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Employees Have a Lot of Questions: Policy Handbooks Have Answers

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Introduction
Does your company have a policy handbook outlining the expectations of the company and employee conduct? Whether your company is large or small, policy handbooks are a necessary instrument to your business. Policy handbooks save management time in resolving day-to-day disputes and they can also be especially helpful when more severe disputes arise. Your policy handbook can have a profound effect on your tax and potential legal issues. It is imperative for companies having even a few employees to have a policy handbook before any disputes arise.

Fringe Benefits and Tax Consequences
Fringe benefits are benefits paid for by the employer, for the benefit of the employee. Usually included among fringe benefits are retirement programs, health insurance, life insurance and vacation benefits.

Generally, expenses paid by the company on behalf of the employee for fringe benefits are deductible by the company. A clear indication of the benefits, including what amounts or time periods involved, should be clearly spelled out in your manual. Keep in mind that if you own two or more companies, you must keep fringe benefits consistent across your organizations to fulfill legal and tax requirements for deductibility and administration.

Your policy handbook can have consequences influencing your tax position. There are many tax provisions that are affected by employee use of company property. For instance, deductibility of company vehicles requires a written policy prohibiting employees from using the company vehicles for personal use or your company may lose the deduction.

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A CASE STUDY

FAILURE TO FILE GIFT TAX RETURN

The US Court of Federal Claims ruled that a donor's health problems were not severe enough to warrant reasonable cause for failure to file a gift tax return. In this case the donor failed to file a gift tax return for gifts made to her two daughters. The donor had multiple health issues including a knee replacement, pneumonia, upper respiratory infections, a thyroid growth, heart palpitations, and a cataract surgery. The donor subsequently failed to file the mandatory gift tax return by the proper deadline.

The IRS's position was that none of these afflictions taken alone or all together resulted in a debilitating condition. The US Court of Federal Claims ruled for the IRS stating that there was no evidence that the donor was continuously incapacitated and her ailments did not escalate into a debilitating crisis. Furthermore, the donor's attorney called her a month before the due date to remind her of the deadline. Additionally, the donor attended numerous events and filed multiple forms, more difficult than a gift tax return. The court's conclusion was that the late filing penalty was properly applied in this case.

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CoverStory

Loss of deductions can result in a much higher tax liability than expected, had a written policy been in place.

Policy handbooks can also have an impact on the finances of your company. Limiting or prohibiting phone calls during work time may prevent an otherwise industrious employee from being an interstate socialite while on company time. The result would be greater productivity from the employee and a lower company phone bill.

It is also important to define vacation time and what happens to unused time. However, make sure the definition or proclamation does not create a balance sheet liability.

Legal Consequences

The ultimate importance of a policy handbook is the effect it may have in court. Committing to your position in writing prior to a dispute or court case can have a profound effect on the outcome of the circumstances. Every attorney would agree that they would rather have a policy handbook with a sexual harassment procedure as opposed to not having a policy.

Waiting until after sexual harassment has been committed to state that it will not be tolerated may not save you from liability.

Do you work in a hazardous environment? A policy handbook containing safety procedures and OSHA regulations can be a very important device. Not only is it important to keep your employees safe, it is important to define safe procedures to avoid winding up in court.

Defining job descriptions is also important to help you in a legal situation. The Fair Employment Act describes exempt and nonexempt employees for purposes of paying a salary or wage. Just stating that an employee is exempt or nonexempt does not establish the fact. Care must be taken to design jobs to conform to legal standards.

