

## Township Personnel Policies:

# What You Don't Have Can Hurt You

By Stephen O. Schultz, Attorney  
Foster, Smith, Collins and Swift, P.C.,  
Lansing

*You would not buy a board game if it did not have playing instructions included with it, so why should any township expect its employees to be satisfied without some instructions as to how it plays the employment game?*

**"B**ut we only have two part-time secretaries."

*"Besides the clerk and treasurer and two secretaries, we only have our planning commission chair in the office. She serves as our zoning administrator."*

ed officials, or for their employed or volunteer staff. Others have adopted policies years ago, but have not updated them. Still others may have adopted policies, but find that their own procedures "work better."

Whether your township is large or small, operating without well-written, realistic personnel policies is like driving without a spare tire. You'll usually get there just fine, but when something goes wrong, it costs you a lot more in both time and money.

This article addresses many commonly asked questions about personnel policies and policy manuals. Why should you have them? What are the advantages and disadvantages? What should they say? How can you adopt them?

*"Our fire department is all volunteers and they have their own policies."*

*"We adopted our policies in 1994 and they still work fine."*

For any number of reasons, many townships have not adopted personnel policies for either their elected or appoint-

## 1. What is a Policy Manual?

Every employer, both public and private, has policies that establish or govern the relationship it has with its employees. Sometimes these policies are written. Many times they are informal or unstated, but “understood.” A policy manual is nothing more than an effort to collect all such employment policies into a single, comprehensive document. A well-prepared policy manual shapes and defines the employment relationship, your policies and your “understandings.”

## 2. Why Do I Need an Employee Policy Manual?

Even if your township has only a few employees, it is likely to have established some employment policies that attempt to define the relationship between the township and those employees. Some townships circulate memos as the need arises or even establish policies by word of mouth. Once these policies are issued, however, many townships may fail to compile them, and many more may fail to review them as often as they should in light of current changes in employment law. For those townships with many employees that have undertaken to prepare a comprehensive employee policy manual, too often the first effective review of those policies may be undertaken by a government agency or an attorney representing an employee who seeks to challenge the policies or a management decision.

The importance of formulating a policy manual or revising an old policy manual cannot be overstated. A rural town-

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ship with only a few employees may not be able to afford to defend a wrongful discharge suit, much less pay a significant judgment. An urban township with many employees may find litigation tying its hands, reducing morale and thus impairing its ability to serve the public. Though it takes time, energy and sometimes money to prepare, the investment is worth it in terms of avoiding these consequences.

## 3. How Can a Policy Manual Benefit My Township?

You would not buy a board game if it did not have playing instructions included with it, so why should any township expect its employees to be satisfied without some instructions as to how it plays the employment game? A well-prepared policy manual lets employees know what to expect from you and what you expect from them. The result should be a positive work atmosphere, a more productive work force and fewer misunderstandings as to the rules of the game.

A well-prepared policy manual also serves as a point of reference for anyone supervising township employees. It promotes uniform and fair treatment of all employees. The result should be more consistency, which promotes a sense of fairness, and usually a reduced risk of lawsuits claiming discriminatory treatment or breach of contract if something does go wrong with the employment relationship.

Finally, well-written employee policies are an opportunity to showcase the benefits your township provides to its employees. The result should be improved employee morale and increased employee loyalty.

A policy manual's value depends upon your intent. You might use a policy manual as an integral part of the employee orientation process and as a means of giving new employees a positive first impression of your township. In many cases, the policy manual might simply serve to set forth township expectations in a systematic way.

A policy manual also provides an effective vehicle for informing new employees that they are employed “at-will” or can be terminated only for “just cause.” You can protect yourself from liability and prevent employees from developing expectations inconsistent with their employment status by carefully defining the employment relationship in the written manual.

Historically, employees who did not have written employment contracts were considered at-will employees. As such, these employees could be discharged at any time with or without the township ascribing a reason for the discharge, so long as the discharge was not unlawfully discriminatory under civil rights statutes. Then, in the landmark decision of *Toussaint vs. Blue Cross*, 408 Mich 579 (1980), the Michigan Supreme Court dramatically reduced the scope of “presumed at-will” employment. As a result, townships must now include language in their policy manual that the township reserves the right to terminate employment and compensation at any time, for any reason, with or without notice, at the will of the township.

