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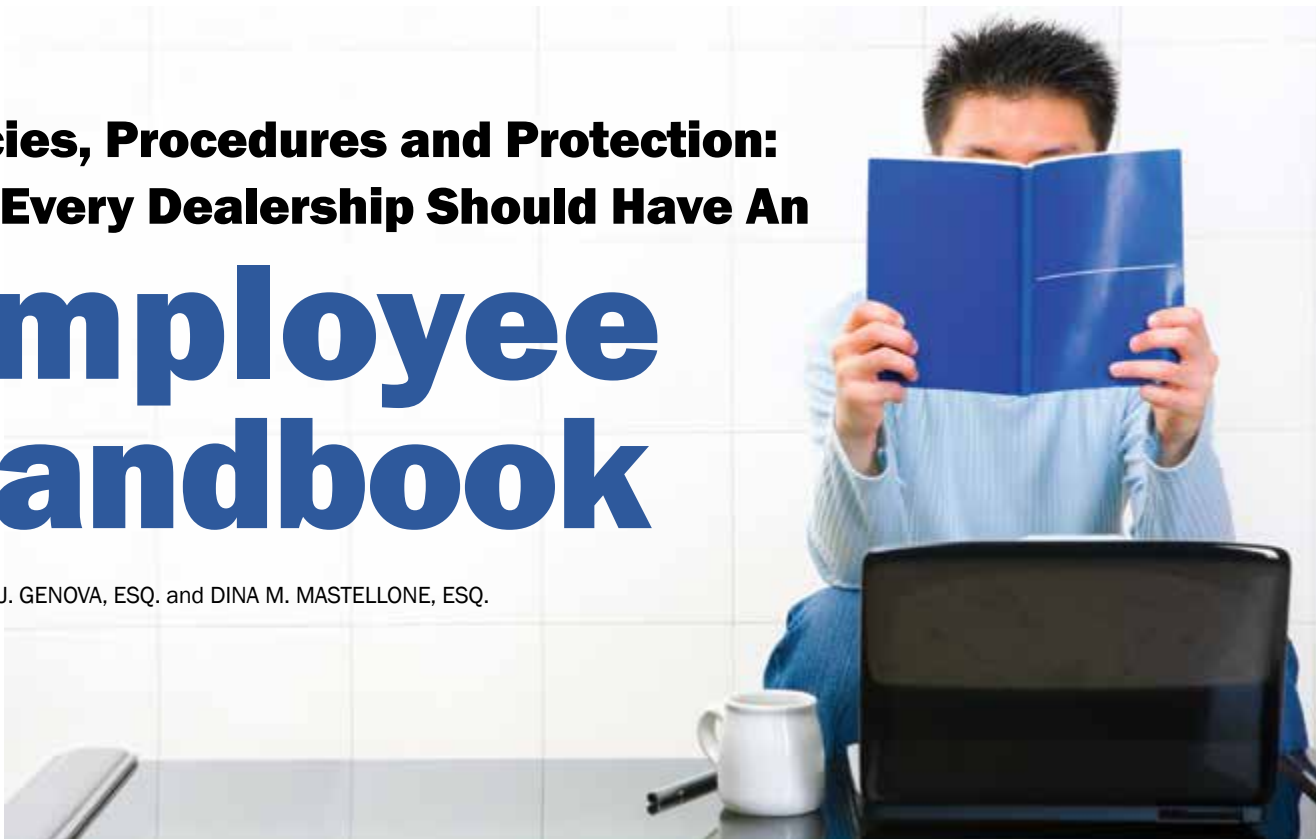


Employers & Employees: A Partnership

Policies, Procedures and Protection: Why Every Dealership Should Have An

Employee Handbook

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For some, having an Employee Handbook may seem forbidding. However, Employee Handbooks are critical communication tools for dealerships to set forth corporate goals, policies and objectives as well as the expectations demanded of employees and what they, in turn, can expect from their employers. An effective Employee Handbook also ensures fair treatment for employees and, when drafted correctly, can effectively limit the dealership's liability from employment discrimination, harassment or other legal claims. Below are the top 10 policies that should be contained in a dealership's Employee Handbook:

1) At-Will Employment Disclaimer. New Jersey is an "employment-at-will" State, meaning that either an employer or employee may end employment at any time, without reason or notice, for any reason not expressly prohibited by federal, State or local law or a clear mandate of public policy. A dealership's "at-will" employment policy should be in bold, conspicuous letters so as to separate it from the rest of the Handbook. There should also be a disclaimer stating that the Handbook is merely a recitation of the dealership's policies and in no way creates a contract for employment. An acknowledgement form, also containing the at-will disclaimer, should be signed by the employee evidencing the employee's receipt and review of the Handbook.

2) Equal Employment Opportunity (EEO): An EEO policy statement has become an essential feature of most Handbooks. An EEO policy confirms that the dealership will provide equal employment opportunity to all persons without regard to race, color, sex, age, disability, religion, national origin, veteran status and/or any other status protected by applicable federal, State or local laws. This policy applies to all areas of employment, including recruitment, hiring, training and development, promotion, termination, layoff, compensation, benefits and all other conditions, terms and privileges of employment in accordance with applicable federal, State and local laws.

