any such documentation should contain a merger/non-modification provision which indicates that the written document supersedes any prior oral or written agreement and cannot be modified except in writing signed by the employer.

C. Current Trends in the Law Affecting Termination Practice.

Many employers have commenced the process of defending themselves and have adopted written at-will agreements which have significantly curtailed wrongful discharge litigation. However, creative plaintiff employment counsel have shifted many employment related claims into the civil rights forum asserting claims of age, race, gender and handicap discrimination.

D. Other Limitations on At-Will Employment.

At-will employment is further limited by the following protected activities or agreements:

1. Employees covered by collective bargaining agreements or individual employment contracts.

2. Public sector employees.

3. Whistle blowing.

4. Service on jury duty.

5. Retaliation for filing workers' compensation claims.

II. EMPLOYMENT APPLICATIONS AND EMPLOYERS' DUE DILIGENCE.

A. Initiation of Employer/Employee Relationship.

At the time that an employee submits an Employment Application for employment, the parties are at one of the most crucial times of the employer/employee relationship. This is the time that an employer can

most easily protect itself from wrongful discharge claims, unqualified employees, and/or employees that are generally undesirable. However, the application process can result in significant liability if the process is conducted improperly.

B. Paper, Paper, Paper.

Employees are more willing to sign documents at the beginning of an employment relationship. Employers should take advantage of this and obtain all appropriate documentation to evidence the nature of the potential employment relationship. It is not sufficient to obtain a simple standard form employment application. At the time the employee fills out an employment application the following documentation should be completed:

1. The employee should certify that all information in the employment application is accurate and correct and that the same forms a material part of the employment application and that falsification of the same could lead to discharge or refusal to retain.

2. Obtain authorization to investigate all statements in the application including if applicable, credit histories, driving records, educational records, and all employment records.

3. Obtain a Bullard-Plawecki Employee Right to Know Act, MCLA §423.501 et seq. waiver. If applicable, obtain waiver and consent to medical examination, drug testing, skill testing, honesty testing, etc.

4. Obtain an acknowledgment as to the "At-Will" nature of the relationship.

C. Tailored Applications and Inquiries.

Most employers utilize standard form, off the shelf employment applications, which may not provide sufficient information about the employee for purposes of evaluating the employee's ability to perform the job applied for. Employers should give ample consideration to the positions to be filled and tailor employment applications and pre-employment inquiries in a fashion that is intended to obtain information that will help assess the employee's qualifications. Employers should utilize specific job descriptions for the position being applied for.

D. Employer Due Diligence.

Employers should utilize the information supplied by the employee including references, Bullard Plawecki waivers, past employment records, educational documentation and related materials. Once you have obtained the right to review the employee's historical background information, a review of this information can be your best way of evaluating an employee. In many instances past employers will not give out any information either over the phone or in response to inquiries regarding a past employee. However, the Bullard-Plawecki waiver will enable you to obtain a copy of the employee's entire employment file, including disciplinary reports and attendance records. A review of such information should be a pre-requisite to any offer of employment.

E. Improper Pre-employment Inquiries.

There are various statutes and laws which prohibit employers from making inquiries regarding a potential employee's past and/or using such information in making employment related decisions. The following are areas of concern regarding pre-employment inquiries:

1. Civil Rights. Except where there exists a bona fide occupational requirement and/or job related pre-requisite, it is improper to require or request a photograph or inquire as to age, race, religion, height, weight, marital status, sex, national origin, and non-job related physical and mental conditions.

2. Worker's Compensation. It is improper to inquire into an employee's history of prior job-related injuries which do not impair the ability of the individual to perform the essential functions of the present job.

3. Military Records. Inquiries regarding military discharge may be found to create disparate impact under federal civil rights laws in that there is a disproportionate impact on African Americans.

4. Arrests. It is improper to inquire into arrests, detentions, summoning into court in which a conviction did not result and/or which is unrelated to the position sought.

