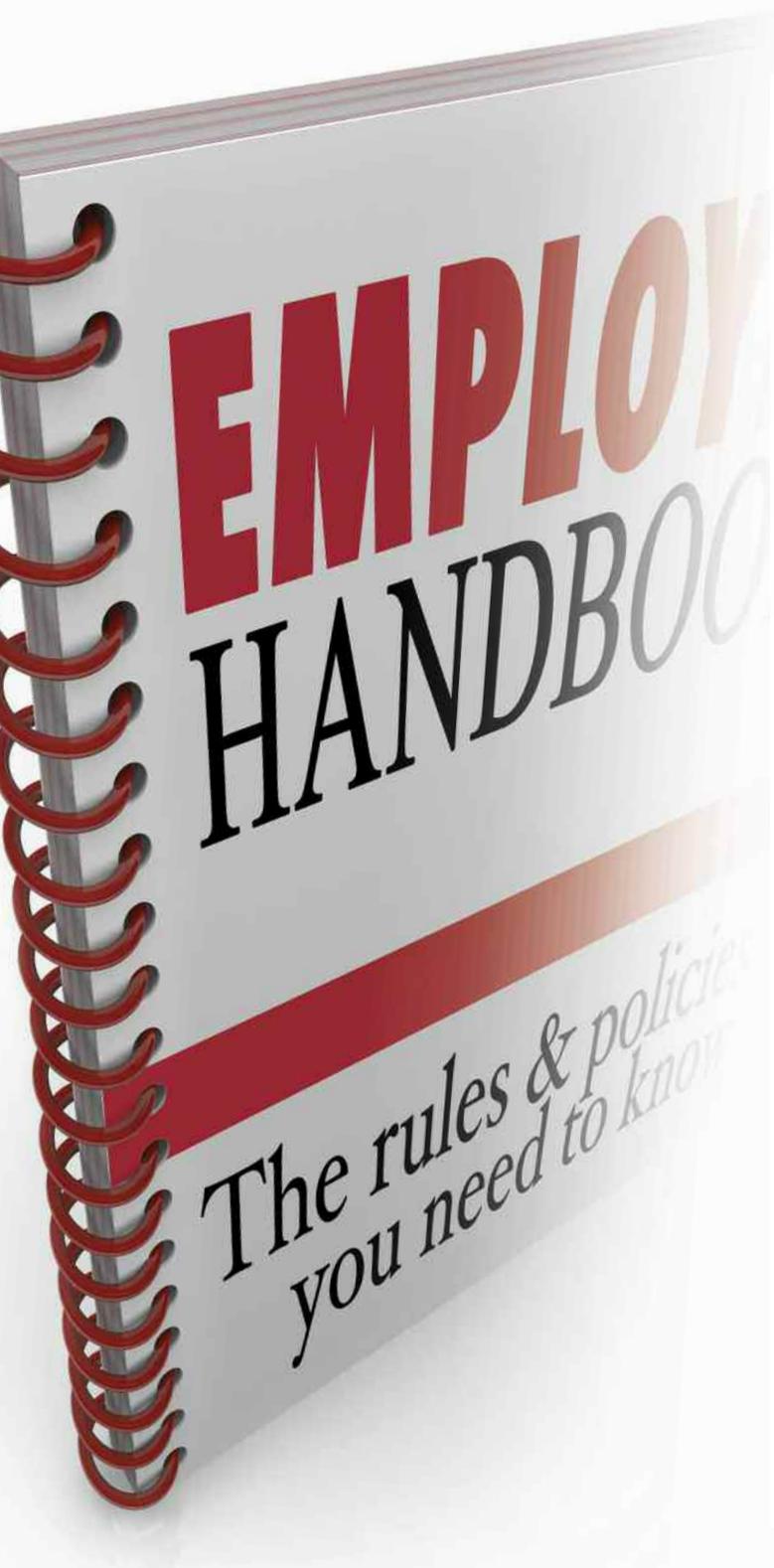


# Employee Handbooks: If You Don't CAIR, Don't Bother Having One



In an earlier article (Board Do's and Don'ts, *The Kansas Lifeline*, November 2018), I reviewed the difference between managing and governing a utility system. I was targeting the RWD board or city council which from here on in this article, I'll refer to as "the board". The board's job is to govern the system at a higher level and to supervise their single direct report, the only employee that they directly hire and fire, the system manager or administrator. The system manager's job is to, well manage the other employees and the day-to-day operations of the system. The easy acronym for this is that boards need to RISE to the occasion and do the following:

- Review rates
- Implement Annual Budget
- Supervise Manager
- Evaluate Plans/Policies

Under "E", one of the plans/policies that the board would need to evaluate is the employee handbook if there is one. An employee handbook is a document outlining a system's rules, policies, and expectations for its employees. New hires are generally given a copy of the employee handbook with a form to sign, acknowledging they've read through it and agree to the terms. That sounds great, doesn't it? You would have an outline of everything you want your employees to do and it would be simpler to supervise them, right? The good news for most of my readers is that in Kansas (and most other states) you don't have to have an employee handbook. The reason that is good news is because unless you are willing to dedicate quite a bit of time and money to the CAIR of your employee handbook, you shouldn't bother having one. A poorly maintained employee handbook can open you up to more legal disputes than you ever imagined, so make sure that you CAIR before you enact one.

What does CAIR mean? If you are going to have an employee handbook you must:

- Communicate
- Attorney Review
- Implement
- Revise

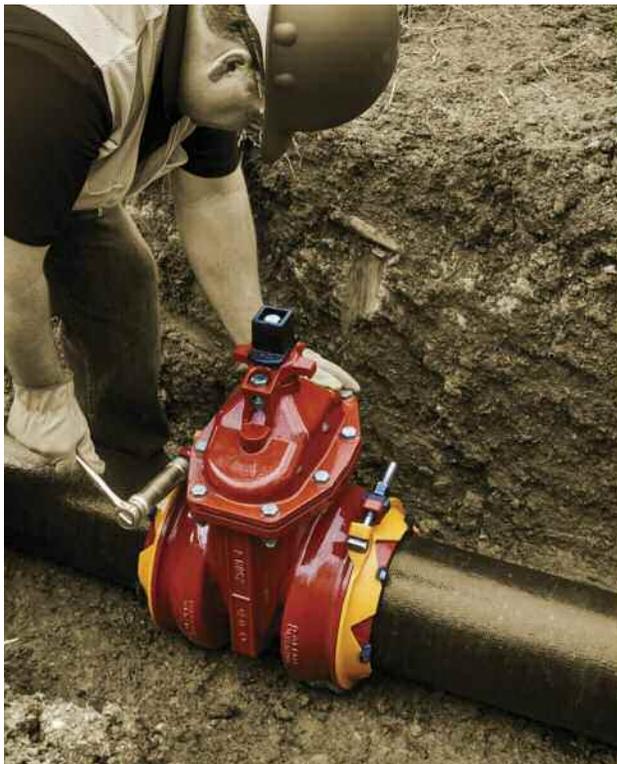
But STOP! You should not even consider having an employee handbook unless you already have all your other plans and policies in place. Do you have a long-term system expansion or improvement plan? A COOP (continuity of operations plan)? A system map? Written policies and

procedures? Updated bylaws or ordinances? A consistent shut off policy? Have you reviewed rates within the last five years? If you cannot answer YES to every one of these questions, then you need to forget about spending time on an employee handbook. Order a poster of all the mandatory labor laws, slap it up over the copier or in the break room and call it a day. If you do not have essential operational policies/procedures like this in place, then you are unlikely to CAIR enough about your employee manual in order to stay out of trouble. And having a poorly implemented employee manual is a sure fire way to end up with an employment dispute. Most employment disputes are nasty, contentious, stress out other employees and expensive. They are even worse when the dispute comes out of a failure to follow the employee handbook, because those are usually resolved in favor of the employee.

