

TABLE OF CONTENTS

CHAPTER 1.	HIRING	1-1
1.1	Employment Applications	1-2
	1.1.1 What Should Be Avoided	1-2.1
	1.1.2 What Should Be Included.....	1-5
1.2	Interviews	1-6
1.2 A	Social Media Sites	1-6.2
1.3	References	1-7
1.4	Polygraph Notice	1-8
1.5	Drug and Alcohol Testing.....	1-8
1.5 A	Medical Examinations	1-9
1.6	Consumer Reports	1-10
1.6 A	Job Applicant Fairness Act.....	1-10.1
1.6 B	Criminal Background Checks.....	1-10.2
1.7	Offer Letters	1-10.7
1.8	Rejection Letters.....	1-12
1.9	Negligent Hiring and Retention	1-12
1.10	New Hires.....	1-14
1.11	The Patient Protection and Affordable Care Act, New Hire and Payroll Requirements	1-14
1.12	Disclosure and Use of Wage History and Wage Range	1-14.1
Form 1.1 A	Employment Application	1-14.3
Form 1.1 B	Employment Application	1-18
Form 1.1 C	Employment Application	1-23
Form 1.1 D	Information for Applicant.....	1-28
Form 1.1 E	Equal Employment Opportunity Information Form	1-29
Form 1.1 F	Employment Eligibility Verification; Form I-9	1-32
Form 1.1 G	Immigration Law Compliance Policy.....	1-36.14
Form 1.2 A	Hiring—Interview Tips.....	1-36.15
Form 1.2 B	Interview Form	1-36.16
Form 1.2 C	Sample General Guidelines for Pre-Employment Inquiries	1-42
Form 1.2 D	Policy for Management Personnel Regarding the Use of Social Media Sites and Other Internet Sources in the Hiring Process	1-44.2
Form 1.2 E	Guidelines for Pre-Employment Inquires Technical Assistance Guide.....	1-44.3

CONTENTS

Form 1.3 A Reference Release Form 1-44.9
Form 1.3 B Reference Questions 1-44.9
Form 1.4 Notice of Prohibition on Polygraph Testing 1-44.11
Form 1.4 A Notice: Employee Polygraph Protection Act 1-44.12
Form 1.5 A Applicant Substance Abuse Screening
Program Policy 1-45
Form 1.5 B Alcohol and Drug Testing Policy 1-45
Form 1.5 C Informed Consent and Release for Drug
or Alcohol Testing. 1-54
Form 1.5 D Sample Letter to Applicant/Employee
Regarding Positive Drug/Alcohol Test Result 1-55
Form 1.5 E Suspected Drug/Alcohol Abuse Behavior
Documentation Form 1-55
Form 1.6 A Fair Credit Reporting Act Disclosure 1-56
Form 1.6 B A Summary of Your Rights under the Fair
Credit Reporting Act—Attachment 1-58
Form 1.6 C Sample FCRA Pre-Adverse Action Notice 1-60.2
Form 1.6 D Sample FCRA Adverse Action Disclosure. 1-60.2
Form 1.6 E Job Applicant Fairness Act Disclosure 1-60.3
Form 1.7 A Offer Letter 1-61
Form 1.7 B Offer Letter 1-62
Form 1.8 A Rejection Letter 1-63
Form 1.8 B Rejection Letter 1-63
Form 1.9 Maryland New Hire Registry Reporting Form. 1-64
Form 1.10 A Model Notice for Employers Who Offer a
Health Plan to Some or All Employees
(Prepared by U.S. Department of Labor) 1-65
Form 1.10 B Model Notice for Employers Who Do Not
Offer a Health Plan (Prepared by U.S.
Department of Labor) 1-68

CHAPTER 2. EMPLOYER-EMPLOYEE RELATIONSHIP
AND EMPLOYMENT CONTRACTS 2-1
2.1 Employee or Contractor Status. 2-1
2.2 Written Employment Agreements 2-5
2.2.1 Preamble 2-6
2.2.2 Duties 2-6
2.2.3 Term of Employment 2-6
2.2.4 Compensation and Benefits 2-8
2.2.5 Restrictive Covenants, Trade Secret and
Confidentiality Provisions 2-8
2.2.6 Alternative Dispute Resolution. 2-9
2.2.6 A Waiver of Jury Trial and Statute of
Limitations 2-9