At-will employees cannot assert breach of an employment contract if they are discharged or disciplined, but just cause employees may challenge these employment decisions. Most often, the issue of whether an employee was discharged for just cause will become an issue for the jury to decide. Townships can spend a large amount of time and money defending these jury trials. At-will employees lack the right to bring termination before a jury.

A township agreeing to terminate or discipline employees only upon a showing of just cause also commits itself to substantive and procedural requirements before taking such action. These requirements may include advance notice of rule or policy changes, progressive discipline, and adequate justification for discipline or discharge based upon the employee's misconduct. Obviously,

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the just cause employer surrenders substantial discretion in making employment decisions, though that can be offset by sound policies and can lead to improved employee morale and retention. Employees may feel less committed to the township or may be susceptible to union organization efforts when they are employed "at-will."

A policy manual also summarizes all fundamental policies and procedures that employees must follow for requesting sick leave, taking vacation, insuring safety, and for solving on-the-job problems. Thus, in addition to establishing employment status, a well-written policy manual promotes good will, prevents misunderstanding, and encourages open lines of communication between the township and its employees.

#### 4. What are the Disadvantages of a Policy Manual?

There is little downside to written employee policies if they accurately describe *reasonable* rules of employment. The most common negative side effects of policy manuals are the result of policies that do not mirror your actual employment practices. Instead of being an aid to employees, such manuals serve only to confuse and frustrate. Once you adopt this type of a policy manual, employees assume the employer is not being fair with them because it violates its own written rules. Of course, a manual that accurately describes draconian policies will be counterproductive as well.

#### 5. Is it Necessary to have an Official Township Policy Manual?

In this day and age, townships are well-advised to draft and implement a policy manual, whether short or lengthy. It is necessary for you to then act consistently with either at-will or just cause employment, and a well-written policy manual can provide excellent guidelines for managerial decision-making.

If you intend to maintain an at-will employment relationship, it is critical that you refrain from establishing policies that could give employees a reasonable expectation of "tenure." For exam-

*Almost always, policy manuals are handed down with little opportunity for the rank and file to participate in the process of preparing it or to even comment upon its contents before it is implemented. However, employee involvement is recommended whenever possible and can improve morale and policy acceptance.*


ple, it may be inconsistent for you to say that the township employs people at-will but include a progressive discipline policy, a probationary period, or other indicia of just cause employment in your policy manual. If you are a just cause employer, however, you need to establish a proper disciplinary policy, and you may wish to implement different methods in your manual for resolving grievances, such as providing for arbitration or a peer review system.

It is equally important for any township, whether at-will or just cause,

to prevent its officers from orally modifying township policies or entering into unauthorized employment contracts. Your policy manual can be tailored to attempt to override or negate any inconsistent statements made intentionally or unintentionally by township officers.

#### 6. How is an Employee Policy Manual Created?

There is no legally mandated process for creating a policy manual. Policy manuals most often are prepared by "upper management," with or without the assistance of an outside consultant. Townships with the luxury of in-house human resource expertise often delegate the task of preparing the manual to that person. Almost always, policy manuals are handed down with little opportunity for the rank and file to participate in the process of preparing it or to even comment upon its contents before it is implemented. Some townships, however,

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allow employee participation or comment in the development of policies. Such employee involvement is recommended whenever possible and can improve morale and policy acceptance.

### **7. Can the Policies in a Policy Manual be Changed After It is Distributed to Employees?**

Although this varies from state to state, most courts, including those in Michigan, rule that an employer has the inherent right to change its employment policies. After all, such policies are nothing more than a set of flexible guidelines unilaterally adopted by the employer in the first instance.

Indeed, policy manuals are not sacrosanct. They must grow and evolve to keep pace with constantly changing circumstances and ever-increasing legal obligations of the township. First-line managers or township officers confronted with the need to get the job done on time and on budget may find it necessary to deviate from written policy. Those responsible for preparing and updating employment policies may often be the last to know of such *de facto* policy changes. Many a discrepancy between actual practice and stated policy may not come to the attention of the township until a disgruntled employee or former employee files a complaint. To avoid such complaints, townships must review their policies periodically to determine if changes are necessary. Employment policies must be reconciled with changes in day-to-day employment practices.