Still determined to have an employee handbook? First review the current position descriptions for each employee, including the manager. How do they match with your understanding

of what work each employee does? What, you ask? “We don’t have written position descriptions”. Hmmmm. Then maybe you aren’t ready for an employee handbook. Before you go any further down this path, it is a good idea to ask every employee to write down what they do and what they think they are supposed to do. You would be surprised at how illuminating this can be. One small system had their field technician do this so that they could prepare an ad for an additional field technician. It was a surprise to everyone when they read his description. He thought that he was supposed to help out in the office and had been periodically logging into the system computer if the clerk was out and answering questions about customer accounts. He knew where the password was written down and it never occurred to him that it wasn’t his job to help out. So kudos for the customer service but a bad idea because no one knew that he was doing it and it highlighted potential cybersecurity problems, i.e., password hidden near computer and unauthorized users, to name a few.

After you receive the position descriptions from the employees, then ask your manager to write a position description for himself and each employee or groups of employees. For example, you would need one position description that covers both of the field technicians and separate descriptions for the manager and the office clerk. Once those position descriptions are written, sit down with the manager and compare them with what the employees have written and see if there are discrepancies. You and your manager need a really clear understanding of what everyone does and what everyone thinks they do. If there are discrepancies, they need to be corrected before you consider hiring someone to prepare an employee handbook, because the handbook needs to be tailored to the types of jobs that people actually perform for you. But maybe you’ve got good position descriptions and you’re still determined to have an employee handbook. Let’s walk through the ideal way to CAIR about your employee handbook and explore some examples of what can go wrong when you don’t CAIR enough.



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## Communication

Make sure all your employees know about the handbook and that it is available to them. Give each employee a hard copy (make sure you get a signature so you can show that all employees have received their copy and put the confirmation in their employment file). Don't assume that employees all have access to email or that they can print a copy. Do put a copy up on your website under the employee portal, if you have such a thing. Remind employees about specific policies with news bulletins or emails. In other words, make sure there's no way an employee can plead ignorance of the policies and procedures in the handbook. You may need to have the manager sit down and review the handbook with all current employees. Because in smaller organizations with fewer employees it is really easy to skip the technicalities and get lazy. If



employees don't have a copy of the handbook, they can claim ignorance of the policies that they violate. When it comes to employment, ignorance of the employee handbook is definitely a defense. You will have to decide who is in charge of all this additional paperwork and establish a system for maintaining the additional records.

## Attorney review

Before we even start discussing the essential annual attorney review of your handbook, let's discuss whether or not you really need one just one more time. Your attorney should work with you to help you conduct a cost-benefit analysis of the need for an employee handbook. A larger organization, with employees scattered across many states, multiple levels of management, and high-risk activities may need a handbook in order to protect itself from liability. A smaller company, with fewer employees and managers

and less dangerous work, might not. None of this is black and white but you need to weigh the time and expense of preparing, maintaining, and following a handbook versus the risk of high dollar liability claims and insurance expenses. Here's a good example: a company that was using drones to locally inspect roofs after storm events expanded to inspect power lines and railroad bridges across the country. When the owner and a couple of employees were flying drones around their region, there was really no need for an employee handbook. Management was simple, it was low risk work to both the employees and the customers and there wasn't much money at stake. But when they started doing potentially high-risk, high-dollar work in multiple states, an employee handbook became essential. They weren't even going to be able to get decent rates on workers comp and liability insurance without comprehensive written training, safety and management policies. It made much more sense to have all of that codified in one place and for out-of-state-managers to have clear guidance on these policies. The expense of an employee handbook was small compared to the potential exposure of millions if an employee flew a drone into high tension electric wires and

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caused a huge power outage or fell off a railroad trestle. But if you have a system manager, two field technicians and an office clerk, you should really ask yourself if an employee handbook is worth the expense.

