

Mini- Storage Messenger

“Do I need an Employee Handbook?”

Question: An owner of a facility writes: “With my self-storage facility I only have two full time and one part-time employees. My accountant told me I ought to have an employee handbook. Is this really necessary since I am such a small operator? “

The general answer is that a well written employee handbook adds a lot of protection to you as the owner/employer in a lot of different situations.

In most states, employees are what are known as “employees at will” which means, subject to certain limitations; an employee can be fired for any reason or no reason at all. Some self-storage operators have started creating employment contracts with their employees to define the terms and conditions of their employment. The unfortunate by-product of an employment contract is that the courts and employees sometimes view them as an agreement to keep the employee employed for certain length of time regardless of performance. The best way to define the relationship between you and your employees, and avoid the inadvertent creation of enforceable promises of continued employment, is with a well written employee handbook. This is a document that you should have your attorney draft. Because state laws are different I do not recommend your buying an employee handbook off the internet or off the shelf. However, you certainly do not need a self-storage attorney to write an employee handbook.

Every employee handbook is going to contain some common statements. For example if your employee is “at will” you will want to state this in the handbook; you need standard language that indicates that you are an equal opportunity employer; you will want a provision on sexual harassment to attempt to protect you from some of that litigation; and you will certainly want a mandatory arbitration provision in your handbook (and have your employees agree to it in writing) to help make it more difficult for your employees to sue you.

Beyond the “standard” provisions the employee handbook is an opportunity to define all of the other job requirements, aspirations and terms and conditions that you want your employees to follow. Having an employee handbook discussing these sorts of concepts will a) help you avoid having to repeat them every time you have a new hire and b) allow you to institute a consistent job performance evaluation system with all of your employees. The types of issues that you may want to address in an employment handbook are:

1) Issues dealing with the specific requirements of the job, sometimes known as a job description. The manager's job description will be different from the maintenance person's job description but each person should have one and that should include the duties that you expect that employee to perform daily weekly, monthly and annually. For example, if you expect a manager to do a weekly lock check, place that material in a report on occupancy, and email you that report every week, this responsibility should be part of the job duties or job description. Most particularly, you would want money handling, particularly cash handling and bank deposit issues as well as authorization to write checks or expend money, covered in this detailed job description in your handbook;

2) You will want to have appropriate language regarding the availability of or prohibition against overtime. This could be a whole separate column. Suffice to say many managers do not meet the test to be an employee exempt from overtime requirement. Thus, if the employee works more than 40 hours a week on any duties involving their employment you would have to pay them overtime. It is better to discuss your policies, up front and in writing, to help you defend yourself later;

3) You may want to have a conflict of interest provision. For example, you certainly would not want your full time day manager acting as the night manager at your competition's facility;

4) You may also wish to have a non-disclosure and/or non-competition clauses so that the manager can not quit and go work for the competitor right down the street with your customer list;

5) The hours of employment. This can be a very helpful feature of your employee handbook if your manager later claims that he or she was "forced" to work hours of "overtime" every week. If you do not set job duty hours, or if there are "off the clock" duties, and if office hours consume a 40 hour week, then if the employee is not exempt you will be paying overtime;

6) You may include reminders in the manual, of your right to conduct drug and/or alcohol testing on a random basis, with or without reasonable suspicion.;

7) Any requirements you may have for appearance, both of the employee, their desk, office and, if they live on site any living quarters that may be visible to the public. These rules should certainly include provisions regarding vehicles owned by the employees. If you do not intend to give up three of your outdoor parking spaces to the manager's RVs this needs to be

stated in the manual. This could also include requirements for uniforms or the type of business appropriate clothing, shoes, and safety used;

8) An employment manual also includes terms and conditions of employment above and beyond working hours such as the existence of any paid holidays, when the employee is reviewed for performance or raises, when the employee is entitled to vacation or sick pay and/or how much vacation or sick pay, and other benefits he or she may be entitled to.

This article is merely an overview of the types of items that must be addressed in an employment manual.

Your attorney should be able to draft an employment manual for you for not too much money however, please remember there are times where you can be penny wise and pound foolish. A well written employment manual, properly acknowledged by your employees (your attorney will explain to you that you must get a receipt signed before the employee starts working or that certain consideration may have to be given to an existing employee to make the manual binding on them if you introduce a manual after they start working) can avoid the substantial costs of just one employee lawsuit. The mere fact that you may be able to block a sexual harassment lawsuit because the employee did not follow reporting procedures, or at least force that type of lawsuit into arbitration rather than a full blown jury trial in your county court, will save a minimum of twenty times what you will ever spend paying your attorney to prepare this type of manual and advise you on how to properly institute it.

You can send your questions, comments, or suggestions for future topics to Jeffrey Greenberger at info@selfstoragelegal.com or mail them to Jeffrey Greenberger c/o Katz Greenberger & Norton LLP, 105 E. Fourth Street, Suite 400, Cincinnati, Ohio 45202 or you can reach Mr. Greenberger at (513) 721-5151, or visit his website at www.selfstoragelegal.com.