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DEVELOPING AN EMPLOYEE HANDBOOK FOR MISSOULA COUNTY
EMPLOYEES

By

Tsige H. Haile

B. S. Beirut University College, 1984

Presented in partial fulfillment of the requirements
for the degree of
Master of Public Administration
University of Montana
1988

Approved by

Jonathan Tompkins
Chair, Board of Examiners

[Signature]
Dean, Graduate School

Sept. 15, 1988
Date

UMI Number: EP34434

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ACKNOWLEDGEMENTS

This paper could not have been accomplished without the generous and patient help of Dr. Jonathan Tompkins, his wife, Debra Howell, and my long-suffering wife Almaze Issac.

There is no way that I can adequately convey my debt of gratitude and appreciation to my friend and also my academic advisor, Dr. Jonathan Tompkins, chairman for this professional paper, for his extra effort in making my study worthwhile, for the clarity of his response, and for the invaluable assistance he offered me, not only to finish my graduate study, but also to successfully overcome my personal problem; it was he who sustained and informed my vision of this professional paper.

I would also like to extend my deep appreciation and gratitude to Dr. Peter Koehn and to members of Community Covenant Church for encouraging me to go to the graduate school. I want to thank, in particular, Jeffrey Rosas who allowed me to work on his personal computer. Without his support, this professional paper would not be completed.

Finally, I owe a substantial debt to the Political Science Department staff for their advice and guidance throughout my stay in the program, and to the Missoula County Personnel Office for providing me with all the necessary information to write this paper.

Tsige Haile

CHAPTER ONE

INTRODUCTION

Throughout most of the nation's history, the employment-at-will rule, which states that either an employer or an employee can terminate the work relationship at any time, was so well established in the American legal system that it was virtually unchallenged. Consequently, neither party has been required by law to give a reason for the termination. Although the rule applies to both employer and employee decisions to end a work relationship, the focus is typically on the employer's right to take this action. The frequently quoted decision of a Tennessee court more than a hundred years ago expresses the at-will viewpoint succinctly: "All may dismiss their employees at will, be they many or few, for good cause, for no cause, or even for cause morally wrong without being thereby guilty of legal wrong."¹

However, in the past two decades judicial activism and legislative intervention have had a significant impact on the at-will rule in many states. In May, 1987, for example, the Montana state legislature enacted the nation's first wrongful discharge law. Under the terms of this statute, a discharge is wrongful if it was in retaliation for the employee's refusal to violate public policy or for reporting

a violation of public policy; if the discharge was not for good cause; or if the employer violated the express provisions of its own written personnel policy. Employers whose actions fall into these categories may be required by courts to pay heavy damage claims to employees whose employment rights they violated.

As a result of Montana's wrongful discharge law, all non-probationary employees, not just those covered by "just cause" provisions in collective bargaining agreements, will now enjoy greater job protections.² Due to these striking and unprecedented developments in this area of the law and greater willingness by courts to recognize common-law exceptions to the at-will rule, the Department of Personnel and Labor Relations of Missoula County requested me to develop an employee handbook that contains fair policies regarding employee termination, compensation, sick leaves and benefit programs. In addition, because some state courts have found that handbooks are in certain circumstances binding contractual commitments, the County requested me to write the handbook with changes in the law and court rulings in mind. Its general objectives are to provide employees with information concerning the fundamental policies and procedures of the County; to provide potential and new employees with a favorable first impression of the County; and to provide all employees with an overview of what they

can expect from the County and what the County will expect from them.

In response to the County's request, I developed an employee handbook which is presented as chapter three of this professional paper. It is written in a simple style and covers only key issues of concern to employees. As a result, the handbook is divided into eleven subject areas: introduction, employment policies and practices, guidelines for personal conduct, general employment information, general work rules and procedures, general termination policy, disciplinary action and grievance procedures, compensation, employee benefits, leaves of absence, and conclusion.

Chapter two of this professional paper is divided into two parts. The first part focuses on the factors that must be considered when developing a readable employee handbook and the importance of employee handbooks to an organization and to personnel administration. The second part of chapter two includes a discussion of relevant court cases regarding the implied contract exception to the at-will rule and how the courts have decided them. Because several state courts have viewed employee handbooks as constituting implied contracts with employees, care must be taken not to create unnecessary legal liabilities.

Chapter three presents the employee handbook developed for Missoula County employees. This handbook is written to

supplement, but not replace, existing collective bargaining agreements and the County's personnel policies. Thus, it should be read as a summary of existing policies and contractual agreements. Finally, chapter four presents conclusions and recommendations regarding the importance of employee handbooks to employees and employers and what to consider when developing them.

Developing the handbook required collecting data relative to the essential elements of a public employees' handbook, researching applicable statutes (especially the wrongful discharge law), and reviewing handbooks that have been prepared for similar jurisdictions. In addition, the County personnel office's documents and personnel policies were thoroughly reviewed to make sure that the handbook's provisions are consistent with current county personnel policies.

CHAPTER TWO

WHAT TO CONSIDER WHEN DEVELOPING AN EMPLOYEE HANDBOOK

Employee handbooks are the most common documents placed in the hands of employees by their employers at the time they are hired. Through these documents employers are able to improve organization image, communicate a labor relations philosophy, and establish rules and problem-solving procedures. Often, they are the only vehicle for the employer to set forth these policies, and are intended to create a cooperative relationship between employer and employees by establishing and fostering communication. The character of the handbook, however, will vary with the goals of the organization. Some organizations establish their handbook in such a way as to reflect their particular operational and management style, which can be either progressive (instituting progressive ideas about employee relations) or reactionary (in the sense of discouraging unionization). Moreover, employee handbooks must also reflect the current law.

