

### Is your Handbook up to date?



405 Madison Ave., Ste. 1300  
Toledo, Ohio 43604  
(419) 244-6788

[www.Bugbee-Conkle.com](http://www.Bugbee-Conkle.com)

John F. Wetli  
Gregory B. Denny  
Tybo Alan Wilhelms  
Robert L. Solt, III  
Robert P. King  
Mark S. Barnes  
Harvey C. Miller  
Andrew J. Wilhelms  
Janelle M. Matuszak

The Employee Handbook is usually a good vehicle to express the philosophy, goals and ethical standards maintained by an employer. A clear and unambiguous Handbook also describes what the employee can expect from the employer, and in turn, outlines the expectations the employer has of an employee. When drafting a Handbook, employers must exercise care, because if developed and implemented incorrectly, an Employee Handbook can do more harm than good.

For example, in *Stengart v. Loving Care Agency, Inc.*, Superior Court of New Jersey, June 26, 2009, plaintiff (former employee) used the laptop provided by the company to send emails to her attorney regarding her intent to sue the company for discrimination. After the lawsuit was filed, the company created a forensic image of the laptop's hard drive and discovered the emails. When plaintiff first learned that these emails were in the possession of the company's counsel, she requested that the original emails and all copies be turned over, but the company's counsel refused.

According to the company, its electronic communications policy set forth in its Employee Handbook notified employees that it reserved the right to review and disclose all matters on the company's media systems and services at any time, with or without notice. In addition, the policy said that email and voice mail messages, Internet use and communication and computer files are considered part of the company's business and client records, and were not private or personal to any employee. The policy then went on to identify certain uses of the email system that were specifically prohibited, but also provided that "occasional personal use" would be permitted.

The court held the company's ownership of its computer systems did not justify its right to retain personal emails, particularly when the Handbook expressly acknowledged the right to occasional personal use of the email system. Because of its poorly written Handbook, the com-



405 Madison Ave., Ste. 1300  
Toledo, Ohio 43604  
(419) 244-6788

[www.Bugbee-Conkle.com](http://www.Bugbee-Conkle.com)

John F. Wetli  
Gregory B. Denny  
Tybo Alan Wilhelms  
Robert L. Solt, III  
Robert P. King  
Mark S. Barnes  
Harvey C. Miller  
Andrew J. Wilhelms  
Janelle M. Matuszak

pany was unable to use the information it obtained from the laptop in defense of the lawsuit brought against it by the plaintiff.

What could the company have done? An Employee Handbook is a living document that needs constant examination and revisions. It is therefore necessary for an employer to review and update its Handbook at least once a year. If the company had done this, the flaw could have been fixed, and the evidence obtained may then have been used to defend the company.

Remember, a well-crafted and up to date Employee Handbook can be used as an effective tool to minimize both litigation and liability.

## Recent EEOC publication

On July 15, 2009, the EEOC published “Understanding Waivers of Discrimination Claims in Employee Severance Agreements”, a document directed to employees facing layoffs and terminations. The publication summarizes the legal requirements for the waiver of claims in severance agreements under the ADA, Title VII, the Equal Pay Act, and, separately, the Age Discrimination in Employment Act.

Many employers provide laid-off employees with optional severance agreements, through which employees may obtain certain compensation or benefits in exchange for releasing the employer from liability. The document addresses the validity and consequences of such releases.

For more information concerning Employee Handbooks or the EEOC’s “Understanding Waivers of Discrimination Claims in Employment Severance Agreements” please contact a member of our Labor and Employment law practice group at (419) 244-6788:

Tybo Alan Wilhelms ([twilhelms@bugbee-conkle.com](mailto:twilhelms@bugbee-conkle.com))

Andrew J. Wilhelms ([awilhelms@bugbee-conkle.com](mailto:awilhelms@bugbee-conkle.com))

Mark S. Barnes ([mbarnes@bugbee-conkle.com](mailto:mbarnes@bugbee-conkle.com))

THE EMPLOYER is not intended to provide legal advice, but is intended as a service to the clients of Bugbee & Conkle, LLP and to alert them to recent developments affecting the employment relationship, with a particular emphasis on the perspective of the employer.