

# **THE NEW SOUTH CAROLINA EMPLOYEE HANDBOOK LAW: FREQUENTLY ASKED QUESTIONS**

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On July 1, 2004, South Carolina's employee handbook law—Section 41-1-110 of the South Carolina Code—becomes applicable. As explained in Nexsen Pruet's March 2004 Employment Law Update, the new law specifies under what circumstances employee handbooks—as well as personnel manuals, policies, and other documents—may not be considered contracts of employment. We take this opportunity to answer some frequently asked questions about the new law.

## **Should we reissue the entire handbook?**

The entire handbook—not just the cover page—should be reissued, even if the handbook was recently revised. Section 41-1-110's protection from contract formation applies only to "a handbook ... issued ... after June 30, 2004." To make it clear that Section 41-1-110 applies to the handbook, the date of reissuance should be stated on the cover page.

## **What should the disclaimer say?**

Section 41-1-110 does not provide foolproof language for an adequate disclaimer. Employer-specific issues will likely affect what is said in the disclaimer. These issues include workforce size and labor relations history. Nevertheless, all employers should consider including the following information in the disclaimer:

- A reference to the new law;
- An explanation that the handbook does not constitute an employment contract;
- An explanation that the new handbook supersedes old versions;
- An explanation that the company reserves the right to amend, alter or make exceptions to the handbook; and
- A statement that employment at the company is at-will.

## **Where should we place the disclaimer?**

The new law states that in a handbook, the disclaimer "must be in underlined capital letters on the first page of the document and signed by the employee." Lawyers are divided on what is meant by the "first page." Some employers have placed the disclaimer on the cover page of the handbook. Other employers have decided to place the disclaimer on a stand-alone disclaimer page, entitled "IMPORTANT NOTICE" and numbered page "1," immediately behind the cover page and immediately in front of the Table of Contents of revised handbooks. We recommend numbering the disclaimer page "1" to make it clear that it is the first page.

### **How should we notify employees of the new handbook?**

Employees must receive actual notice of new provisions in an employee handbook. Handing out the reissued handbook without explanation might not count as actual notice. Introducing the revised handbook during an employee meeting and summarizing the changes is considered a good way to communicate the new handbook. Alternatively, a memorandum explaining the handbook changes could be distributed to employees before the revised handbook is issued.

### **What if an employee refuses to sign the disclaimer?**

Employers can make signing the disclaimer a condition of employment. However, before terminating an employee for refusing to sign the acknowledgment, we advise employers to confer with an attorney because the activity of a single employee in refusing to sign a disclaimer may constitute “protected concerted activity” if it is taken on behalf of other employees.

### **Would an electronic signature satisfy the signature requirement?**

The new law does not define the term “signature,” much less discuss the validity of electronic signatures. However, it is likely that an electronic signature would satisfy the signature requirement. The South Carolina Electronic Commerce Act, first enacted in 1998, provides the legal framework for the recognition of electronic records and electronic signatures in private transactions of the type required under the new handbook law. Under the Electronic Commerce Act, “an electronic signature satisfies any rule of law requiring a signature or providing consequence if a document is not signed.” The Act further states that “the mere requirement that information be ‘in writing’, ‘written’, ‘printed’, [or] ‘signed’” is not by itself sufficient to establish that an electronic signature is not valid. Nevertheless, in an abundance of caution, employers may also want to have employees sign a printed disclaimer to ensure that they have tangible proof of compliance with the handbook law.

### **Can other changes be made to the handbook as part of this process?**

Yes, this would be a good opportunity for employers to review and revise their handbooks. Employment laws constantly change, so employers can take advantage of the revision process required by Section 41-1-110 to update important policies such as harassment, FMLA, and overtime pay policies.

### **Conclusion**

The new handbook law is an important safeguard from litigation that all employers should consider using. However, employers should be cautious and thoughtful in communicating and implementing handbook changes. Mishandling the introduction of the new handbook could lead to unnecessary confusion, individual employee concerns, and labor relations issues.

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