In general, handbooks gained importance as large organizations became more common, and a system of rules became essential for orderly and efficient employer functioning.³ Employers with a small number of employees can usually operate without articulated rules because when the

employment force is small, activities can be individually directed. When there are many employees, however, individualized decision making becomes impractical because the number of employment decisions that must be made exceeds the ability of one person to make them.

Delegation of the decision making authority to lower-level employees creates the risk of inconsistency. As a result, employers with a large number of employees often use formal rules to explain policy to employees and to reduce the number of individual unilateral decisions. Rules are promulgated with respect to operations, procurement, capital investment, accounting, and public relations. Policies control supervisory discretion regarding time off, compensation, and other benefits, as well as promotions and discipline. Thus, handbooks are useful in promoting not only the above mentioned rules and regulations but also the employers' image and employee benefits. It is necessary, therefore, that the role of employee handbooks in personnel administration be well understood and carefully and regularly reviewed, and that related legal issues are delineated in order for handbooks to achieve their goals without incurring legal risks.

The Role of Employee Handbooks in Personnel Administration

Employee handbooks are considered by many employers as an effective management tool which are generally seen as an image builder, a unique communications opportunity, a vehicle for establishing rules, a problem-solving device and a symbol of security. More and more employers are realizing that several problems, ranging from civil rights charges to reduced productivity, can result from the employer's poor image with the work force or the general public. Employers frequently see no need to attempt to take credit for providing good wages and benefits or for furnishing a pleasant place to work. These are the same employers who are shocked by the ingratitude of employees when a union-organizing effort begins at their work place or when employees otherwise evidence their discontent. As a result, employers should realize that the employee handbook is a useful device for creating a better image within the work force and for promoting the favorable benefits and working conditions being provided. In other words, a well-written handbooks with attractive benefit programs and fair discipline policies can be used to establish a favorable image that will assist the employer both inside and outside the work place.

Handbooks also offer employers a unique communications opportunity that can establish the tone of an organization's

labor relations philosophy. In most organizations there is a constant turnover of employees and therefore a somewhat haphazard orientation of the employee to the organization and its history. A well-drafted and effective handbook can become a powerful tool for communicating the employer's attitudes and expectations about the employment relationship. Delivering the message to employees about what is expected of them is an essential task in building a stable and happy work force. An employer has few opportunities to communicate deeply held beliefs about job performance, attendance, social integration, unionization, work ethic, honesty, and loyalty. The employee handbook often functions as a powerful transmitter of those messages.

The handbook is also a formal method of communication if any policy, condition of employment, fringe benefit, expectation about workplace behavior, procedure for pursuing rights, or other element is changed. It tells employees what new rules they are expected to follow and explains that these new rules are not meant to restrict the rights of anyone but are necessary to protect their rights as well as the rights of the employer.

Through their handbooks employers will also be able to inform employees about the benefits of employment to which they are, or will be, eligible, and the kind of services they are offering to the public. Consequently, employees will get a basic knowledge of the services offered by their

new employer, make them better informed, make them feel more knowledgeable, more important, and more involved. In order to communicate all these messages with impact, the handbook must be carefully written. It should be designed to help ensure that the handbook is geared to organization's goals. Moreover, its contents should not be so superficial as to detract from its purpose.

Employee handbooks also allow employers to establish the parameters of employee conduct, set forth the policies that govern the working environment, and establish the rules that foster an orderly handling of employee matters while preserving a friendly, cooperative environment. In serving this function, the handbook should not resemble a military procedures manual. Employees expect and want a working environment that is safe and orderly, but they rebel against an oppressive, over-regulated workplace. A properly drafted handbook can strike a happy medium, and as an alternative to a rule book, the multifunctional handbook describes the employer, explains employment benefits, establishes procedures for pursuing their rights such as grievance procedures, and sets forth a few rules of conduct by which all employees must abide.

The employee handbook is a perfect device for the establishment of a dispute-resolution procedure. The handbook not only puts forth the mechanism by which problems are neutralized before they become chronic or repeated

incidents, but it also offers a means by which the employer can take credit for providing a working environment where fairness is a top priority. Whether the dispute-resolution procedure involves a stepped appeal process, arbitration or peer review, or some mix of these features, the employee handbook can promote the process and make it more effective by setting it out in an attractive and easily understood context.⁴

An employee handbook also serves as a symbolic document. Not only does it represent the employers' goodwill, but it clearly functions as a symbol of stability and security for the employee. The employer has drafted the handbook for the employee as a representation of the employer's desire to provide a pleasant, safe, and rewarding work place.

As seen from the above analysis, it is clear that handbooks are beneficial to both the employee and employer. In general, they give the employer an opportunity to set forth its expectations and guidelines in an accessible manner. Further, they bolster employee morale by making employees more aware of and involved in organization operations. They can also serve as a device for building a positive image within and outside the workplace, and for promoting the organization's favorable benefits and working conditions. Employees, on the other hand, will learn a great deal about the employer, the organization's general employment policies, history, growth, and more specifically,

about the rights (e.g., sick leave, disability leave, job security) they have as well as procedures for pursuing their employment rights. It is, therefore, advisable for every organization, no matter what its size, to have an employee handbook through which management may establish policies and practices and make them known to its employees. In this way management can secure an orderly, cooperative and loyal work force, and the employee can gain the peace of mind associated with job security and the conviction that he or she will be treated fairly.³ However, management should understand that provisions in the handbook must be clear, accurate, and applicable to the employees for whom it is designed.