5. Civil Litigation. It is improper to base employment decision on the fact that the employee has been a party to civil litigation, particularly enforcement of rights under any of the civil rights laws.

6. Credit Reporting. Employers may obtain credit reporting information, however, the employer must notify the potential employee that the report has been requested and if the report results in denial of employment, that must be disclosed. There is a risk that such reports may run afoul of the disparate impact standards for federal civil rights laws.

7. Physical Condition. Under the Americans with Disabilities Act, 42 USC §12101 et seq., inquiries regarding disabilities are

prohibited. However, an applicant can be asked whether job related functions can be performed.

8. Under the Michigan Handicapper's Civil Rights Act, MCLA 37.1101 et seq., an employer may ask "do you have any impairments, physical, mental, or medical, which would interfere with your ability to do the job for which you have applied."

9. It is recommended that no inquiries be made regarding physical handicaps, impairments, or abilities until after a conditional offer of employment is made. Offers of employment can be conditioned upon fulfillment of a pre-employment physical.

F. Rejecting an Applicant.

An employer can reduce the potential liability by following the following rules in rejecting applicants:

1. Follow consistent procedures in processing and handling all applicants.

2. Never use symbols on any application.

3. Focus only on key functions and job related requirements.

4. Pay particular attention to note taking on application.

5. Reduce expectations in potential applicants, do not set expectations too high.

6. Respond quickly to all applicants.

7. Do not discuss the qualifications of the selected applicant with any rejected applicant.

G. Retention of Documents.

After employers have completed the hiring process, documents regarding that process should not be discarded. Generally, employment applications and related materials should be retained for a period of at least one year following the conclusion of the employment process. However it is recommended, if possible, that such documents be retained for at least three years so as to be consistent with the statute of limitations regarding the Michigan Elliott-Larsen Civil Rights Act.

III. EFFECTIVE EMPLOYER PRACTICES-CREATING YOUR OWN DISCIPLINE RECORD.

A. Establish Your Own Personnel Department.

Whether you have 1 employee or 1,000 employees, you should establish an internal personnel department. You should have a single individual or group of individuals who are responsible for evaluating and making final decisions regarding employee discipline. Employee disciplinary decisions should be made in conjunction with an employee's supervisor. However, implementation of a process using a personnel department will provide for the fair treatment of all employees and help safeguard against improper employment related decisions. Furthermore, utilizing a personnel department will create an umbrella organization which will be able to more fully inform you of the manner in which your business is operating. Finally, your personnel department will help you to better evaluate your supervisors and their conduct.

B. Educate Your Personnel Department.

There are complex employment rules, regulations and statutes which differ on both the state and federal level. Managers need to be trained

and educated in regard to compliance with all applicable laws and regulations. Every supervisor, manager and officer should receive some training and education in the area of personnel management.

C. Never Promise Fairness.

In establishing workplace guidelines, generally, it is a mistake to promise fairness and/or due process in the treatment of work related infractions. The concept of fairness implies that an employee will be given ample notice, have an opportunity to respond to allegations and that the employee will receive treatment consistent with other similarly situated individuals. In most employment situations, employees are not afforded the foregoing opportunities. Promising fairness may in fact undermine the "at-will" relationship. It is more productive to rigidly establish the "at-will" relationship yet provide for fairness or due process in the implementation of your employment practices.

D. Adhere to Established Guidelines.

Employment manuals, rules and policies should be reviewed on a regular basis. See Employee Manual Checklist attached as Appendix A. Any type of disciplinary action taken in response to employee conduct or performance should strictly comply with the policies established by the employer. Many employers inadvertently violate their own policies when imposing disciplinary action. If you have established a just cause policy or a progressive discipline policy, you should adhere to these policies in administering discipline.

