



## Focus on Human Resources

### EMPLOYEE HANDBOOK BASICS

By Ronald Rice, Diamond Corporate Services

**“A good employee handbook gives you some protection and sets the expectations for successful behavior by employees.”**

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Every employer should have an employee handbook. The handbook is essential for communicating clearly the company's written policies concerning employees. The employee handbook benefits the employer by explaining unacceptable behaviors which could result in disciplinary action and possible termination. When the wrong behavior occurs, the employer has a straightforward approach for a meeting with the employee to explain the behavior, and the consequences for that action. After the meeting, the employer (or manager) should document the meeting. If the employee later tries to claim unemployment benefits, or makes other charges against the employer, the employer has the written evidence of the employee handbook and the meeting notes to aid with the defense of the claim.

**New Hires:** New employees should be given an employee handbook immediately upon employment. It is important to give the employee a copy to keep. At the time the handbook is given, the employer should require a signed statement from the employee. The statement should simply say that the employee acknowledges being given a copy of the handbook and has had an opportunity to read it. The employee also has the opportunity to ask questions to clarify any policies they do not understand. The statement should be signed and dated, then put in the employee's file. In some instances, the employee handbook could not be used as a defense for employee misconduct if the employer is unable to prove the employee was given one, and had the opportunity to read it.

**Updates:** Employee handbooks should be updated every two or three years. When updated, a new copy of the entire handbook should be given to each employee. In many industries today, most of the workforce turns over every two or three years. With so many changes in the workplace, the

handbook updates give the employer a chance to reintroduce company policies and reinforce their importance. If unacceptable behaviors are not being addressed, they will continue to occur. Thus reintroducing the handbook gives the employer a way to refocus employees on correct behaviors and remind them of the consequences of failing to perform. In some instances, an employer may have to prove that an employee was aware that certain actions were unacceptable and could result in termination. If the employee handbook is not discussed with employees for years after they are hired, the employer takes a risk that the employee could successfully argue that their behaviors were not expressly prohibited, but were in fact commonplace and tolerated by management.

**Expectations:** The written rules and policies set the expectations for employee performance. You are not always there to watch the employees and their managers in action. Written expectations put you in control even when you are not there. Poor supervisors are less likely to put the owner at risk of a lawsuit if the handbook contains clear policies. Additionally, the handbook should contain a section on ethical behavior and positive values of the company, thus setting high standards as expectations.

**Promote Values:** A well-written employee handbook should promote the company's vision and culture. There should be a concise statement of the company mission statement and some positive values the company promotes. Some handbooks also include a statement offering that the purpose of the handbook is to promote productive work habits, or promote success employment careers at our company. Thus the handbook becomes a gift and a tool for the employee's success.

**Privacy Protection:** Handbooks should include a section on protecting customer data from identity theft. See below for related article.

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## **IDENTITY THEFT ISSUES**

**By Ronald Rice, Diamond Corporate Services**

By now, everyone has heard of identity theft. Somebody steals a credit card, or gets hold of private personal information, such as social security numbers. Identity theft occurs when one individual misappropriates another's identifying information and uses that information for criminal or fraudulent purposes.

***“Identity theft is a potential cost to your business.”***

Experts have estimated that more than 9 million Americans were victims of identity theft in 2004 and the number seems to be growing each year.

Cost to individuals and businesses: Victims of identity theft can spend thousands to restore their ruined credit, and settle financial accounts. Yet it appears that businesses may end up bearing the brunt of identity theft costs, considering unpaid account balances, goods and services lost to identity thieves. Other costs to businesses include lost productivity and legal costs.

A new concern for businesses is negligent or dishonest practices by their own employees. Most businesses track private information about customers, such as addresses, phone numbers, credit card numbers, credit scores, driver’s license numbers, etc. When dishonest employees misuse the information, your business gets caught up in a case of identity theft. One disturbing trend is that businesses may become liable for inappropriate actions by their own employees, whether or not the business owner was aware of the action. At the very least, businesses are subject to the loss of clientele, and could be exposed to lawsuits or fines.

Some common-sense procedures can lower your risk and your company’s risk. You can easily provide a short training session on these procedures.