The Legal Issues

Employers have long enjoyed relative freedom in their treatment of employees. Traditionally, under a rule known as Wood's Rule, which was first expressed in 1877, employees served at the will of their employers and could be terminated for any or no cause. As a result, employers' policy statements concerning job security, evaluations, and disciplinary and termination policies generally were not regarded as binding contractual commitments. In fact, for years courts supported the traditional view that handbooks did not affect the employee's at-will status. Moreover, American law has never imposed significant restrictions on employer discretion. Consequently, the unfettered right employers have traditionally enjoyed in their treatment of employees has seldom been challenged in court.

Recently, however, courts in several states have undercut the at-will rule by finding implied contract terms, not only in employee handbooks but also in employers' policy statements, personnel practices and policies, provisions of benefit plans, and oral or written representations of job security. According to this implied contract theory, certain employer actions or oral statements regarding job security or termination procedures may constitute legally binding contractual obligations if they are communicated to

employees. Thus, based on the legal rules of consideration if contractual elements are communicated to the employee through an employee handbook, the employee's continued employment furnishes the necessary consideration to form the contract. It is clear, therefore, that a handbook offered at the time of hiring or later can create a binding contractual commitment. For example, the establishment of grievance procedures by the employer can create a contractual obligation, and the employer's failure to follow them may represent a breach of contract.⁶ Moreover, an employer otherwise free to discharge employees may not do so when he or she has implied that he or she will do so only for good cause.

Clearer discussion of the implied contract theory is found in Pugh v. See's Candies, Inc..⁷ In this case, a vice-president with a good record of service was terminated after 32 years of service, without further explanation for the termination. The court concluded that the length of the employee's service, which would naturally engender a sense of job security; the series of promotions and commendations; the lack of direct criticism of his work; and the assurance he was given that if he did a good job his future would be secure, had obligated the employer to deal with the employee in good faith. While there was no express, mutual agreement about the terms of employment, the court ruled that an implied contract existed, providing for termination only for

good cause, and that the employer had violated its implied promise. This case demonstrates that the duration of employment with an organization has an important bearing on the employee's prospect for recovery. Moreover, the court appears to be saying that employers can be found guilty of wrongful discharge if a court finds that the dismissal violates explicit or implicit promises made to the worker at the time of hiring. Thus, according to this analysis, it is clear that employers must live up to their promises and to resist promising what they cannot deliver to their employees.

Courts in many states, however, have rejected implied contract claims. For example, in Hill-v. Westchester Aeronautical Corp.,⁴⁹ an employee was told he would not be fired except for cause. When he was fired without cause, he sued for breach of contract. The court, however, dismissed his claim, holding that there were no such assurances incorporated into his employment application or into an employee handbook, and that he did not provide consideration beyond ordinary services which could support a limitation on his employer's right to fire him.

As can be inferred from the above rulings, courts are not in agreement regarding the legal status of employee handbooks. While some state courts have argued that terms of an employee handbook do not indicate a binding contract (e.g., Texas courts do not recognize employee

handbooks as contractual documents),⁹ other courts have reached the opposite conclusion, seeing the terms of the handbook as a binding contractual obligation. For example, courts in California and Michigan have been particularly willing to find implied contracts in employee policies and handbooks.¹⁰ Because the enforceability of such implied terms has been recognized to some degree by courts in many states, employers would be wise to design their handbooks with caution.

In light of cases such as Pugh, employers who have viewed their employee handbooks as effective communication tools in employee relations might confront the possibility that their handbooks may constitute employment contracts. Even though no formal employment contract may be contemplated by the employer, he or she may unintentionally create one with employees. Oral statements by an employer representative such as "you will always have a job as long as you do your work," or use of words in handbooks and written policies such as "discharge for cause" or "permanent employee," have been interpreted by courts as promises of employment security. Moreover, employee handbooks also contain elaborate discussions regarding the quality of the working environment, the employer's concern for the individual, and other expressions of the employer's good citizenship. Sometimes the text of such policy statements goes beyond such pronouncements to include such statements as "you have

job security here." Employers should bear in mind that any reference to job security can be a hook by which an employee will claim that his or her right to job security has been breached by failure to follow a specific procedure.

For example, in Ebling v. Masco Corp.,¹¹ an employee was promised his job for as long as he performed his duties satisfactorily, and that he would not be terminated without having his case reviewed. When he was fired, he alleged that his employment contract was breached and that he was fired without cause, and without adherence to progressive discipline procedures. The Michigan Supreme Court agreed, holding that, although the employer did not have to establish personnel policies or communicate them to his employees, he did promote termination procedures presumably to enhance employee relations. He may not subsequently treat his promises as illusory. The court ruling demonstrates the fact that where employers state a series of progressive discipline steps leading to termination, these steps must be followed before a person can be discharged. It also indicates that employers frequently wish to assure employees that they will be treated fairly and, thus, their handbooks contain an implied or explicit promise that employees will be discharged only for cause. Since this phrase arises frequently in the course of litigation and is subject to wide interpretation, it should not be used unless the employer intends to grant a measure of job security.

Instead, the employer may either list specifically the events that will result in discharge or state that it reserves the right to discharge at any time for any reason.