3) Non-Harassment and Discrimination: Both federal (Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act) and State law (the New Jersey Law Against Discrimination) prohibit discrimination, harassment and retaliation in the workplace based on a person's race, color, religion, national origin, sex, age, disability, veteran status or any other classification protected by federal, state or local law. This policy should not only be contained in the Handbook but also should be separately distributed to each employee for signature. The policy must cover all types of workplace harassment and be written in plain English and not legalese. It is important that the policy confirms a zero tolerance for discrimination, harassment and retaliation, not just by supervisors and employees, but also by vendors and customers. It is also important that

the policy allows for multiple avenues of complaint, so that employees have various places to go if they feel harassed or victimized by discrimination. Additionally, the anti-retaliation provision often warrants its own policy. Moreover, mandatory anti-harassment training for all employees, especially for supervisors and managers, should be conducted on an annual basis. Dealerships with an effective, published policy against harassment and retaliation with a detailed, multi-avenue complaint and investigation procedure will have a great defense to certain claims when an employee fails to invoke the established procedure.

4) Leaves of Absence: If your dealership employs 50 or more employees, you are required to comply with both the Federal Family and Medical Leave Act (FMLA) and also the New Jersey Family Leave Act (NJFLA). A Handbook is a forum for the dealership to clearly state employee eligibility requirements and to summarize the benefits each leave provides. Eligible employees are provided up to 12 or 26 weeks of unpaid, job-protected leave, with full benefits, during any 12-month period for certain qualifying events as defined by the FMLA and the NJFLA. The leave policy should also state whether the leave is paid or unpaid and how it interacts with any paid time off policy and applicable wage replacement laws.

5) Americans with Disabilities Act Amendments Act (ADAAA): The ADAAA prohibits discrimination against any qualified employee or job applicant with respect to any terms, privileges, or conditions of employment because of a person's physical or mental disability, as defined by the statute. The ADAAA also requires the employer to make reasonable accommodation(s) for all employees or applicants with disabilities of which it is aware, provided that the individual is otherwise qualified to safely perform the essential duties of the position, with or without reasonable accommodation, and provided that any accommodations do not create an undue hardship for the dealership. By including an ADAAA policy in the handbook, dealerships shift the burden to request accommodation onto employees, and demonstrate an affirmative commitment to offer reasonable accommodations when doing so will allow employees to perform the essential functions of their jobs.

6) Time and Attendance: Customer service is of the utmost importance to any dealership and, as such, employees are expected to be on time and ready to work. A time and attendance policy setting forth the dealership's call-in procedure for employees in the event of an absence, late arrival or early departure is critical to effective dealership operations. The policy should also address the consequences of consistent ab-

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sences, excessive tardiness, the failure to clock in or out and/or late arrivals. The policy should also address overtime pay and what approval process an employee must undergo in order to receive overtime.

7) Discipline: Having a well-defined discipline policy will provide employees clear guidance regarding their workplace behavior. It is important that all personnel action be documented, from warnings to terminations, and that all documents be placed in the employee's personnel file. The documentation should refer to any dealership policy that has been violated. Moreover, periodic performance evaluations should be conducted, filed and reviewed with employees.

8) Monitoring Electronic Communications: With the prevalent use of workplace computer systems, dealerships need to reserve the right to review and monitor all information that passes through their computer systems. Employers should remind employees that there is no expectation of privacy in any communication—whether business related or personal—performed using company equipment. Dealerships may also seek to prohibit private Internet access and/or the use of smart phones during work hours.

9) Alcohol and Drugs: A drug and alcohol policy is important to protect the safety, health, security and well-being of both employees and customers that visit the dealership. The policy should provide clear guidelines and consistent procedures for handling incidents of employees' use of alcohol, drugs or controlled substances in the workplace that affect job performance and to make every effort to institute and maintain a drug-free workplace. It is important to also note that the ADAAA and many state disability rights laws protect

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alcoholics from workplace discrimination. The policy should also require the confidential disclosure of any prescription medication that may interfere with the employee's safety or ability to perform the essential functions of the job.

10) Operation and Search of Dealership Vehicles: The policy should define who is authorized to operate dealership vehicles inside or outside of the work day. The policy should also address safe operation of vehicles, define a preventable accident, require that employees who operate dealership vehicles have a valid driver's license and acceptable driving record, prohibit the use of cellular telephones while driving, enact a speed limit on the premises, detail the procedure in the event of a collision and require seat belts to be worn at all times. Finally, the policy should state that the vehicles are, at all times, the property of the dealership and can be searched for any reason.

This list is by no means exhaustive and a truly well-rounded Handbook will also address issues such as wage and hour compliance, workplace safety and security, dress code, benefits and confidentiality provisions. You might also want to consider having each employee sign an arbitration agreement, requiring that any dispute related to an employee's employment with your dealership be submitted to arbitration, as opposed to filing litigation in court. Arbitration can be a more swift and cost-effective way to resolve a dispute and can

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also be used to prevent class actions. Moreover, because the law is ever-changing, to ensure your Handbook is in compliance with the latest federal and State laws and regulations, it is imperative that your dealership conduct an annual review of its Handbook and policies. Reviewing the dealership's policies annually with experienced legal counsel is essential to determine whether existing policies should be revised, new policies should be implemented or whether outdated policies should be eliminated. It will be well worth the effort if it can limit the exposure to potential employment violations or lawsuits. **nj car**

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