E. Establish Reasonable Policies.

In establishing performance and conduct policies, such policies should be realistic and comport with the realistic business functions of your business. Overbearing conduct requirements will be viewed as such when presented to a jury. The employer must establish guidelines

which, when viewed objectively, are seen as fair. Finally, all rules should be enforceable. Only institute rules that you intend on enforcing and can be enforced in the workplace.

F. Documentation, Documentation, Documentation.

1. Regular Written Evaluations.

Employees should be evaluated, in writing, on a regular basis. Employers should plan on conducting annual or bi-annual written evaluations of employee performance and conduct. In many instances, employers desiring to discharge an employee based on poor performance or conduct have no written record of the substandard performance. Employee evaluations should be specific, fact related and not sugarcoated. The evaluation should be submitted to the employee for review, comment, response and acknowledgment.

2. Incident Report.

An employer should specifically document any disciplinary action taken in response to employee misconduct or substandard performance. Communication with the employee is the best way of obtaining a positive response to the evaluation made. Evaluating the employee in writing will elevate the evaluation to an appropriate level, in essence, getting the attention of the employee. Documenting any such incident creates a record for the employer that will assist the employer in the event there is a subsequent termination and a potential lawsuit. It is difficult to make a case in an employer's defense when there is an employment file devoid of any type of negative employment evaluations.

G. The Proof is in the Writing.

The written documentation contained in any employment file will form the substance of any defense in the event there is employment related litigation. A complete and comprehensive employment file containing all appropriate documentation is an employer's best defense. Documentation should be prepared as follows:

1. All major personnel decisions and/or actions should be documented in writing contemporaneously with the event documented.

2. Generally, if possible, the event should be documented by two supervisory personnel.

3. Don't wait to document any performance or conduct evaluation.

4. Be specific in setting forth facts and events which led to the evaluation.

5. Give the employee an opportunity to respond to the evaluation in writing.

6. At a minimum, obtain the employee's written acknowledgment of receipt of the evaluation.

7. Include all information regarding the employer's attempt to work with the employee and obtain adequate job related performance or conduct. The tone of the evaluation should not be accusatory or mean spirited.

8. Include chronological references to past warnings and actions on the part of the employer which gave rise to the need for the written evaluation.

H. Investigation.

Whenever an employer elects to take some type of disciplinary action, it is incumbent upon the employer to properly investigate the conduct of the employee. The personnel department head should review the statements of the employee's immediate supervisor. You should obtain a statement from the employee and investigate any ancillary facts which come to light as a result of such investigation. The institution of an investigation will bolster the employer's position in the event that severe disciplinary action is required.

I. Institution of Disciplinary Action.

In the event any employer is required to institute disciplinary action such as suspension or warnings, the employer should specifically describe to the employee the basis for such disciplinary action. The employee should be given the right to explain his/her side of the story. In all situations, the employee should be treated in a dignified manner. The employer should emphasize that such action is being taken for the purpose of assisting the employee. Provide the employee with specific goals, recommendations and deadlines. Always document the manner and method of such disciplinary action.

J. Type of Discipline.

Any discipline instituted by the employer should be consistent with the severity of the offense. Furthermore, the discipline should be consistent with other discipline utilized in conjunction with other employees. There must be internal consistency with regard to the disciplinary policies of the employer.

IV. EMPLOYMENT SEPARATIONS-REDUCING AN EMPLOYER'S EXPOSURE TO LIABILITY.

A. General Considerations.

Generally, reducing liability for terminating employees depends on an employer's appropriate adherence to good employment practices. Employers who have obtained "at-will" statements from their employees, have properly documented disciplinary and performance infractions, and have consistently applied employment practices and policies, generally have lower risks of liability arising out of employment terminations.

B. Exit Interview.

For any employment related termination, an exit interview should be conducted between the employee, the individual recommending the employee's discharge and an officer of the Corporation or the office manager. The basis for discharge should be reduced to writing and documented. The employee should acknowledge a receipt of the employment action leading to discharge and an officer of the corporation or the office manager should be given an opportunity to respond thereto. The exit interview should be conducted in such a fashion as to afford the employee as much respect and dignity as possible. The employer should attempt to reduce the stress and embarrassment of the termination process. All parties present at the exit interview on behalf of the employer should prepare written notes of the event. Attempt to obtain conciliations from the employee regarding the employee's understanding of the basis for termination.