From the above discussion, it is obvious that employers' oral and written promises may be found to be enforceable as an express or implied agreement reflecting legitimate employee expectations based on the employers' representations.¹²³ For this reason, employers need to observe due process in personnel procedures and to give job-related reasons for employees' dismissals despite the at-will rule. Moreover, employers should be willing to abide by their own policies, that is, they should not violate their own personnel policies and they should learn how to keep their promises. However, instead of establishing progressive employee policies and committing themselves to abide by them, some employers are now taking a defensive approach to protecting themselves against charges of wrongful discharge. In this approach, employers set forth disclaimers of contractual intent that include statements reaffirming the at-will nature of employment in their employee handbooks. This disclaimer is written in such a way as to disclaim any promises or guarantees of continued employment, and also to state that the handbooks do not constitute a contract but merely a statement of organization policies. In addition, the employee may be asked to sign a statement that he or she understands that employment is at-will. In support of such

an approach, a few state courts have ruled that with such a strong disclaimer, recognized by the employee at the outset, the element of reliance is eliminated and, thus, no contract can be implied.¹³ The Arizona Supreme Court, for example, offered similar advice in Leikvold v. Valley View Hospital:¹⁴

Employers are certainly free ... to issue a personnel manual that clearly and conspicuously tells their employees that the manual is not part of the employment contract and that their jobs are terminable at the will of the employer with or without reason. Such actions ... instill no reasonable expectations of job security and do not give employees any reason to rely on representations in the manual.

The court ruled accordingly that this maintains the at-will status of employees and their implied contracts cannot be recognized. As a result, a few employers have followed the suggestions of the Leikvold court by including disclaimers in their employee handbooks and other personnel documents.

Contrary to the court's suggestion, however, a number of labor relations professionals and labor lawyers have advised their management and clients to avoid using employee handbooks altogether. This, of course, would be a tragic overreaction that fails to recognize the practical reality that management should never include policies in its employee handbook unless it intends to live by them. Simply eliminating handbooks for fear of a breach of contract claim

does not solve the problem. Employers should learn how to abide by their own employment policies. Even if the representations in an employee handbook are not deemed to be enforceable under contract principles, the breach of those commitments amounts to a broken promise that will have an adverse effect on the employer's credibility.

Thus, by placing disclaimer language in employee handbooks, employers think that they will be able to discourage employees from challenging their personnel policies. Unfortunately, the law regarding employee handbooks is still evolving. In Aillo v. United Airlines, Inc.,¹⁵ the court ruled that disclaimers do not protect the employer from wrongful discharge claims based upon the doctrines of implied contract and promissory estoppel. Moreover, although the inclusion of disclaimers has protected a few organizations from wrongful discharge suits, their effect on employee morale should be carefully considered. Further, when an employer makes it clear to employees through his or her disclaimer statements that management makes no guarantees of future job security, the result could be lower employee commitment to the work and greater susceptibility to union organizing. With regard to employee commitment, the Japanese are said to obtain greater worker dedication and higher quality work because of the lifetime employment practices in many of their firms.¹⁶

Risks of legal liability should not deter employers from developing employee handbooks because handbooks can have beneficial personnel-management aspects that easily outweigh any hazards arising from their legal implications. It is, of course, possible that employee handbooks can become the focal point of a disgruntled employee's attempts to regain employment, reverse a personnel action, or seek damages. Consequently, it makes sense to take certain steps to minimize the risk of successful challenges based upon handbook language. This involves tempering any strong language the employer may have previously adopted that characterizes the work place in glowing terms. Thus, it is necessary for an employer to remove certain troublesome expressions from the employee handbook. The phrase "permanent employment", for example, is used quite frequently by employers to describe the status of employees following the completion of a probationary period. The use of such language can lead to a dispute over the parties' intent. For example, in Walker v. Northern San Diego Hospital District,¹⁷ the court held that although the San Diego Health and safety code provides that local hospital district employees serve at will, the District's employee handbook provided that employees shall become "permanent" after successfully completing a probationary period. Such language can be replaced by the more neutral term, "regular" employee.

Thus, the emerging theory of implied contract should not effect an employer's decision to create and use an employee handbook as a personnel tool. Employers should simply include in the employee handbook only those provisions that they are willing to live with. It is only when an employer wants to bend or break its own rules that problems arise. If the rules are carefully devised, simply administered, and basically fair, no legal entanglements should arise. In addition, employers can avoid contractual consequences or minimize claims by effectively reviewing the contents of employee handbooks to eliminate outdated or currently inapplicable rules and regulations. Frequently updating the contents of the handbook also prevents unreasonable reliance on the provisions of a handbook.

CHAPTER THREE

HANDBOOK FOR MISSOULA COUNTY EMPLOYEES

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Dear County Employee:

The County Commissioners welcome you to the staff of County employees. They hope you find Missoula County a pleasant place to work.

As an employee of Missoula County, you are a public employee who, in essence, works for the taxpayers in Missoula County. Therefore, your goal should always be to present yourself to the public at your best.

As a public employee, your purpose is to provide the many governmental services as effectively as possible and to serve the needs of all citizens in Missoula County to the best of your ability.

This handbook has been prepared to help answer some of the questions you may have concerning the policies and regulations of Missoula County and the development of your career in local government.

Chairman

Commissioner

Commissioner

I. INTRODUCTION

Missoula County and Its Government

Presently, Missoula is the only incorporated city in the 2,603 square mile county and is the seat of county government. Situated outside the city limits are several small unincorporated communities and several large residential areas. The current estimated population of the county is 34,000 within the city limits and 75,000 in the entire county.

Elected county officials include the Attorney, Auditor, Clerk of Court, Clerk and Recorder, District Court Judges, Justices of the Peace, Sheriff, Superintendent of Schools, Surveyor, and the Board of County Commissioners. The Commissioners appoint those county department heads who are not elected and members of various supervisory boards and committees. The primary duties and authority of the county budget are levying taxes and exercising other fiscal powers which are regulated by state law.

(MAP WILL BE PRESENTED HERE)

General Statement

This handbook has been written to acquaint employees with the basic personnel rules and regulations presently in effect within Missoula County government. Its purpose is to ensure that all regular county employees understand what is expected of them and what they can expect from the county as an employer. If employees are not a regular county employee, they need to refer to the Missoula County Personnel Policies available in the Personnel Office for the specific policies that apply to them.

