

## **EMPLOYEE HANDBOOKS IN SOUTH CAROLINA– *To Have or Not to Have?***

Employee handbooks are commonplace in most work environments today. Employers desire to treat their employees as “at-will” (i.e. terminable for any reason and at any time) and insert disclaimers and other language in their handbook to solidify the employment “at-will” relationship. Two recent South Carolina Court decisions, however, have whittled down the “employment at-will” doctrine leaving employers to ponder the following questions: *Should an employer have an employee handbook?... How can an employer effectively communicate its policies yet avoid the creation of a contractual relationship between employer and employee?* This article will review the most recent South Carolina cases addressing these issues and offer tips to employers for drafting and revising employee handbooks.

### *Recent South Carolina case law*

In February 2002, the Supreme Court of South Carolina issued a decision, *Connor v. City of Forest Acres*, 348 S.C. 454 (2002), dealing with the formation of a binding contractual relationship between employer and employee. Plaintiff, Evelyn Connor, worked as a police dispatcher and sued her employer for breach of contract based upon language in her employee handbook. Ms. Connor had been discharged for performance issues. In her suit, she alleged that certain policies in the handbook (i.e. Code of Conduct and Discipline) contained mandatory, promissory language thereby creating a contractual relationship and altering her employment at-will status. Although the City argued the handbook did not create a binding contract, the Supreme Court reversed summary judgment for the employer and sent the case to the jury on the issue of whether a contract existed between the parties. In a similar case, *Baril v. Aiken Regional Medical Centers*, No. 3561 (S.C. Ct. App. 10/28/2002), the Court of Appeals held that the hospital may have created a contract of employment based upon mandatory, promissory terms set forth in its handbook policies (Progressive Discipline, Discharge and Grievance). In both of these cases, the employers had policies clearly confirming the employee’s at-will status and specifically disclaiming any contractual relationship.

### *Where do we go from here?*

The *Connor* and *Baril* decisions left many employers wondering whether employee handbooks and employment at-will status can coexist in South Carolina. The challenge for employers today is creatively drafting a handbook that clearly establishes the policies and

procedures of the company, while at the same time minimizes liability for creating a binding contract of employment. While some employers may be tempted to abolish their employee handbook in light of these cases, this practice would undoubtedly create confusion for employees and perhaps liability issues for employers. *How would the employer clearly communicate its policies to employees? Would the employer experience a significant increase in claims or complaints by employees of inconsistent and unfair treatment without uniform, written policies applicable to all employees?*

In an attempt to avoid the results reached by these two cases, employers should take the following steps: (i) Avoid mandatory language and statements in the handbook; (ii) Avoid verbal and/or written promises to employees; (iii) Carefully draft disclaimer language and avoid the use of “form/template” handbooks; specifically tailor handbook policies to meet the needs of your business; (iv) Utilize an employee acknowledgement form to confirm receipt of the employee handbook; (v) Avoid generalized promises of fair treatment or other similar phrases that imply employees can be terminated only for cause; (vi) Consider revising the Discipline and Termination Policy and carefully evaluate the most appropriate policy for your work environment.

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