C. Releases.

One of the best ways an employer can eliminate liability upon termination of employees is to obtain a signed release from the

employee. In order to be enforceable, a release should contain the following provisions:

1. Voluntary.

   A release must be knowingly and voluntarily executed. The employee's signature cannot be obtained through duress, fraud or misinformation. The release should contain an express provision providing that the employee has signed the agreement knowingly and voluntarily.

2. Consideration.

   The employee must receive some type of consideration which he or she would not have otherwise been entitled to but for the release. Such consideration can take the form of additional compensation, payment for health benefits if permitted under the health insurance plan or letters of recommendation.

3. Time to Review.

   The employee must be given ample time to deliberate and review the release. The courts have essentially recognized the embarrassing and stressful nature of the termination process and are thus more likely to enforce a release if an employee is given a reasonable period of time to review the documentation.

4. Express Release.

   The nature and scope of the release must be specifically set forth in the document. The release should be generally broad based and apply to all forms of employment related claims which could be asserted by the employee.

5. Execution.

The release must be signed by all of the parties to the document.

6. Additional Provisions for Inclusion in a Release.

a. Reaffirmation of "at-will" relationship.

The release should reaffirm that the employee was retained on an "at-will" basis.

b. Attorney Review.

The release should provide a certification that the employee has seen or has been afforded the opportunity to review the release with an attorney. An employer's best defense to rescission of a release arises in situations where the employee has been represented by counsel.

c. Confidentiality.

The release should contain language whereby the employee agrees not to disclose the terms or existence of the release.

d. Conduct.

The release should contain language whereby the employee agrees not to act in any way which could cause embarrassment, damage or injury to the reputation of the employer.

e. Return of Property.

The release should contain language providing that any property which is in the possession of the employee which is owned by the employer shall be returned.

f. Default Provisions.

The release should contain provisions dealing with breach or default by the employee of the terms and provisions of the release. Additionally, the document may contain alternative dispute resolution mechanisms.

g. Waiver of Right to Tender Back.

Various common law cases exist whereby an employee can tender back the consideration received in support of the release and thereafter, proceed against the employer. The release should contain a provision which provides for a waiver of the right to tender back consideration.

h. Waiver of Right of Reinstatement.

The employee should waive the right to be reinstated and/or to re-apply for a position with the employer.

7. Releases Applying to Older Workers.

Workers who are 40 years of age or older may be covered by the Older Workers Benefit Protection Act. The Older Workers Benefit Protection Act requirements apply to all releases and waivers of any claim under the Age Discrimination in Employment Act. In order for a release to be valid under the Age Discrimination in Employment Act, the release must contain the following specifications:

a. The release must be written, understandable and must refer to claims under the Age Discrimination in Employment Act.

b. The employee cannot waive rights that arise after the date of the release.

c. The employee must receive some consideration which he/she would not otherwise be entitled to but for the release.

d. The employee must be advised of the right to consult with an attorney before execution of the release.

e. An employee must be given at least 21 days to consider the agreement and 7 days in which to revoke the agreement after signing it.

f. If the waiver is offered as part of an incentive program which is offered to a group of employees, the employees must be given 45 days to consider the agreement.

V. NON-DISCLOSURE AGREEMENTS

A. What are Non-Disclosure Agreements

1. Agreements to restrict the disclosure of certain types of business information between an employer and its employees.

2. Names, types, or forms.

a. Non-Disclosure Agreements

b. Confidentiality Agreements

c. Secrecy Agreements

d. Similar to, but different from, Non-Compete Agreements

e. May be part of other standard employment agreements, including Employment Manuals, Employment Relationship Statements, Severance Agreements, Non-Compete Agreements, and Release Agreements.