This handbook is not intended to be a replacement for personnel policies or to include all personnel rules and regulations, but is intended to support personnel policies and is derived from them. It is, therefore, necessary to consider it as a set of general guidelines to some of the County's employment policies and regulations. Complete information relative to conditions of employment can be found in Missoula County Personnel Policies and in appropriate collective bargaining agreements.

This handbook applies to all employees appointed to a regular position so long as its provisions are not in conflict with other agreements with the county, including labor contracts. If employees have any questions as to how this handbook applies to them, they should direct those questions to their supervisor.

Since this employee handbook is based on operational policies and procedures, federal and state statutes, and present employee fringe benefit programs, all of which are subject to change, so also must this handbook be subject to change. The Board of County Commissioners, therefore, reserves the right to revise by addition, reduction, correction, deletion, or updating any part or all of the materials in this handbook. Any changes made in the materials now or in the future will be brought to the attention of all employees through proper channels within their departments.

II. EMPLOYMENT POLICIES AND PRACTICES

EEO/Affirmative Action

Missoula County is an equal opportunity employer and complies with Federal and State laws that prohibit discrimination based on race, color, creed, sex, age, marital status, religion, national origin, or handicapped status. The County also has an Affirmative Action program.

Probationary Period

The initial period of employment is a probationary period. This period gives the county the opportunity to evaluate those new, promoted, or transferred employee's interests in their job and their ability to carry out its requirements. During this period employees' supervisor will periodically evaluate employees' progress.

In no case, however, should completion of the probationary period of employment be understood to mean that employees are guaranteed regular full-time employment. Termination for a bona fide job-related cause can still occur. Also, the six months probationary period should not be considered as an employment contract of six months. Termination is possible during the six months period if it is warranted by a lack of adequate progress as measured by job-related criteria.

An employee who is transferred to a new position is also placed on probation. If employee is unable to handle the requirements of the new job, he/she may be returned to his/her previous position.

Promotion

If employees master their job and demonstrate their ability to handle more difficult assignments, employees will be considered for promotion as openings become available within the County. Promotion is based on merit and technical qualifications when two or more job applicants are considered. Position openings are brought to employee's attention to ensure that every employee may apply and receive fair consideration for the position.

Transfers

Transfers from one department to another at the same salary level may be allowed if it is determined that such transfers do not adversely affect operational efficiency. Requests for transfer must be in writing, must be approved by the head of the department to which the transfer is made, and should be in response to the posting of an open position.

Performance Appraisals

Evaluation of employees' work performance is very important and provides an opportunity for employees as well as for the County to find out how employees are doing on their job. Performance evaluations are completed at least once each year on the employees' anniversary date except that probationary employees shall be appraised at the end of three months and six months, or more often if appropriate. Each formal appraisal will be shown to employees and discussed with them in detail.

Relatives (Nepotism)

No one may be refused employment or terminated solely because another member of that individual's family is employed by the County. However, it is the policy of the County to discourage the employment of relatives wherein one relative might be in a position to be supervised by or supervise the other. In the event of the marriage of two employees in the same department, neither shall be required to transfer or terminate.

However, in the event an employee is in a position of exercising appointment or grievance adjustment authority

over a relative, the employee shall not exercise such authority over his/her relative but shall defer to his/her immediate supervisor.

III. GUIDELINES FOR PERSONAL CONDUCT

Personal Conduct

Public relations is an integral part of each County employee's job. Employees should take pride in conducting themselves in a manner conducive to the best possible relations with the public and in doing the best job possible for the citizens of Missoula County. In addition, employees may not accept special favors, considerations, gifts, or gratuities resulting from or related to their employment with the County.

Political Activity

Montana law forbids any County employee, while on the job, from soliciting money, influence, service, or other things of value or otherwise aiding or promoting any political cause or the nomination or election of any person to public office. However, this prohibition is not intended to restrict employees' rights to express personal political views while they are off the job.

Solicitation

No peddling, solicitation, or sale for charitable or other

purposes is allowed on County property during working hours without the approval of department heads.

Legal Liability

For the most part, decisions regarding liability for accidents and injuries are based on proven negligence. In cases of accidents, for example, employees may not be relieved of personal responsibility if negligence on their part is proven. For more information refer to MCS 2-9-305.

Outside Employment

If an employee feels that circumstances require him/her to accept outside employment, he/she is asked to discuss the matter with his/her supervisor before doing so. The County has no objection as long as the second job has no negative effect on employee's ability to satisfy the job-related requirements of his/her position at the County. In general, approval will be granted if the following conditions are met:

- a) outside employment must be compatible with employee's work within the County;
- b) may not detract from the efficiency of employee's work
- c) may not discredit County employment; and
- d) may not take precedence over extra duty required by

County employment.

In no circumstance may County equipment or resources be used in outside employment.

Conflict of Interest

In order to avoid conflicts of interest, County employees may not use County time to participate in matters of personal interest. In addition, when giving testimony unrelated to assigned County responsibilities, County employees should present themselves as private citizens and not use information or facts that have come to them by virtue of their employment and are not subject to disclosure to the public.

IV. GENERAL EMPLOYMENT INFORMATION

Job Safety

Accident prevention is an integral part of employees' job. County employees are required to be familiar with the general safety policy and departmental safety procedures where applicable. Accidents and unsafe working conditions must be reported promptly to their supervisor.

County Vehicles

Should employees' work assignment requires the use of a County vehicle, their supervisors will ensure that employees are instructed in the rules for vehicle use.