2.2.7	Choice of Law and Forum Selection Clauses	2-10
2.2.8	Inventions and Improvements.	2-10.1
2.2.9	Protections Against Employee’s Obligations to a Former Employer	2-10.1
2.2.10	Non-Waiver of Rights.	2-10.2
2.2.11	Integration Clause and Subsequent Amendments.	2-10.2
2.3	Collective Bargaining	2-10.2
2.3 A	Posting Requirements of National Labor Relations Act.	2-10.5
2.3 B	Privileged Communications Involving Labor Organizations	2-10.5
Form 2.1	Checklist for Contractor Status, Maryland Unemployment Insurance.	2-11
Form 2.1 A	Short Form Independent Contractor Letter Agreement	2-12
Form 2.1 B	Independent Contractor Agreement	2-12.1
Form 2.1 C	Notice to Independent Contractors and Exempt Persons	2-12.9
Form 2.2 A	Employment Agreement with Restrictive Covenant; 1 Year Term with Right to Terminate Without Cause on 30 Days Notice; Transfer of Intellectual Property to Employer.	2-12.11
Form 2.2 B	Employment Agreement for Definite Term; Subject to Limited Rights to Terminate for Cause, Arbitration Clause.	2-25
Form 2.2 C	At-Will Agreement for Management Employee Emphasizing Trade Secrets, Intellectual Property Protection, and Restrictive Covenant	2-30
Form 2.2 D	Executive Employment Agreement for Specified Term; Termination for Cause; Resignation for Good Reason; Severance Benefits	2-38
Form 2.2 E	Officer Employment Agreement for Term of Years; Conditions for Severance (Including Change of Control).	2-45
Form 2.2 F	Offer Letter, Employment Agreement Severance Benefits	2-56
Form 2.2 G	At-Will Employment Retention Agreement.	2-58
Form 2.2.6 A	Jury Trial Waiver Agreement for Inclusion in Employment Agreement.	2-61
Form 2.2.6 B	Jury Trial Waiver Agreement for Inclusion in Employment Agreement.	2-61
Form 2.3 A	Employee Rights under the National Labor Relations Act	2-62

CONTENTS

CHAPTER 3.	WAGE AND HOUR LAW	3-1
3.1	Interplay of Federal and State Law.	3-1
3.2	Fair Labor Standards Act	3-1
3.2 A	Break Time and Remote Work under the FLSA.	3-2.1
3.2 B	Internships	3-2.3
3.2 C	Outside Salespersons under the FLSA	3-2.7
3.2 D	Joint Employment under the FLSA	3-2.8
3.2 E	General Contractor Liability for Unpaid Wages Act	3-2.8
3.3	Maryland Minimum Wage and Overtime Requirements	3-3
3.3 A	Maryland “Living Wage” Statute	3-4
3.3 B	Maryland Training Wage	3-4.1
3.4	Maryland Wage Payment and Collection Law	3-4.1
	3.4.1 Definition of Wage	3-4.2
	3.4.2 Payment of Wages	3-6
	3.4.3 Deductions from Wages and Payment of Wages upon Termination	3-7
	3.4.4 Employee Action to Recover Unpaid Wages.	3-8
	3.4.5 Earned Income Information Act	3-8.1
3.4 A	Break Time under Maryland Law.	3-8.1
3.4 B	Maryland Lien for Unpaid Wages Act	3-8.2
3.5	Equal Pay for Equal Work	3-8.2
3.6	Posting of Regulations, Record Retention, and Inspection of Wage Records	3-8.4
3.7	Child Labor and Employment of Handicapped Individuals	3-9
3.8	Garnishment of Wages and Support Enforcement Withholdings	3-9
3.9	Workers’ Compensation and Unemployment Insurance.	3-10
3.10	Interstate Employment	3-11
Form 3.2 A	Wage Law/FLSA Exempt Employee (Job Duties) Classification Guide	3-12
Form 3.2 B	Policy Regarding Exempt/Nonexempt Employment Categories	3-13
Form 3.2 C	Work Schedules	3-14
Form 3.2 D	Overtime Policy	3-15
Form 3.2 E	Overtime Policy	3-15
Form 3.2 F	Working Hours and Conditions	3-16
Form 3.2 G	Timekeeping	3-18
Form 3.2 H	Overtime Policy for PDA and Smartphone Usage	3-18
Form 3.2 I	Employee Rights under the Fair Labor Standards Act	3-20.1

