

NYSCWA MEMBERSHIP MEETING

Practical Legal Solutions for Car Wash Employers



Presented by:

Alvaro Hasani, Esq.

Phone: (908) 516-1058

ahasani@fisherphillips.com

The Case for the Employee Handbook



Should I Have a Handbook?

“It depends”

- Do you want your employees to know your rules and policies?
- Do you want the EEOC to see that you have a harassment/discrimination/retaliation policy?
- Do you want to make your supervisors and HR personnel happy?
- Do you want to make your employment lawyer’s job easier?(and save some money too?)

Should I Have A Handbook?

- Why are employee handbooks important?
 - Economic (increase in decisions that adversely affect employees)
 - Cultural (set policies and uniform sets of guidelines)
 - Technological (increased workplace use of Social Media & Internet)
 - Legal (policies are a proactive and defensive tool)

Should I Have A Handbook?

- Employers that invest proper time and resources maintaining up-to-date employee handbooks and educating their workforce see decreased litigation and higher employee retention rates.
- Court cases, statutes and regulations explicitly reference employer policies as a determining factor in liability.

Ensuring Handbook Style Fits with Corporate Culture

Perhaps the most important aspect of your employee handbook is the introduction of new employees to your corporate culture and how they will fit in. **This helps to foster a sense of pride and belonging, which studies show will help employees become more productive in a shorter period of time.**

Ensuring Handbook Style Fits with Corporate Culture

- The writing fits with your *organization's communication style*
- The handbook covers your *business challenges*
- List your company's *unique benefits*



Handbook Objectives

Employee Based:

- Answer basic questions
- Describe benefits
- Identify expectations
- Outline acceptable behavior

Employer Based:

- Promote the Company
- Comply with the law
- Protect against litigation
- Improve unemployment experience rating

Getting Started

Handbook Options

- Introductory Period
- Benefits
- Basic Work Rules
- Personal Business
- The Company's Image

Don't Bother

- Anything that happens pre-employment
- Issues that rarely arise
- Issues that aren't to your benefit

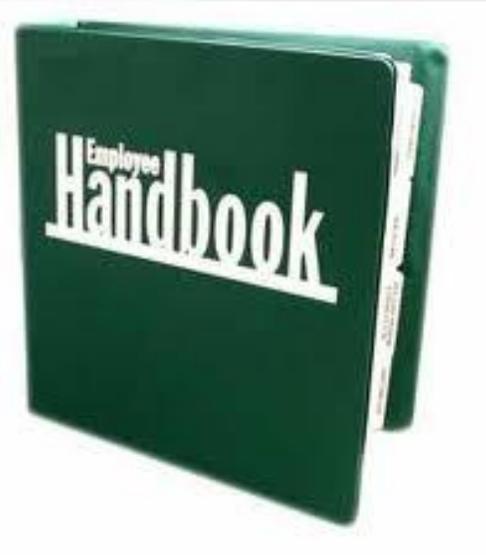
Topics that Should be Included: Handbook Essentials

- At-will
- EEO
- No Harassment
- Reasonable Accommodations
- Drug and Alcohol
- Open Door
- Inspection of Work Area
- Basic Work Rules
- FMLA
- Work Schedule
 - Absenteeism/Tardiness
 - Overtime
 - Timekeeping
- Electronic Communications
- Protecting Information and Property

Conspicuous Disclaimer

- Law provides that a disclaimer is conspicuous if it is
 - Underlined
 - In capital letters
 - On the first page of the document
 - Signed by the employee
 - Caution: Courts will still look to see if there is a promise contained in the language of the handbook

Today's Employee Handbook



- Same Sex Marriage (and the FMLA)
- Drugs and Alcohol
- Protected Classes
- EEOC Guidance
- NLRB Restrictions
- Affordable Care Act
- State Laws

Revising the Old v. Starting Anew

Update the Handbook Periodically

- Before publishing and distributing a new employee handbook, have your employment lawyer review any changes.
- Reflect on past situations and incorporate changes into the handbook to address such situations in the future.

Minors in the Workplace

Avoiding Pitfalls



Must be Aware of Additional Legal Risks and Burdens when Employing Minors.

Examples:

1. Hour Restrictions
2. Work Type Restrictions
3. Additional Documentation / Notice Requirements
4. State Law Protections Against Age Discrimination
5. Last But Not Least: The Unique Problem Of Teenage Sexual Harassment/assault

Federal Requirements Under the FLSA

Minors 16 and over:

- There are no limits to employment of minors 16 and over, other than those declared “hazardous” by the Secretary of Labor.
- Include: Power-driven meat and poultry processing machines, commercial mixers, and certain power-driven bakery machines.
- In addition, 16 and 17-year-olds may not load, operate, or unload balers or compactors.

Federal Requirements Under the FLSA

Minors Under 16:

- Permitted to work if “such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.” 29 USCA §203(I).
- May not work more than 40 hours in one week when school is not in session; may not work more than 18 hours in one week when school is in session.