### **8. What is the Correct Procedure for Changing Policies?**

Courts have held that although no particular procedure must be followed, employees to whom the modified policy will apply must have reasonable notice of a change. All that is generally required is that an employer does not act in bad faith and that some reasonable method of notifying the affected employees is used.

The best method of changing policy is to deliver a copy of the new or revised policy to each employee, have the employee sign a form acknowledging receipt of the policy, and have the person delivering the policy sign the form as a witness to the employee's signature. This method creates a paper trail should there be a later dispute as to whether a particular employee was notified of a new or revised policy. Furthermore, every policy manual should contain language putting employees on notice that the township retains the right to change its policies.

### **9. What Type of Provisions Do I Need to Include in a Policy Manual?**

As set out below, a variety of provisions can and should be included in a policy manual. You are free to determine exactly how much detail your manual will contain. All policy manuals, in our view, should include at least the following: Welcome (or introduction), Terms of Employment, Hours and Overtime, Employee Benefits, Rules of Conduct, Holiday and Vacation Policies, Termination Policy, and Nondiscrimination Policies. We also suggest including a tear-out page that each employee is required to sign in recognition of his or her receipt of the policy manual. You should keep this executed receipt in each employee's personnel file.

### **10. What Policies Should Not be Included in a Policy Manual?**

Policy manuals are not collections of standard operating procedures for performing job duties. They are not collections of detailed procedures to be followed by management in applying employment policies. A policy manual should only contain

those policies that define and explain the employment relationship. Thus, procedures for the clerk or treasurer's office, for the volunteer fire department, or for the cemetery sexton should be set out in their particular department operating procedures. Care should be taken, however, that those manuals do not unintentionally include employment policies.

### **11. If Our Township Policy Manual was Written in the Last Few Years, are We Safe to Assume It Does Not Need to be Revised Now?**

**No.** The law affecting employers and townships is changing constantly. Implied contract, discrimination, union relations and other areas of the law require that you update your manual regularly. The Michigan and federal courts render decisions interpreting policy manuals and employment practices on an almost weekly basis. These decisions make periodic updating essential.

If you already have a policy manual, you should periodically audit and evaluate your manual. Ask yourself these questions:

- Is our policy manual consistent with our day-to-day employment practices? With current law?
- Are our discipline and termination policies consistent with our desire to be an at-will employer? A just cause employer?

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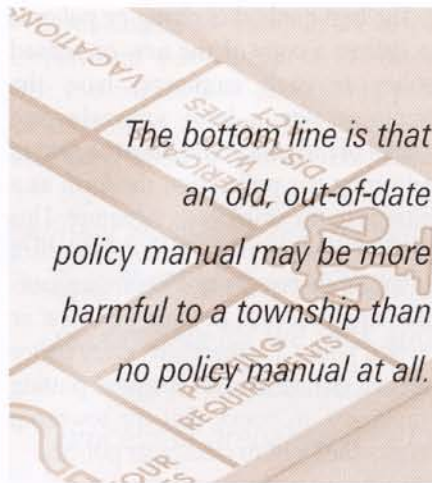
- Has it been more than two years since we have reviewed our policies?
- Do we have an employment problem area that is not addressed by our manual?

In addition to reviewing your policy manual, your township attorney or an expert in public employment issues should periodically review the documents used in employee selection, evaluation, compensation, promotion and termination. If you are unsure of who to call, contact MTA for references.

The bottom line is that an old, out-of-date policy manual may be more harmful to a township than no policy manual at all.

### *Policies that Should be Included in a Policy Manual*

As previously mentioned, there are certain policies that should be in every



employee policy manual. For example, every manual should include an equal employment opportunity statement and a policy against sexual harassment (see sidebar article below). Every manual should contain a discipline policy and a Family and Medical Leave Act policy if you have covered employees. For the

most part, however, the policies that should be in the policy manual depend upon the township's unique circumstances. Policies critical to one township in one county might be meaningless to another township in a different county. Every township must develop a manual that best fits its individual needs.