1. Store all purses, wallets and checkbooks in locked cabinets while in the workplace. Store personal data on employees and customers in a locked cabinet.
2. Shred sensitive documents before throwing them away, especially those containing account numbers or social security numbers.
3. If you are providing sensitive information over the telephone, make sure you are not overheard.
4. Avoid giving sensitive personal information by e-mail or over the phone.
5. Do not place your personal mail containing SS#, checks or account information in an unlocked outgoing mailbox or on a receptionist’s desk. Avoid using social security numbers on any documents.
6. Be sure to use passwords on computers, and close any programs when you leave your desk. Protect the security of all passwords.

***“How does an employer respond when it becomes apparent that private data has been stolen?”***

The Federal Trade Commission (FTC) has issued procedures for handling situations where identity theft has occurred. The

program includes the following:

**Notifying Law Enforcement:** When a compromise of private data has occurred, and it could result in harm to a person or business, call your local police department immediately. Report your situation and the potential risk for identity theft. The sooner law enforcement learns about the theft, the more effective they can be. If your local police are not familiar with investigating information compromises, contact the local office of the FBI. For incidents involving mail theft, contact the U.S. Postal Inspection Service.

**Notifying Affected Businesses:** Information compromises can have an impact on businesses other than yours, such as banks or credit issuers. If account access information – say, credit card or bank account numbers – has been stolen from you, but you do not maintain the accounts, notify the institution that does so that it can monitor the accounts for fraudulent activity. If you collect or store personal information on behalf of other businesses, notify them of any information compromise, as well. If names and social security numbers have been stolen, you can contact the major credit bureaus if you are recommending that people request fraud alerts for their files. Your notice to the credit bureaus can facilitate customer assistance. The three major credit bureaus (with their fraud alert division phone numbers) are Equifax (800-525-6285), Experian (888-397-3742) and TransUnion (800-680-7289).

**Notifying Individuals:** Generally, early notification to individuals whose personal information has been compromised allows them to take steps to mitigate the misuse of their information. In deciding if notification is warranted, consider the nature of the compromise, the type of information taken, the likelihood of misuse, and the potential damage arising from misuse. When notifying individuals, the FTC recommends that you consult with law enforcement about the timing of the notification so it does not impede their investigation. You should also designate a contact person within your organization authorized to provide information. The actual notice letter to an individual has several items that should be included. The FTC has instructions on their website for writing the letter, along with a Model Letter you can use. See [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or call 1-877-IDTHEFT. Another good resource for further information on this subject is the Identity Theft Resource Center at [www.idtheftcenter.org](http://www.idtheftcenter.org).

Most states have already passed laws acknowledging identity theft as a crime. More recently, several states are developing

legislation that will require employers to complete the notifications similar to those listed above. Lack of notification could involve penalties to the employer. This is a trend you should be aware of. Address this issue now by doing a little training with your employee team.

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## **FOCUS ON SAFETY**

### **OSHCON SERVICE FOR OSHA COMPLIANCE**

#### **What is OSHCON?**

The Occupational Safety and Health Consultation (OSHCON) program is a free, non-regulatory Service available to small, private Texas employers (Other states have similar OSHA consultation programs). Experienced professional consultants can evaluate your current safety and health programs and help you identify hazards in your workplace. OSHCON is a program of the Workers' Health and Safety Division of the Texas Department of Insurance. Over 30 consultants are available throughout the state.

#### **How can OSHCON help me?**

Many free services can be provided by an OSHCON consultant, including:

- evaluation and identification of safety and health hazards;
- industrial hygiene services such as noise monitoring and air sampling;
- problem solving and hazard correction assistance;
- technical updates on Occupational Safety and Health Administration (OSHA) standards;
- safety and health program assistance; and
- hands-on training, training materials, videos, and publications.

#### **Is OSHCON the same as OSHA?**

No. Although the consultation program was established by the same legislation that created OSHA, and is funded largely by a grant from OSHA, the consultation services are completely separate from Federal enforcement. OSHCON is a voluntary, non-regulatory program designed to help Texas employers identify areas that do not meet OSHA safety and health

*“You know about OSHA, but you’re not sure you can survive an audit. You could use a safety consultant to do a OSHA-type inspection without OSHA being involved.”*

*“OSHCON makes it easy to stay in compliance.”*

standards. The OSHCON program does not issue fines or citations, but instead offers solutions for correcting hazards.