Federal Requirements Under the FLSA

Minors Under 16:

- May not work more than 8 hours in one day when school is not in session; may not work more than 3 hours in one day when school is in session, including Fridays.
- May not work before 7 a.m. or after 7 p.m., except during summer (June 1 through Labor Day), when they may work until 9:00 p.m.

Federal Requirements Under the FLSA

Minors Under 16:

- May perform the following types of jobs, including, but not limited to: cashiering; price marking and tagging by hand or machine, assembling orders, packing, and shelving; bagging and carrying customers' orders; clean up work, including the use of vacuum cleaners and floor waxers; cleaning vegetables and fruits, and the wrapping, sealing, labeling, weighing, pricing, and stocking of items, including vegetables, fruits, and meats, when performed in areas physically separate from a freezer or meat cooler.

New York State Requirements

Work Hours (ages 14 and 15):

- When school is in session, may not work more than three hours on any school day, more than 8 hours on any non-school day, more than 18 hours per week, or more than 6 days per week.
- When school is in session, may not work after 7 p.m. or before 7 a.m.
- When school is not in session, may not work more than 8 hours per day, more than 6 days per week, or more than 40 hours per week.
- When school is not in session, may not work after 7 p.m. or before 7 a.m., except between June 21st and Labor Day, when a minor may work until 9 p.m.

New York State Requirements

Work Hours (ages 16 and 17)

- When school is in session, may not work more than 4 hours on any day preceding a school day, other than a Sunday or holiday; more than 8 hours on a Friday, Saturday, Sunday or holiday; more than 28 hours per week; more than 6 days per week.
- When school is in session, may not work after 10 p.m. (may work until midnight *with the written consent of a parent or guardian*).
- When school is not in session, may not work more than 8 hours per day (with exceptions); more than 48 hours per week; or more than 6 days per week.
- When school is not in session, may not work between 12 a.m. and 6 a.m.

New York State Requirements

- Employers must make a schedule for all minors, setting forth the shift's start and stop times, as well as start and stop times for meals, to be conspicuously posted.

New York State Requirements

Employment Certificates:

- Before employment begins, the employer must have the minor's employment certificate on file.
- Upon termination of employment, the employer must return the certificate to the minor.

Minors & Sexual Harassment: The Problem

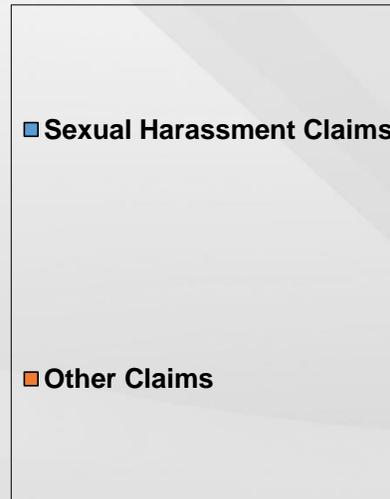
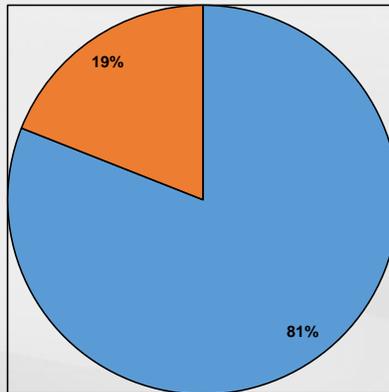
In a recent study, Brandeis University researcher E.J. Graff, found that more than 200,000 teenagers each year are sexually assaulted on the job in the United States.

EEOC's Teen Litigation Report

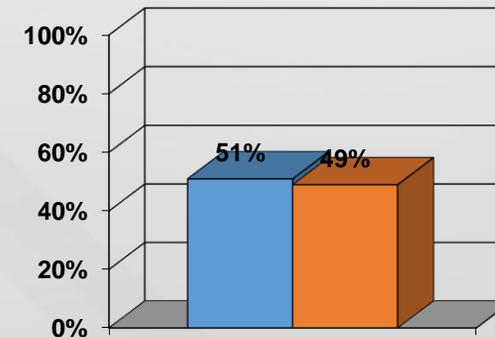
- Tracks EEOC litigation on behalf of teens.
- Includes all EEOC cases involving teens from 1999 to 2008.

What it says:

Claim Breakdown
By Type



Claim Breakdown
By Industry



THE LESSON = BEWARE!

Minors & Sexual Harassment: My Docket Over The Last 12 Months

- **Rape/Sexual Assault: 5 Cases**
 - Washington: 2.2 million dollar demand
 - Alabama: 800,000 thousand dollar demand
 - Texas: 1.6 million dollar demand
 - Denver: 1.2 million dollar demand
 - New Jersey 1.6 million dollar demand
- **Class Action Sexual Harassment / EEOC: 1 Case**
 - New Mexico: 1.6 million dollar demand
- **Federal Lawsuits Alleging Sexual Harassment: 7 + Cases**
 - Demands range from 125,000 – 700,000 thousand dollars
- **State Lawsuits Alleging Sexual Harassment (or Similar Conduct): 5 + Cases**
- **Charges of Discrimination Involving Sexual Harassment of Minors: 20 + Charges Nationwide.**

Minors & Sexual Harassment: Legal Issues

Consider the following:

- *Doe v. Oberweis Dairy*

“Consent” is legally ineffective as a defense to Title VII suits by minors.