Though a sample of each one of these policies is beyond the scope of this article, here are examples of some of the more critical policies you need to adopt.

### *Table of Contents*

This fairly comprehensive list addresses the most important policy issues that may arise in the employment relationship.

### *Nature of Employment*

Critical to your township are policies that ensure compliance with nondiscrimination laws and describe the

## Prohibiting Sexual and Other Unlawful Harassment

No township should be without a written, effective policy prohibiting unlawful harassment of employees and encouraging employees to report incidents of harassment. Such a policy is good management. Employees will appreciate the township's legitimate concern and will bring issues to the attention of the township before they become more serious problems. Once advised of a dispute or disagreement or of an employee's concern that he or she is being unlawfully harassed by a member of the public or others, the township should take appropriate steps to resolve the matter.

Usually one thinks of unlawful harassment as being sexual harassment, however, the scope of prohibitions on harassment are much broader. Sexual and other forms of unlawful harassment are prohibited by state and federal law. While applicable federal statutes may

apply only to certain townships, Michigan's Elliott-Larsen Civil Rights Act, which prohibits sexual harassment and other unlawful discrimination, applies to any governmental unit that employs "one or more employees."

Since it is the most well-known, every township should have a sexual harassment policy, and we will focus on it in this article. You should consult with your township attorney or employment consultant about a broader policy, however.

Sexual harassment includes "unwelcome" sexual advances, requests for sexual favors, and verbal or physical conduct or communication of a sexual nature if:

1. Submission to harassing conduct or communication is explicitly or implicitly a term or condition of employment of the complainant;

2. Submission to or rejection of such conduct or communication is used as the basis or a factor of employment decisions affecting the complainant; or

3. The harassing conduct or communication has the "purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

The "totality of the circumstances" of an incident, series of incidents or work environment, will be considered in determining whether impermissible harassment may have occurred.

Of particular significance to the township is the fact that the township may be held "strictly liable" for sexual harassment under certain circumstances. This means that the township may be liable for harassment even if it is without

employment relationship as at-will or just cause.

### *Standards of Conduct*

Whether a township has adopted a policy of at-will or just cause employment, every township should establish standards of conduct for employees. While at-will employers should not state their standards as "grounds" for discipline or discharge, inappropriate conduct that "will not be tolerated" should be identified. Since there are hundreds of examples of conduct that an employer could deem inappropriate, this policy should clearly indicate that the conduct identified as inappropriate is not all-inclusive.

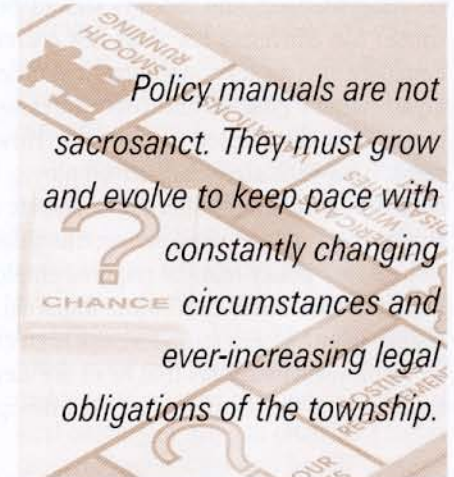
### *Termination Policies*

A termination policy should inform terminating employees of the procedure that they should follow in order to effect

an orderly termination. Employees should also be informed whether or not they will be paid for any accumulated but unused sick, personal or vacation time. The township may choose to pay accumulated but unused vacation if an employee gives a requested amount of notice. If the township chooses not to pay accumulated time, a forfeiture clause should be included in the policy.

Finally, it would be appropriate in this policy to inform employees of their right to continue medical insurance benefits if such rights are applicable. Continuation of health insurance benefits is mandated by federal law for employers who normally employ more than 20 employees on a typical business day during the preceding year. Coverage may be at the employee's expense, and the employer is permitted to charge the employee up to 102 percent of the organization's premium for coverage of the employee.

A policy manual notice will not substitute for a written notice at the time the employee terminates employment, but it will serve to explain the benefit to employees.