B. Why use Non-Disclosure Agreements

1. Use Non-Disclosure Agreements to protect the unauthorized disclosure of legitimate business information.

2. Use Non-Disclosure Agreements to protect business information which is:

a. Not generally known by anyone outside of your business:

i. Competitors

ii. General public

b. Information which is confidential, secret, and propriety.

3. Non-Disclosure Agreements help prevent unnecessary disclosure of confidential information.

4. Non-Compete Agreements help you obtain injunctive relief and monetary damages for unauthorized disclosures of protected business information.

5. Employees have a legal duty of honesty, loyalty and confidentiality while they are employed.

6. Employees have no legal duty or obligation of honesty, loyalty, or confidentiality after their employment, absent a specific written agreement to the contrary.

C. When and how to use Non-Disclosure Agreements

1. Non-Disclosure Agreements should be used as standard operating procedure or as standard method of operation.

2. Non-Disclosure Agreements should be used with all employees and with all independent contractors.

3. Non-Disclosure Agreements should be used all the time, almost no reason not to use Non-Disclosure Agreements.

4. Non-Disclosure Agreements should be used in conjunction with:

   a. Other standard employment agreements, including Employment Manuals, Employment Relationship Statements, Non-Compete Agreements, Severance Agreements, and Release Agreements, and,

   b. Other common sense employment practices, which are consistent with and reinforce the desire to fully protect the confidential information.

5. Employment practices which should be used to support and reinforce the Non-Disclosure interest:

   a. Stamping Documents “Confidential”, and

   b. Customizing computer software for

      i. log-on with special confidential acknowledgment,

      ii. printing all confidential documents with a Confidentiality Statement on all pages thereof.

   c. Conducting in-house training, orientation, and/or education seminars which explain the non-disclosure obligations and importance thereof.

D. What are the elements of a Non-Disclosure Agreement?

1. Non-Disclosure Agreements should acknowledge that the Employer is the sole and exclusive ownership of the information.

2. Non-Disclosure Agreements should acknowledge the desire and need to retain all such business information confidential and not to disclose it to anyone whatsoever.

3. Non-Disclosure Agreements should cover and prohibit the unauthorized disclosure of all business information, which should specifically include information which is confidential and non-confidential, secret and non-secret, proprietary and non-proprietary, and generally known and not known.

4. Non-Disclosure Agreements should acknowledge that the information may only be used for the benefit of employer and for no other person or purpose whatsoever.

5. Non-Disclosure Agreements should require the return of all such business information upon termination of employment or demand.

6. Non-Disclosure Agreements should provide for injunctive remedies and monetary damages for a breach or default of the restrictions, which should specifically include, but not be limited to liquidated monetary damages in a specific dollar amount and all costs of enforcing the agreement, including actual attorneys fees.

E. What should be avoided when using Non-Disclosure Agreements?

1. Like all written agreements, avoid those terms and provisions which are unreasonable, unrealistic, or unfair.

2. With Non-Disclosure Agreements, there is nothing else to avoid. Every employer just needs to have and use them.

3. Typical exclusions or omissions may include:

   a. Information which is generally available or known in the public.

   b. Information legally obtained from other sources or third parties, and not the employer.

   c. Information which the employee had knowledge of prior to employment.

F. What are the problems with Non-Disclosure Agreements?

1. Non-Disclosure Agreements are not a guaranty or an absolute bar from the disclosure of confidential business information.

2. Non-Disclosure Agreements keep only honest people more honest. They will not keep dishonest employees from acting dishonestly.

3. Non-Disclosure Agreements should not be overly relied upon.

4. Non-Disclosure Agreements are “double-edged” and can run in both directions.

   a. Employers must be very careful about hiring employees who may be subject to and bound by a Non-Disclosure Agreement.

   b. Employers must carefully review and analyze all agreements which are signed by or bind prospective employees.