- *EEOC v. V&J Foods, Inc.*

A company that employs minors is obligated to suit its procedures to the understanding of the average teenager.

Minors In The Workplace: Summary of the Problem

1. Younger employees.

- greater legal protection
- heightened risk of problem

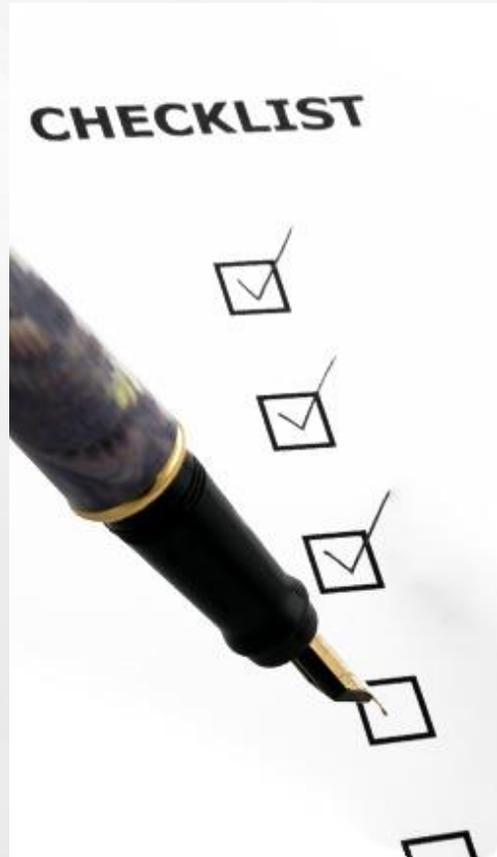
2. Parental Involvement.

- more players
- increased emotions

3. Heightened Expectations For Employer.

- acting as an employer and a custodian.

Minors & Sexual Harassment: What You Can Do



1. Train, Train, Train
2. Carefully Monitor Employees Who Supervise Minors
3. Establish Appropriate Reporting Guidelines
4. Keep Parents Informed

Final Take-Away Suggestions

- **Know the Rules.**
 - Make sure you know and follow state and federal minor work laws: when they can work, break requirements, and the maximum hours they can work.

- **Keep Proper Documentation.**
 - Make sure you have onsite proof of age for every minor in your employ.

- **Manage it.**
 - While you may tell employees that it's their responsibility to take their breaks at the appropriate time (and can—and should—take a hard line with violators), it's you who will receive the DOL penalty if your minors are not taking long enough breaks or are working too many hours.

- **Keep Them Away From “Hazardous” Equipment.**

Final Take-Away Suggestions

- **Train.**
 - Managers, supervisors, and the minors themselves must be trained to ensure that everyone is working toward legal compliance in these areas.

- **Know Your Supervisors**
 - Beware of former sexual offenders and employees with prior complaints of sexual conduct.

- **Involve the Parents**
 - Consider sending a letter to parents asking them review Company policies with their minor.

A Sample Letter To Parents

Dear Parent or Guardian:

We are excited to welcome your son or daughter to [THE COMPANY]. We believe we offer a safe and comfortable environment for younger employees to establish positive work experiences.

As part of our commitment to offering a positive work experience, the Company maintains a Policy Against Sexual Harassment, prohibiting all forms of sexual harassment by employees, customers and vendors. Each employee receives a policy of the Company's Policy Against Sexual Harassment when they are hired, and the Company takes steps to ensure that all employees read and understand this policy prior to beginning work. We have included a copy of the Company's Policy Against Sexual Harassment with this letter. Although we review this policy with employees during orientation, we ask that you also take the time to review the policy with your son or daughter to ensure that they understand the type of conduct prohibited and how to report any violations of the policy.

The Company takes great pride in the work experience it offers. We ask you to assist us in achieving a great experience by talking to your son or daughter about their work. If your son or daughter tells you about an incident that makes you or them uncomfortable, we ask that you encourage them to report the incident by following the procedures set forth in the attached policy. If your son or daughter feels uncomfortable discussing their concerns with the Company, we ask that you assist them by contacting the Company on their behalf.

If you or your child have questions or concerns about the Company's Policy Against Sexual Harassment or other policies, please feel free to contact [NAME AND PHONE NUMBER]. We look forward to having your son or daughter begin working with us at [COMPANY], and we will make every effort to ensure that their experience with us is positive, rewarding, and free from unlawful harassment.

Final Questions?



Presented by:

Alvaro Hasani, Esq.

Phone: (908) 516-1058

ahasani@fisherphillips.com