Personnel Files and Records

Employees have the right to inspect their personnel file during regular business hours, under the supervision of the Personnel Office.

Employees should keep their personnel record up to date by notifying the Personnel Office of any change in their home address, telephone number, marital status, number of dependents, or other relevant personal data. If the information in their file is not correct, problems may arise

concerning their taxes, employee benefits, and other important matters.

Employee Association

The County of Missoula entered into an agreement with the Montana Public Employees Association (MPEA) in July of 1979. Under this agreement MPEA represents certain Courthouse, Planning and Airport employees. Newly hired employees who fall under this union contract will be contacted by MPEA and will receive a copy of the contract. Employees should contact the Personnel office to find out whether their position is union or nonunion.

Parking

The County has provided two parking lots for use by County employees. One is on the corner of Woody and Alder; the other is at Orange and Alder. Each vehicle must display a Missoula County parking permit sticker which is obtained from the Personnel Office.

Employee Status

After completion of the probationary period and on recommendation of their supervisors, employees may achieve

the standing of regular full-time employee. Such employees are scheduled to work 40 hours per week, and are eligible to participate in County benefits. An employee who works at least 20 hours per week is a regular part-time employee, and is entitled to participate only in benefit programs that specifically state that regular part-time employee is included. In general, an employee's benefits will be determined by the number of hours regularly scheduled to work. For example, an employee who works less than 20 hours per week shall not be entitled to County benefits.

V. GENERAL WORK RULES AND PROCEDURES

Attendance

Employees are expected to be punctual. They must give advance notice to their supervisor whenever a necessary absence from work is contemplated. When an unexpected absence or tardiness arises because of illness or an emergency, employees must notify their supervisor as soon as possible. Failure to notify and excessive tardiness or absences are grounds for disciplinary action.

Working Hours and Rest Periods

The normal work day shall be eight hours and the normal work week shall be 40 hours. However, the actual hours of work may vary during the month according to the requirements of the department to which an employee is assigned. For more information refer to the collective bargaining agreements.

Pay Day

Pay day is every other Friday. Employees will be paid by County warrant, which will reflect their gross pay and itemized deductions. If payday falls on a holiday, employees

will receive their paycheck on the last workday prior to the holiday. Paychecks are delivered to the various offices.

Overtime and Compensatory Time

All non-exempt employees (an employee in a position not meeting the definition of exempt as defined by the Federal Labor Standards Act) may receive overtime compensation for hours worked in excess of forty hours per week at the rate of 1 1/2 times their regular hourly rate of pay. Exempt employees may receive compensatory time off for hours worked in excess of forty hours per week at the rate of one hour for each hour worked in excess of forty.

Time Sheet

The County is required to keep an accurate record of the hours worked by each of its employees. Thus, hours for which employees will receive compensation must be recorded on their time-sheet and must be turned in by the deadline specified in order to receive payment on regular paydays.

VI. GENERAL TERMINATION POLICY

Resignation

Resignation is a voluntary termination initiated by the employee. Employees who intend to terminate their employment with the County are strongly encouraged to provide the County with a written notice of their intended termination date at least two weeks prior to their actual termination so that a replacement may be found. Most employee benefits end with termination of employment. Therefore, terminating employees should consult with the Personnel Office at least two weeks in advance of their termination. (For more information, see the employee benefits section of "Benefits Handbook").

Layoffs

Should layoffs be necessary due to organizational changes, lack of funds, or curtailment of work, employees will be laid off according to the collective bargaining agreement or personnel policy. The County will make every effort to give employees reasonable notice of anticipated layoffs.

Disability

An employee may be separated for disability when he/she cannot perform the required duties because of a physical or mental impairment. Action for a disability separation may be initiated by the employee, his/her representative, or the County.

Retirement

A qualified employee may elect to retire in accordance with applicable State law.

A retired employee may continue County health insurance coverage provided that premium amounts are paid in accordance with policies established by the Plan Administrator.

VII. DISCIPLINARY ACTION AND GRIEVANCE PROCEDURE

General Causes for Disciplinary Action

Occasionally, employees must be reprimanded for actions not in conformance with the conduct expected of county employees. The following examples of misconduct are, but not limited to, causes for disciplinary action as prescribed by personnel rules: neglect of duty, incompetency or inefficiency, insubordination, intoxication on job, chronic or excessive absenteeism, disorderly or immoral conduct and falsifying documents.

Disciplinary Process

In order to provide for a fair method of imposing discipline on employees, the county has established a formal process of progressive discipline. This process normally begins with oral or written reprimand and proceeds to suspension, demotion, or discharge. Alternative forms of discipline may be used when deemed more appropriate. If a violation of County policy or work practices is of a serious enough nature, employees may be suspended or discharged without prior disciplinary warnings.

Grievance Procedure

Should employees have a complaint or a problem regarding the interpretation of policies or an alleged violation of any provision of personnel policies, the first step is to discuss the matter with their supervisor. If their supervisor is unable to resolve the problem satisfactorily, the formal grievance procedure is stated in union contracts and Personnel Policies.

VIII. COMPENSATION

Position Classification

All positions in the County are classified according to duties performed, responsibilities assigned, and complexity of work. These class specifications are revised and updated to meet the changing nature of individual work assignments. If a significant change in the duties of an existing position has occurred, the Director of Personnel, her designee, or the employee's Department Head can request a classification study of an individual's position.

Payroll Deductions

The County is required by federal and state law to make payroll deductions for income tax and any other deductions employees may have authorized. If employees find an error on their paycheck, they should contact the Personnel Office.