Form 3.2 J	Maryland Minimum Wage and Overtime Law	3-20.2
Form 3.2 K	Internship Agreement	3-20.3
Form 3.2 L	Remote Work Policy	3-20.5
Form 3.3 A	Wage and Hour Fact Sheet	3-21
Form 3.4.2 A	Compensation Policy	3-22
Form 3.4.2 B	Paydays	3-23
Form 3.4.2 C	Administrative Pay Corrections	3-23
Form 3.4.2 D	Lost Check Affidavit.	3-24
Form 3.4.3 A	Pay Deductions and Salary Advances.	3-25
Form 3.4.3 B	Wage Withholding Authorization	3-26
Form 3.4.3 C	Wage Deduction Authorization.	3-26
Form 3.4.3 D	Sample Repayment Agreement	3-27
Form 3.4.3 E	Final Paycheck Acknowledgment Form	3-28
Form 3.4.3 F	Promissory Note and Employee Authorized Payroll Deduction Tuition Educational Reimbursement.	3-28
Form 3.4.3 G	Agreement and Promissory Note Regarding Employee Authorized Payroll Deduction and Reimbursement for Moving Payment	3-29
Form 3.4.3 H	Payroll Deduction Authorization for Company Property	3-30
Form 3.5 A	Equal Pay for Equal Work	3-32
Form 3.6	Workers' Compensation Insurance	3-36
Form 3.6 A	Ill/Injured Employee Release Form	3-36
Form 3.7	Minor Fact Sheet	3-37
 CHAPTER 4. RECORD RETENTION AND MARYLAND'S		
	WORKPLACE SAFETY LAW	4-1
4.1	Federal Recordkeeping Requirements	4-1
4.1 A	Federal Contractors.	4-4
4.2	Maryland Recordkeeping Requirements	4-4.3
4.3	How to Maintain Employment Records and Personnel Record Policies	4-5
4.4	Record Retention Policies	4-7
4.5	Litigation Considerations	4-8
4.6	Disposal of Records	4-10.1
4.7	Maryland's Essential Workers' Protection Act	4-10.1
Form 4	Employment Record Retention Chart Summary.	4-11
Form 4.1	Excerpts, Standard Form 100 (EEO-1 Report) (Announced January 27, 2006).	4-17
Form 4.3 A	Access to Personnel Files	4-22
Form 4.3 B	Information Changes	4-22
Form 4.3 C	Guidelines for Employee Personnel Files	4-22

CONTENTS

Form 4.4 A	Short Form Document-Retention Policy	4-22.2
Form 4.4 B	Short Form Record-Retention Policy	4-23
Form 4.4 C	Comprehensive Document Retention Policy	4-24
Form 4.4 D	Short Form Preservation Letter	4-27
Form 4.4 E	Long Form Preservation Letter.	4-28
Form 4.4 F	Letter to Client Regarding Electronic Data Preservation	4-33
CHAPTER 5.	DISCRIMINATION AND HARASSMENT	5-1
5.1	State and Local Laws Against Discrimination in Maryland.	5-1
5.1.1	The Administrative Process Under Title 20 of the State Government Article.	5-4
5.1.2	Employer Discrimination—Protection for Interns	5-5
5.1.3	Maryland’s Veteran Hiring and Promotion Act.	5-5
5.1.4	Maryland Disclosing Sexual Harassment in the Workplace Act of 2018.	5-6
5.1.5	Montgomery County’s Expansive Anti-Harassment Law.	5-6.1
5.2	Title VII of the Civil Rights Act of 1964	5-6.2
5.2.1	Scope of Title VII’s Non-Discrimination Provisions	5-6.2
5.2.2	The Administrative Process under Title VII	5-6.6
5.3	Sexual Harassment	5-6.9
5.3.1	Definition of Sexual Harassment	5-6.9
5.3.2	Employer Liability— <i>Quid Pro Quo</i> and Hostile Environment.	5-6.12
5.3.3	Devising an Effective Sexual Harassment Policy	5-7
5.3.4	Conducting Harassment Training.	5-8
5.3.5	Investigating Employee Harassment Complaints and Taking Corrective Action.	5-9
5.3.6	Harassment of Employees by Clients/Customers.	5-11
5.3.7	Domestic Violence and Stalking.	5-12
5.4	The Americans with Disabilities Act	5-12.1
5.4.1	Requirements of the ADA	5-12.1
5.4.2	Developing Job Descriptions	5-13
5.4.3	Leave as a Reasonable Accommodation.	5-14
5.4.4	Guidance for Mental Disabilities	5-15