VI. NON-COMPETE AGREEMENTS

A. What are Non-Compete Agreements?

1. Agreements to restrict a certain type of business competition between an employer and its employees.

2. Names, types, or forms.

   a. Non-Compete Agreements

   b. Restrictive Covenants

   c. Non-Solicitation Agreements

   d. Similar to, but different from, Non-Disclosure Agreements

   e. May be part of other standard employment agreements, including Employment Manuals, Employment Relationship Statements, Severance Agreements, Non-Disclosure Agreements, and Release Agreements.

B. Why use Non-Compete Agreements?

1. Use Non-Compete Agreements to protect legitimate business interests and to prevent unfair business competition.

2. Use to protect the tangible and intangible assets of a business.

3. Non-Compete Agreements help prevent unreasonable competition.

4. Non-Compete Agreements help obtain injunctive relief and monetary damages from unreasonable competition.

5. Employees have a legal duty of honesty and loyalty during the term of employment.

6. Employees have no legal obligation not to compete with you after their employment with you, absent a specific written agreement to the contrary.

C. When and How to use Non-Compete Agreements.

1. Non-Compete Agreements should be used as standard operating procedure or as standard method of operation.

2. Non-Compete Agreements should be used with all employees and with all independent contractors.

3. Non-Compete Agreements should be used all the time. Almost no reason not to use Non-Compete Agreements.

4. Non-Compete Agreements should be used in conjunction with other standard employment agreements, including Employment Manuals, Employment Relationship Statements, Non-Disclosure Agreements, Severance Agreements, and Release Agreements.

D. What are the elements of a Non-Compete Agreement?

1. There should be a specific restriction or prohibition concerning certain types of competition.

2. There should be a specific remedy and damages in the event of a breach or default of the restriction.

3. Draft or edit restriction to protecting reasonable and legitimate existing business interests and nothing more.

4. The restrictions should be reasonable as to:

a. Time or Term

i. 2 to 7 years, usually thought of as reasonable and enforceable.

ii. 10 to 20 years, usually thought of as unreasonable and unenforceable.

iii. The shorter the time, the more reasonable and the more likely to be enforced.

b. Geography or Area

i. 1 to 20 miles usually thought of as reasonable and enforceable.

ii. 25 miles, a state, the nation, or the world usually thought of as unreasonable and unenforceable.

iii. The shorter or smaller the geographic area, the more reasonable and the more likely to be enforceable.

c. Scope or Coverage

i. Restriction limited to legitimate business interests.

ii. Legitimate business interests include attempting to protect existing customers, clients, products, services, employees, contractors, and suppliers.

iii. <u>All potential</u> customers, clients, products, services, and suppliers usually thought of as unreasonable and unenforceable.

iv. The narrower the scope or coverage, the more reasonable and the more likely to be enforced.

5. Restrictions should include:

a. Prohibitions against competing with, contacting or soliciting actual and targeted customers or clients.

b. Prohibition against hiring or dealing with, contacting, or soliciting actual employees, contractors, and suppliers.

6. Non-Compete Agreements should provide for damages in the event of a breach or default, which damages should specifically include, but not be limited to liquidated monetary damages and all costs of enforcing the agreement, including actual attorney's fees.

7. Non-Compete Agreements should provide for equitable remedies, which include injunctions and restraining orders.

E. What should be avoided when using Non-Compete Agreements?

1. Like all written agreements, avoid those terms and restrictions which are unreasonable, over-reaching, unfair.

2. Unreasonable restrictions are:

a. Restrictions which prevent someone from:

i. Working in the only job or industry which an individual knows or has ever known, or

ii. Making a living, and

b. Restrictions which injure or interfere with another's legitimate business interests.

F. What are the problems with Non-Compete Agreements?

1. Non-Compete Agreements are not a guaranty or an absolute bar from unreasonable competition.

2. Non-Compete Agreements keep only honest people more honest. They will not keep dishonest employees from acting dishonestly.