Salary Administration

New Hires. New employees appointed to regular full-time positions are normally hired at the beginning rate or range for their classification. Hiring rates above the beginning rate may be approved in exceptional circumstances and in

conformance of collective bargaining agreements and personnel policies.

Promotions and Transfers. Upon promotions to a higher position, employees' salary shall be increased to the minimum of the new pay range or by (5) per cent, whichever is greater. Employees will be required to serve a new probationary period. If employees are transferred to another department or section but retains the same position, their salary and anniversary date may or may not remain the same.

Salary Range Adjustments. If employees' classification is moved to a higher salary range as a result of a change in prevailing rates for that class of work, their salary will be adjusted according to the applicable collective bargaining agreements or personnel policy provisions.

Merit Increases. An employee shall be eligible for his/her initial merit increase after the successful completion of the probationary period and shall be considered for a merit increase annually on the employee's anniversary date thereafter. The Department Head shall submit requests for merit increases to the Director of Personnel and Labor Relations, stating the percent of merit increase requested and accompanied by supporting justification (including job

performance evaluation) for the request. Merit increase requests, including end of probationary increases, are not automatic and shall be based on parameters established by the Board of County Commissioners on a per annum basis.

IX. EMPLOYEE BENEFITS

Vacation

As provided by State law, each employee shall earn vacation credits as follows:

from the first full day of employment through ten years of employment at the rate of 15 working days for each year of service;

after ten years through 15 years of employment at the rate of 18 working days for each year of service;

after fifteen years through twenty years of employment at the rate of 21 working days for each year of service;

after twenty years of employment at the rate of 24 working days for each year of service;

Vacation is earned at the above specified rate per pay period, but vacation may not be taken until employees have been in continuous employment for a period of six full calendar months. Upon termination, employees will be paid at their rate of pay for all earned and unused vacation leave as long as they have been employed for at least six months. Scheduling of vacation shall be accomplished by completing a standard request form which can be obtained from the Personnel Office.

Holiday and Holiday Pay

Employees are given days off with pay. The following are paid holidays (For more information refer to M.C.A 1-1-716):

January 1 (New Years Day)

3rd Monday in February (Presidents' Day)

Last Monday in May (Memorial Day)

July 4th (Independence Day)

First Monday in September (Labor Day)

Second Monday in October (Columbus Day)

Election Day

November 11th (Veteran's Day)

Fourth Thursday in November (Thanksgiving Day)

Heritage Day

December 25 (Christmas Day)

To qualify for holiday pay, employees must work the last scheduled work day before and the first scheduled work day after the holiday or be on authorized leave for either of these days. If employees are required to work on a recognized holiday, they will receive their regular rate of pay for hours worked and be entitled at their option to either compensatory time off with pay or eight hours holiday pay.

Educational Aid

To promote efficiency in County service by building and maintaining a force of skilled and efficient employees, it is necessary and desirable that educational aid be extended to all County employees. Thus, upon receiving evidence of satisfactory completion of previously approved courses, along with receipts, the County will reimburse employees for the cost of books and tuition up to a maximum established by the Board of County Commissioners. Contact Personnel Office or refer to collective bargaining agreement for more information about reimbursement policy.

Credit Union

The Missoula Federal Credit Union provides loans, savings, and debt counseling services for County employees. Payment of loans through payroll deduction and auto deposit are available. For further information call the Credit Union office: 728-8320.

Employee Development

The County encourages training opportunities for employees in order that service rendered to the citizens will be more effective. Training sessions may sometimes be conducted

during regular working hours. Employees may be compensated for time spent in training outside regular working hours only when such training is required by their supervisor.

X. LEAVES OF ABSENCE

Sick Leave

Sick leave is accrued at a rate of one day for each month of service for full-time regular employees; this computes to 3.69 hours per pay period. Sick leave cannot be taken until employees have worked for 90 days, and is not earned until the last working day of the pay period. It does not accrue during leaves without pay. Upon termination, an employee is entitled to a lump-sum payment equal to 1/4 of the pay attributed to the accumulated sick leave.

Military Leave

An employee who is a member of the National Guard or of a reserve component of the Armed Forces of the United States and who has been an employee for a period of at least six months shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the military forces of the United States. This leave will not be used against the employee's annual leave. Reinstatement privileges will be extended to any employee who has been inducted into military service as provided for under State law will be followed.

Compassionate Leave

Sick leave will be granted for up to four days for an employee to attend or make arrangements for the funeral of a family member, i.e., parents, grandparents, siblings, children, grandchildren, spouse, son or daughter-in-law, or any individual, though not related by blood, who has been a member of the employee's household.

Witnesses or Jury Duty

Each employee who is under proper summons as a juror/witness shall collect all fees payable as a result of the service and forward the fees to the Accounting Office. Juror's fees shall be applied against the amount due to the employee from the County. However, if an employee elects to charge his/her juror time off against his/her annual leave, he/she shall not be required to remit to the County any fees paid him/her by the Court. In no instance is an employee required to remit to the County any expenses or mileage allowances paid to him/her by court.

Leave Without Pay

Leaves of absence without pay may be granted to non-probationary employees. Requests for leave of absence without pay shall be submitted in writing by the employee to the Department Head stating the reason for the leave and the approximate length of time off requested.

No employee benefits shall accrue during a leave without pay. The employee may continue to retain County insurance coverage, upon advance approval by the Director of Personnel, and provided that 100 percent of premiums are paid by the employee in a manner prescribed by the Plan Administrator. The County reserves the right to require proper medical certification at any time, in the case of a medical-related leave without pay.

Educational Leave

Time off with pay may be granted to full-time regular employees to attend job-related courses with the approval of department heads. Provisions are also made available for County employees to attend County sponsored seminars and special training sessions.