If you decide to adopt an employee handbook, a good attorney will not just give you a template. He or she will need to do a compliance review of all your employment practices, review those position descriptions and work with you and your manager to develop an outline of what employment practices you want to formally adopt. THEN, you need to spend the money and have an attorney review your handbook once a year even if there isn't a legal dispute! He/she is going to look for conflicting or confusing language that you may have added and for legal issues that have occurred during the past year. Employment laws change at the state and federal level almost every year and the handbook will need to be up to date on referencing these changes. This annual review will also give you a chance to ask your manager about any changes made during the year. It is very tempting for managers to make changes to the handbook themselves and that can cause problems. One utility manager added a very specific PPE requirement for field employees under the dress code section of the handbook. He did this in order to get a discount on workers comp insurance. The problem was that the assistant billing clerk started going out into the field to read meters and she wasn't wearing a hard hat or steel-toed boots, because she was an office worker not field personnel and the language wasn't clear and it also made no sense to have it under "dress code". Actually, it wasn't clear if she ever even saw the language in the handbook, because no one kept records of whether or not the employees saw the updates and there was no version control of the handbook. When she was injured on the job, it became a problem because the workers comp attorney

## You have to follow your handbook and you have to apply it equally to all employees.

wanted to raise the issue that she wasn't wearing PPE and it was not at all clear from the handbook if the PPE requirement applied to any employee who went out into the field or just the field technicians. Confusion like this almost always cuts against the employer.

### Implement

You have to follow your handbook and you have to apply it equally to all employees. If the handbook sets out a specific process for applying for leave and says that an unauthorized absence is treated like leave without pay, and an employee could have had an authorized absence if they had asked in time, you cannot choose to unilaterally excuse

the absence after the fact and pay them for that day. You cannot pick and choose which sections you enforce or which employees have to follow which sections. One small system had a pretty strict policy for work schedules in their handbook. In reality though, if the manager liked someone he would look the other way if they left work early or came in a little late. He would also let people swap their days off without prior approval. When one employee became a "problem" employee, and the manager wanted to build a case in favor of firing him, he started enforcing the work schedule policy for the problem employee but not other employees. Yikes! When the manager fired the problem employee for chronically showing up late, the employee went straight to the board and threatened an EEOC age discrimination action (he was over 40) and they hired him back. Yes, I know, the board should not have intervened in the matter and hired him back. They should have consulted an attorney and reviewed the matter with the manager before making any decision, but it was

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**An employee handbook is much more than guidance. It can be treated as a binding legal document that creates duties for the employer as well as the employee.**

still a broader problem because the policies in the handbook were not enforced evenly among all the employees. They ended up settling the EEOC complaint and basically paying to make the matter go away when it would have been easy to terminate the employee for cause with the right documentations.

**Revise**

An employee handbook is a living document that should be updated far more frequently than even your operational policies and procedures. If you are really following it, you will find that there are daily employment procedures that you want to change in order to make things run more smoothly. It's a double edged-sword

though. The handbook outlines all the steps that employees must follow. But it also outlines all the steps that you must follow. If you decide to change a policy, and you don't tell employees as soon as you change the handbook, you're inviting legal issues. It is really tempting to think that you can follow the handbook on big stuff but deviate from it for little stuff. Or that it's for employees to follow but that management can make its own decisions. The handbook has to match actual practices and it has to be revised and the revisions have to be clearly communicated (ideally in writing) to all employees before you implement new practices. Oh and you need to maintain version control. That means that every version of the handbook is

dated, the changes are clearly identified, and you track in what manner those changes are communicated to the employees. If asked, you should be able to produce every version of the handbook that you have ever had, with all the changes clearly marked. An employee handbook is much more than guidance. It can be treated as a binding legal document that creates duties for the employer as well as the employee. Kansas is an "employment-at-will" state. This means that either the employer or the employee may end the employment relationship at any time, for any reason, or for no reason, unless an agreement exists to the contrary. Even if you don't have an explicit employment agreement, certain actions and representations can bind you just as if there were a written contract signed by both parties. That is called an implicit employment agreement and an employee handbook that contains discipline, bonus, and termination procedures, etc. could be treated as contract between the employer and the employee. This means that with an employee handbook in place, you cannot terminate an employee at will unless you have followed all the steps in the handbook. That can make hiring and firing employees very, very complicated.

So that labor law poster in the break room is sounding pretty good right about now, isn't it? The real takeaway about employee handbooks is that because they can be treated as binding legal documents, it requires a great deal of time and money to keep them properly updated and implemented. If you can't commit to doing that, then you are better off without one!

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