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knowledge of the improper acts. Actions of managers that adversely affect employment (for example, termination) or the benefits of employment (for example, wages and working conditions) may result in imposition of strict liability.

A township may also be liable for establishing or permitting a "hostile environment" in which unwelcome or offensive conduct in the workplace unreasonably interferes with an employee's working experience. Such offensive conduct includes actions of managers, coworkers, and, potentially, the public or other third parties.

Other than claiming harassment did not occur, the township's primary defense is that a proper investigation and remedy occurred. This is where a well-drafted "Sexual Harassment" or "Unlawful Harassment" policy is helpful. A thorough harassment policy should include the following:

1. A clear and complete description of

the conduct that constitutes prohibited harassment, including examples;

2. A clear statement that describes harassment that is prohibited by the township and by state and federal law;

3. A clear statement of an employee's right to complain about perceived harassment without fear of retaliation;

4. A complaint procedure, including an alternative procedure for reporting harassment in circumstances where the usual recipient of a complaint (for example, a manager) may be involved in or sympathetic to the claimed harassment;

5. A procedure for promptly and thoroughly investigating all complaints; and

6. A statement that appropriate remedial measures will be taken to resolve complaints of harassment and that retaliation for good faith reports that this policy may have been violated will not be tolerated.

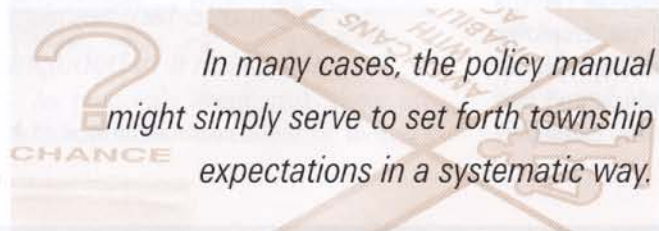
Sexual and other harassment is a sen-

sitive and complicated issue. We believe that even the best sexual harassment policy is enhanced, as is the township's defense to any claims of harassment, if the township includes a comprehensive training program concerning its anti-harassment policy for managers and employees. Among other things, managers and even the township board must understand that their behavior can create liability for the township, even if the complaining employee does not complain to anyone other than the manager involved, or does not outwardly appear to be disturbed by the manager's behavior. In addition, all employees must understand that their personal standard of what may or may not be acceptable will not necessarily be the standard applied by the person who feels they are being harassed. Nevertheless, the township must understand that even workplace teasing and jokes may result in liability under state or federal law. ■

—Stephen O. Schultz

## Acknowledgment

At the time that policy manuals are distributed, employees should acknowledge that they have received a copy of the manual by signing a receipt. The receipt should then be placed in the employee's personnel file. Any amendments should also be acknowledged, and receipts should be placed in the personnel file. Michigan law does not currently require that an employee sign an acknowledgment in order to be bound by an organization's policies and procedures as long as the handbooks are distributed uniformly. However, recent decisions have indicated that an employee must assent to be bound by a system of alternative dispute resolution that precludes court review of a discrimination claim. In such circumstances, the policy manual requires employees to use arbitration or some other non-court, impartial process to resolve claims. In any case, a signed receipt is an effective reminder for an employee who claims that he or she never heard of the policy for which that employee is being disciplined.



*In many cases, the policy manual might simply serve to set forth township expectations in a systematic way.*

## Any Further Questions?

Whether your township has two part-time secretaries or a full-time staff, it is imperative that your township adopts up-to-date, reasonable personnel policies. You will reduce misunderstandings and get everyone "on the same page" by doing so. This can only help morale and head off litigation, both of which will help your township achieve its goal of serving the public. ■

*Stephen O. Schultz is a shareholder with the Lansing law firm of Foster, Swift, Collins and Smith, P.C. Mr. Schultz serves as a township, city and village attorney, and as legal counsel to several public authorities. He is a past chair of Foster, Swift's Labor and Employment Law Department.*

*For examples of township personnel policies, visit the MTA Web site at [www.mta-townships.org](http://www.mta-townships.org), and click on the Township Information Services link. Part II of this series on personnel policies, "The Dos and Don'ts of Hiring and Firing," will appear in the October issue of Michigan Township News.*

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