5.4.5	Guidance for Opioid Use Employment Issues	5-16.1
5.4.6	COVID-19 and Discrimination and Harassment	5-16.2
5.4 A	Maryland Reasonable Accommodations for Disabilities Due to Pregnancy Act and EEOC Pregnancy Discrimination Guidance.	5-16.3
5.5	The Age Discrimination in Employment Act of 1967 and Maryland Prohibition Against Age Discrimination.	5-16.4
5.6	Requirements for Equal Pay.	5-16.5
5.6 A	Uniformed Services Employment and Reemployment Rights Act	5-16.6
5.7	Retaliation.	5-16.7
5.7 A	EEOC Enforcement Guidance on Retaliation and Related Issues	5-16.10
5.7 B	The Patient Protection and Affordable Care Act	5-16.11
5.7 C	Maryland False Claims Act	5-17
5.8	Common Law Tort Claims Arising Out of Discrimination	5-17
5.8.1	Intentional Infliction of Emotional Distress	5-17
5.8.2	Assault and Battery.	5-18
5.8.3	Defamation	5-18
5.8.4	Wrongful or Abusive Discharge	5-18.1
5.8.5	False Imprisonment	5-19
5.8.6	Invasion of Privacy	5-19
Form 5 A	Equal Employment Opportunity Policy	5-20
Form 5 B	Equal Employment Opportunity Policy	5-20
Form 5 C	Equal Employment Opportunity is the Law.	5-20.1
Form 5 C(i)	“EEO is the Law” Poster Supplement	5-20.2
Form 5.1	State and Federal Employment-Related Laws Notice Posting Requirements Chart	5-20.3
Form 5.3.3 A	Short Form Harassment Policy.	5-20.7
Form 5.3.3 B	Long Form Harassment Policy	5-21
Form 5.3.3 C	Long Form Harassment Policy	5-22
Form 5.3.3 D	Combined Discrimination and Harassment Policy.	5-24
Form 5.3.3 E	Combined Discrimination and Harassment Policy.	5-25
Form 5.3.3 F	Complaint Form	5-26
Form 5.3.3 G	Consensual Romance in the Workplace Agreement.	5-28
Form 5.3.4 A	Acknowledgment Form of Harassment Policy and Training	5-28.3
Form 5.3.5 A	Sexual Harassment Investigative Question Checklist.	5-28.4

CONTENTS

Form 5.4 A	Americans with Disabilities Act of 1990 (“ADA”) Policy	5-30
Form 5.4 B	Americans with Disabilities Accommodations	5-31
Form 5.4 C	Reasonable Accommodation for Disabilities Due to Pregnancy	5-33
Form 5.4 D	Policy for Management Personnel Describing the Americans with Disabilities Act (“ADA”)	5-34
Form 5.4.1 A	Sample Job Description Form	5-36
Form 5.4.1 B	Confirmation of Request for Reasonable Accommodation	5-38
Form 5.4.1 C	Resolution of Reasonable Accommodation Request	5-39
Form 5.4.1 D	Reasonable Accommodation Information Reporting Form.	5-41
Form 5.4.1 E	Release of Information for Functional Capacity Assessment	5-43
Form 5.4.1 F	Reasonable Accommodation Vaccine Exemption Request Forms	5-47
CHAPTER 6.	EMPLOYEE PERFORMANCE, WORK RULES, DISCIPLINE AND PROBLEM RESOLUTION.	6-1
6.1	Performance Policies and Evaluations	6-1
6.1.1	Initial Introductory Periods.	6-2
6.1.2	Formal Performance Appraisals	6-2
6.1.3	Regular Documentation of Employee Performance	6-4
6.2	Employee Conduct and Work Rules.	6-4
6.3	Disciplinary Policies and Procedures	6-5
6.3.1	Progressive Discipline	6-5
6.3.2	Disciplining Employees	6-7
6.4	Problem Resolution	6-7
6.4.1	Formal Problem Resolution Policies	6-8
6.4.2	Informal “Open Door” Policies	6-8
Form 6.1.1 A	Introductory Period Policy	6-9
Form 6.1.1 B	Introductory Period Policy	6-9
Form 6.1.1 C	Review Following Orientation and Training Period	6-10
Form 6.1.2 A	Performance Review	6-10
Form 6.1.2 B	Performance Evaluation	6-11
Form 6.1.2 C	Performance Evaluations	6-11
Form 6.1.2 D	Performance Reviews	6-12
Form 6.1.2 E	Performance Appraisal Worksheet	6-13
Form 6.1.2 F	Self-Evaluation	6-16
Form 6.1.2 G	Self-Appraisal.	6-17
Form 6.2 A	Standards of Conduct	6-20