3. Non-Compete Agreements should not be overly relied upon or used as a substitute for providing quality goods and/or services.

4. Non-Compete Agreements are “double-edged” and can run in both directions.

    a. Employers must be very careful about hiring employees who may be subject to and bound by a Non-Compete Agreement.

    b. Employers must carefully review and analyze all agreements which are signed by or bind prospective employees.

VII. CONCLUSION

"It is the trade of lawyers to question everything, yield nothing, and to talk by the hour."

APPENDIX A

EMPLOYEE MANUAL CHECKLIST

1. ATTENDANCE

    A. NOTIFICATION OF ABSENCE

    B. ABSENCE DUE TO ILLNESS/INJURY

    C. OCCUPATIONAL ILLNESS OR INJURY

    D. MEDICAL STATEMENTS

    E. UNAUTHORIZED ABSENCE

    F. ATTENDANCE RECORDS

    G. PAYMENT FOR ABSENT TIME

    H. LATENESS/PUNCTUALITY

    I. HOURS

2. BENEFITS

    A. VACATIONS

    B. LEAVES

    C. HEALTH & WELFARE

    D. RETIREMENT

3. BULLETIN BOARDS

4. COMPENSATION

A. BASE

B. NONEXEMPT EMPLOYEES

1. UP TO FORTY HOURS

2. OVER FORTY HOURS

C. TIME WORKED

1. LUNCH OR SUPPER PERIODS

2. PAID HOLIDAYS AND PAID ABSENCES

3. REST PERIODS

4. LATE ARRIVALS

5. EARLY ARRIVALS AND LATE DEPARTURES

6. WORK AWAY FROM PREMISES OR AT HOME

7. TRAVEL

8. REPORTING PAY

D. RECORDING WORKING TIME

1. TIME RECORDS FOR NONEXEMPT EMPLOYEES

2. WAGE AND SALARY CHANGES

E. LOANS/ADVANCES

5. COMPLIANCE STATEMENTS

A. EEOC/EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (FEDERAL)

B. MHCR/MICHIGAN HANDICAPPER'S CIVIL RIGHTS ACT (STATE)

C. ADA/AMERICANS WITH DISABILITIES ACT (FEDERAL)

D. ADEA/AGE DISCRIMINATION IN EMPLOYMENT ACT (FEDERAL)

E. ELLIOTT-LARSON CIVIL RIGHTS ACT (STATE)

F. FMLA/FAMILY MEDICAL LEAVE ACT (FEDERAL)

G. NON-DISCRIMINATION

H. SEXUAL HARASSMENT

6. CONDUCT

A. ALCOHOL & DRUG USE

B. OUTSIDE EMPLOYMENT

C. CONFIDENTIALITY

D. SOLICITATIONS

E. HONESTY

F. INTEGRITY

G. DISCLOSURES

H. CHARITY SALES

I. REQUIREMENTS

J. STANDARDS

K. DRESS CODE

L. APPEARANCE

M. NOTICES/REPORTS

N. GAMBLING

O. WEAPONS

7. CONTRIBUTIONS, SOLICITATIONS OR DISTRIBUTIONS

8. COURTESY

9. CREDIT UNION

10. DEMOTION AND SALARY REDUCTION

A. PERFORMANCE RELATED

B. ORGANIZATIONAL REALIGNMENT

C. CHANGE FROM FULL-TIME TO PART-TIME STATUS

11. DISCIPLINE

A. NOTICES/WARNINGS

B. CURE

C. PROGRESSIVE

12. DISCLAIMERS

13. DISPUTES

A. NOTICE

B. ARBITRATION

C. TIME PERIODS

D. EXCLUSIVITY

E. CONFIDENTIALITY

14. DOCUMENTS

A. APPLICATIONS

B. AT-WILL

C. NON-DISCLOSURE/CONFIDENTIALITY

D. NON-COMPETE

E. SEVERANCE/SEPARATION

F. AMENDMENTS/MODIFICATIONS

15. EVALUATIONS

A. SUPERVISOR

B. SELF

C. DISAGREEMENTS

D. TIMING

16. EXPENSES

A. FORMS

B. RECEIPTS

C. PRIOR APPROVALS

D. ADVANCES

20. HOURS OF WORK

    A. WORKWEEK

    B. DAILY HOURS

    C. LUNCH AND REST PERIODS

    D. HOURS OF MINORS

    E. START TIME

    F. WEEKEND

    G. AFTER HOURS