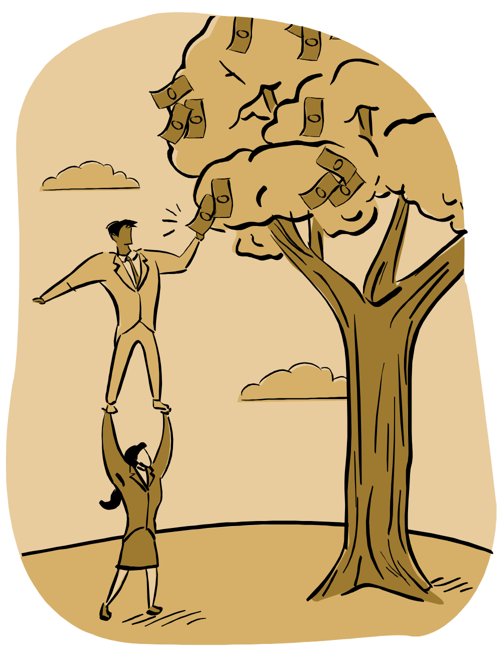
Conclusion

It's very important to define each one of your company policies. Failing to do so allows other people, employees, courts or even unions to define your policies. The consequences of not having a policy handbook can also lead to problems concerning matters you may not have previously considered.

Dr. Bart A. Basi is an attorney, CPA, and the Senior Advisor of The Center for Financial, Legal & Tax Planning, Inc, a full service company specializing in financial, legal & tax matters. Basi is a nationally recognized author, lecturer, and advisor on how to structure deals to minimize taxes. Tax structure makes the difference between getting the deal done and watching the deal fall apart. Many of you may be familiar with Basi and the topics he covers in the Financial, Legal & Tax Advisory which may be read in various industry-specific trade publications.

Points of Interest

- **Whether your company is large or small, policy handbooks are a necessary instrument to your business.**
- **The ultimate importance of a policy handbook is the effect it may have in court.**
- **It's very important to define each one of your company policies. Failing to do so allows other people, employees, courts or even unions to define your policies.**



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A CASE STUDY CONTINUED:

Editor's Comment:

This case is important because it illustrated that although a donor may have multiple health issues, quantity does not necessarily add up to a crisis or debilitating illness. Obviously, it is best to file forms on time. If a taxpayer or donor cannot file the forms on time, there are extensions available and the IRS expects the taxpaying public to use these.

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Avoiding the Common Pitfalls in Acquiring a Business - "If it ain't broke, don't fix it!"

Most buyers are eager to "make their mark" once they've acquired a business. But unless the business is losing money, or employees and customers alike despised the previous owner, it is generally a mistake for a new owner to make a lot of changes in the first 6 months.

Many times even small changes made with the best of intentions can have disastrous and unexpected consequences on employee morale and/or customer satisfaction, and ultimately on sales and cash flow. The risks are even greater if the previous owner was beloved by his employees & customers, as all eyes will be trained on you to see what waves you'll make -- presumed to be negative -- in this previous paradise.

If you're the new owner, most likely, you've just paid a substantial premium for the "goodwill" of this ongoing business. Respect this, and take the first few months to really get to know your employees and customers, who in reality are responsible for the business' continuing sales and cash flow. Get to know their true likes & dislikes about working in/buying from your business. Begin by making A FEW SMALL changes to remove their dislikes & reaffirm their likes, and then WATCH CAREFULLY how these changes affect employee morale, customer satisfaction, as well as top line & bottom line results.

If you know of a business owner who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation with us, have them contact me directly at: mertel@legacyadvisorsgroup.com

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Frequently Asked Questions…

Q: Is it possible to have Roth and traditional IRAs as part of a comprehensive plan?

A: Yes. Individuals can have an assortment of Roth IRAs, traditional, and even employer retirement plans as their overall retirement plans. However, when funding the IRAs, it is important to mention the combined limit for both IRA types remains the same at $5500 per year.

Q: Are Roth and traditional IRAs taxed differently in an estate?

A: Yes and no. In an estate setting all property is considered part of the estate. As such, all property contained within the estate is subject to estate tax. Once the estate is taxed, the distributed property is subject to tax on its own character of gain. A Roth IRA is not subject to income tax as its character holds from one generation to the next. The traditional IRA's character remains ordinary income in nature, and in so far as the traditional IRA is income, it is subject to income tax.

Q: For the purpose of retiring, are there some states that are better than others from a tax standpoint?

A: Yes. Some states are better than others when dealing with taxes that are common to retirees on fixed incomes. Because every situation is different, retirees are best advised to do their research when choosing a state for tax reasons.