Maternity Leave

It shall be unlawful to terminate a woman's employment because of her pregnancy. A Pregnant employee will be granted a reasonable leave of absence and compensation to which she is entitled. Request for maternity leave must be in writing and must be verified by medical certification that the employee is not able to perform her employment duties.

XI. CONCLUSION

If employees have read this handbook carefully, they will have learned a great deal about the county government of which they are part. Every job has an important place in the effort to provide the best in county service. To be happy in their work, it is imperative that employees understand the aim of this effort. It is hoped that through the employee handbook employees will find their position in the county a little more easier and that they will start their work here with a good knowledge of what is expected of them and what they may expect in return.

CHAPTER FOUR

CONCLUSION/RECOMMENDATION

In every organization it is necessary to have certain rules and regulations which are not meant to restrict the rights of anyone but to protect the rights and increase the safety and happiness of all. In order to bring these rules and regulations to the attention of every member of the organization, management needs to develop an employee handbook through which it will be able to set forth its expectations, explain its benefit programs, and describe its general personnel policies in an accessible manner. Thus, management should develop the handbook in such a way as to improve the labor relations environment of a particular work place and to enhance management's image and reputation. Accomplishing these purposes will be impossible if management is unwilling to live with and promote the statements made in its employee handbook. Therefore, those who attempt to develop an employee handbook should take several key questions into consideration: What are the aims or objectives of the handbook? What process can be used to accomplish those objectives? How can it be determined if these objectives are being met through the handbook? What implied contracts might policies give rise to? Is the employer prepared to fulfill its own policy commitments?

Before any employee handbook is written, its purposes and objectives must be clearly delineated and each consideration must be carefully evaluated. The handbook writers must make sure that the information gathered for developing the handbook will not constitute promises, unless they intend to. All the provisions that are gathered through different methods should be closely scrutinized and writers should make sure that the provisions will appear as policy guidelines rather than a written contract between management and employees.

For most organizations, employee handbooks are intended to achieve several purposes. If the final product is to meet the organization's expectations, it is essential that the handbook writers are clear concerning the handbook's objectives and the design and process of their achievement. In general, the successful handbook should be written in a manner that can be easily read and understood by the majority of employees, should contain information that interests or concerns workers, and should have the acceptance of managers and employees.

Employee handbooks should be written in simple language and cover only the key issues of concern to employees. If it contains simple language, employees will be more likely to read it. However, the temptation to make the handbook interesting through the use of flowery writing may possibly confuse the employees and, cause them to interpret the

information differently. Thus, the materials must be within the vocabulary range of the employees who are expected to read and comprehend them.

For the handbook to achieve the acceptance of managers and employees, the information it contains must be true. If groups of all types of employees have the opportunity to take part in the process of developing the handbook, employees will be more likely to feel a sense of ownership about the handbook's contents and to feel positively about the handbook. It will also generate positive worker relations if all employees are made aware of its development process.

No matter how many employees are involved in the handbook's development, it is important to obtain feedback to determine whether it is actually achieving its purposes. One method of obtaining such feedback is to give employees a form when the handbooks are distributed. The form will solicit, comments or suggestions concerning the value of the handbook. Although major policy or procedures decisions are not made by employees, sometimes insightful employee suggestions that are channeled back to management may lead to substantive changes.

Finally, employers should consider selecting policies and procedures consistent with the progressive ideas emerging from the recent literature on personnel management. If it is truly committed to such policies, and willing to live by its

own commitments, management need not be overly concerned about incurring legal risks.

ENDNOTES

- ¹ Payne v Western A.P.R. Co., 81 Tenn 507, 1884.
- ² See Jonathan Tompkins, "Protecting Employees from Wrongful Discharge : 'Good Cause' Legislation in Montana", Employee Relations Law Journal (forthcoming)
- ³ M. L. Fox, Jr., and Robin Robinson, "Employment At-Will: A Time For Change," Industrial Management, July-August, 1985, 17-23.
- ⁴ John D. Coombe, " Peer Review: The Emerging Successful Application," 9 Employee Relations Law Journal. 659 (1984).
- ⁵ See Simpson, Handbook on the Law of Contracts, 2d. ed. (St. Paul, Minn.: West, 1965), pp. 5,6.
- ⁶ See Jonathan Tompkins, cited at note 2.
- ⁷ 116 Cal App 3d 1971 (1981).
- ⁸ 492 NYS 2d. 789, New York 1985.
- ⁹ William E. Hartsfield, "Preservation of At-Will Employment in Texas," Texas Bar Journal, July 1986, pp. 712-715.
- ¹⁰ See David A. Cathcart and Mark S. Dichter, Employment At-will: A 1984 State-By-State Survey, 1st ed. (Corte Madera, Calif.: National Employment Law Institute, 1985); Brian Heshizer, "The Implied Contract Exception to At-Will Employment," 35 Labour Law Journal 131 (1984)..
- ¹¹ 292 NW 2d 880, Michigan 1980.
- ¹² 408 Mich. 579, 292 N. W. 2d 880 (1980).
- ¹³ See Mau v. Omaha National Bank, 299 N.W. 2d 147(Sup. Ct. Neb. 1980), in which the handbook contained the statement "this booklet is not a contract."
- ¹⁴ 141 Ariz. 544, 688 P. 2d 170 (1980).
- ¹⁵ 818 F. 2d 1196 (5th Cir, 1987).

¹⁶ Clyde Summers, "Employment-At-Will in the 1980's: A Look Ahead -- The Experts Predict," The Employment At-Will Issue (BNA), 2 December 1982, p. 26.

¹⁷ 185 Cal. Rptr. 617(1982).