    H. OVERTIME

    I. PRIOR NOTICE

    J. PRIOR APPROVALS

21. IDENTIFICATION

22. ILLNESS

23. INJURIES

    A. ON-THE-JOB

    B. OFF SITE

24. INTRODUCTION PERIOD

    A. PROBATION

    B. ORIENTATION

25. LAYOFFS, BUMPING, RECALLS

A. RECALL PROCEDURE

B. LAYOFF

C. RECALL

26. LEAVES OF ABSENCE

A. DISABILITY

1. SHORT TERM

2. LONG TERM

B. FUNERAL

1. DEATH IN IMMEDIATE FAMILY-LEAVE WITH PAY

C. JURY AND WITNESS DUTY

1. PERMANENT EMPLOYEES

2. REGULAR EMPLOYEES

3. SALES REPRESENTATIVES

4. JURY DUTY

D. MATERNITY LEAVE

E. MILITARY SERVICE

1. CONDITIONS OF LEAVE

2. REINSTATEMENT RIGHTS

3. LEGAL REQUIREMENTS

4. CUMULATIVE SERVICE

5. OTHER MILITARY ABSENCES

a. MILITARY SERVICE

b. RESERVE MILITARY DUTY

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1. APPROVAL

2. MINIMUM SERVICE

3. PRIOR NOTIFICATION

4. DURATION OF LEAVE

5. REINSTATEMENT

6. FAILURE TO RETURN FROM LEAVE

G. PERSONAL PAID TIME OFF

H. PERSONAL UNPAID TIME OFF

I. SICK LEAVE

J. APPROVALS

1. PRE

2. POST

K. CUMULATIVE SERVICE

L. INTENT TO RETURN

M. MAXIMUM DURATION OF LEAVE

N. MEDICAL STATEMENT

O. VOTING

P. NOTICES

1. PRE

2. POST

27. LENGTH OF SERVICE

28. LOCKERS

29. LOST AND FOUND

30. MESSAGES, MAIL AND PARCEL POST

31. MODIFICATION

32. NOTICES/DISCLOSURES

A. FORM

B. TIMING

C. COPIES

D. PERSON

E. PROBLEMS

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35. PASSES

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C. ADVANCES ON UNEARNED WAGES AND NEW SALARIES

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1. WAGE POLICY

2. CASHING OF PAYCHECKS

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7. PAY TIME DISRUPTIONS

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39. PERSONAL PROBLEMS

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B. HEALTH

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B. EMPLOYEE KNOWLEDGE AND CONSENT

C. RECOMMENDED POLICY STATEMENTS

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E. INAPPROPRIATE PERSONAL INFORMATION

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1. CAR

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A. REGISTRATION AND VOTING

B. MAKING ONE'S OWN VIEWS KNOWN

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I. EQUIPMENT

J. COMPRESSED GAS CYLINDERS

K. CHEMICAL AGENTS

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1. WELDING SPARKS AND LIGHT RAYS

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4. HOT WORK PERMITS

M. GOGGLES AND RESPIRATORS

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P. FIRST AID

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R. HOUSEKEEPING

S. USE LADDERS SAFELY

1. STEPLADDERS

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X. PHYSICAL EXAMINATIONS

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I. WHAT IF I DON'T AGREE WITH THE DECISION?

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