### **Does my business qualify for OSHCON assistance?**

Your company is eligible for OSHCON assistance if it:

- Does business in the state of Texas (other states have similar programs)
- Is in private industry; and
- Has less than 250 employees at the consultation site and no more than 500 employees at all sites controlled by the employer.

The focus of the program is on employers in high hazard industries, but assistance is available to all businesses that meet the above criteria because hazards can be present in any workplace. You must request a consultation from OSHCON to initiate assistance.

### **What is the process involved with an OSHCON consultation?**

You must first request a consultation from OSHCON. Consultants are available throughout the state and will schedule the consultation at your convenience. You may request a consultation to address specific issues or a comprehensive consultation.

There are many convenient ways to request assistance: Call toll-free at 1-800-687-7080, or send an email to [OSHCON@tdi.state.tx.us](mailto:OSHCON@tdi.state.tx.us).

A comprehensive visit includes the following four components:

1. The consultant explains his or her role and your obligations as an employer.
2. During the walk-through survey, you and the consultant examine the conditions in your workplace, including appraisal of mechanical and environmental hazards as well as physical work practices. The consultant will talk with some employees who are working during the walk-through.
3. An assessment of your safety and health program will also take place to determine if OSHA required written programs are in place.
4. During the closing conference, the consultant will review with you not only the findings that need to be improved, but also what you are doing correctly. At that time, you can discuss

plans to eliminate or control any serious hazards identified.

After the consultation, all gathered information is evaluated. If necessary, relevant research or sample analysis is conducted. The consultant then provides you with a detailed written report which will include findings and recommendations.

The consultants will generally want to review your company's SIC and/or NAICS code, number of employees, FEIN and OSHA 300 logs. Written safety and accident prevention programs will be reviewed.

### **What are my obligations if I request an OSHCON consultation?**

When you request and agree to an OSHCON consultation, you agree to correct any serious hazards or imminently dangerous situations that might be identified. The abatement period is set where you agree to correct serious hazards.

### **Will an OSHCON consultation lead to an inspection by OSHA?**

OSHA is not notified of visits to employers that request OSHCON consultations, nor are the findings routinely reported to OSHA. In rare cases, when an employer refuses or fails to correct serious hazards or imminent dangers in the agreed-upon time frame, those violations must, by law be reported to OSHA. An employer in the OSHCON program can ask for an extension if more time is needed to correct hazards.

### **What are the benefits of OSHCON?**

An OSHCON consultation can help you:

- Reduce workplace illnesses and injuries;
- Stay informed of and become compliant with OSHA requirements;
- Avoid fines for safety and health violations;
- Minimize workers compensation and medical costs;
- Maintain successful safety and health programs;
- Maintain production schedules;
- Reduce liability;
- Improve employee morale and reduce turnover.

This material provided from the Texas Department of Insurance website.

**“What are the rules for paying an employee once they are termed from employment?”**

## **THE FINAL PAYCHECK**

**By Ronald Rice, Diamond Corporate Services**

Employers often have questions about how to handle the final paycheck for an employee. Some states have rules for when the employee is to receive their final check. For example, in Texas, the final check must be issued within 6 calendar days if the separation is involuntary and the 6<sup>th</sup> day falls on a day the business is normally open. If the work separation is voluntary, the employee can be paid on the next regularly scheduled payday. Another issue is whether the employer can take special deductions out of the last paycheck. I've had several questions on whether the employer can deduct training costs, uniforms or loans on the final check. Other issues are recovering cash drawer shortages or the value of missing equipment. One problem for employers is the US Dept of Labor rule which requires the employee receive no less than \$5.15/hour for regular hours and time and a half for overtime hours. A few states have minimum wage requirements above \$5.15. For example, Illinois is currently \$6.50/hour, Florida \$6.15, and Wisconsin \$5.70. The employer is unable to take a special deduction from any check that brings the paid wages below the minimum wage. Thus, the employer is sometimes unable to recover all their costs when a termination occurs. Most states and most PEO companies require a written authorization form signed by the employee prior to any payroll deductions. In the absence of a written deduction form, the employee would usually win if they were to make a wage claim to their state or to the DOL. If uncertain about the rules for the final paycheck, contact your PEO directly, or call your state labor department office.

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