Form 6.2 B	Employee Conduct and Work Rules	6-20
Form 6.3	Disciplinary Policy	6-22
Form 6.3.1 A	Code of Conduct and Progressive Discipline Policy	6-22
Form 6.3.1 B	Standards of Conduct and Progressive Discipline	6-24
Form 6.3.2 A	Discipline Documentation Form	6-27
Form 6.3.2 B	Discipline Checklist for Use by Supervisors and Managers	6-28
Form 6.3.2 C	Employee Warning Notice	6-30
Form 6.3.2 D	Employee Plan for Improvement	6-31
Form 6.3.2 E	Sample Memo to File—Oral Reprimand	6-32
Form 6.3.2 F	Written Reprimand	6-33
Form 6.4.1 A	Employee Complaints/Problem Resolution	6-34
Form 6.4.1 B	Formal Complaint Procedure	6-35
Form 6.4.1 C	Problem Resolution	6-36
Form 6.4.2 A	Open Door Communications	6-38
Form 6.4.2 B	Open Communication Policy	6-38
CHAPTER 7.	FAMILY AND MEDICAL LEAVE AND OTHER LEAVES OF ABSENCE	7-1
7.1	Family and Medical Leave Act of 1993	7-1
7.1 A	The Maryland Parental Leave Act	7-5
7.2	Vacation Leave	7-5
7.3	Holidays	7-6
7.4	Sick Leave	7-6.1
7.4 A	Paid Leave for Federal Contractors	7-6.4
7.5	Leave for Jury Duty and Court Appearances	7-6.6
7.6	Voting Leave	7-6.7
7.7	Military Leave	7-7
7.7 A	Maryland Deployment of Family Members in the Armed Forces Act	7-8
7.8	Personal Leave	7-8
7.9	Bereavement Leave	7-8.1
7.10	Educational Leave	7-9
7.11	Religious Holidays and Observances, Grooming and Dress	7-9
7.12	Paid Time Off Policies	7-10
7.13	The Maryland Flexible Leave Act	7-10
7.14	Civil Air Patrol Leave	7-10.2
7.15	Leave for Organ and Bone Marrow Donation	7-10.2
Form 7.1 A	Short Form Family and Medical Leave (FMLA) Policy	7-11
Form 7.1 B	Long Form Family and Medical Leave (FMLA) Policy	7-12

CONTENTS

Form 7.1 B(1)	Military Leave for Family and Medical Leave Policies	7-14.1
Form 7.1 C	Request for Family and Medical Leave	7-14.2
Form 7.1 D	Employer Response to Employee’s FMLA Request	7-16
Form 7.1 D(1)	Designation Notice for Family and Medical Leave Request	7-20
Form 7.1 E	Department of Labor-Rights—under the Family and Medical Leave Act	7-22
Form 7.1 E(1)	Military Family Leave	7-23
Form 7.1 F	Certification of Health Care Provider for Employee’s Serious Health Condition	7-24
Form 7.1 F(1)	Certification of Health Care Provider for Family Member’s Serious Health Condition	7-28
Form 7.1 F(2)	Certification of Qualifying Exigency for Military Family Leave	7-28.4
Form 7.1 F(3)	Certification for Serious Injury or Illness of Current Servicemember—for Military Family Leave	7-28.8
Form 7.1 F(4)	Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave	7-28.12
Form 7.1 G	Family and Medical Leave of Absence Return to Work Certification.	7-28.16
Form 7.1 H	Sample Letter Concerning Family and Medical Leave Expiration.	7-28.17
Form 7.1 I	Medical Leave of Absence Policy (For Employers with Less than 50 Employees)	7-28.18
Form 7.1 J	FMLA Notification to Key Employee	7-28.19
Form 7.1 K	Maryland Parental Leave (For Employers with 15-49 Employees).	7-28.20
Form 7.2 A	Vacation Policy	7-29
Form 7.2 B	Vacation Policy	7-29
Form 7.2 C	Paid Leave Time upon Termination	7-30
Form 7.3 A	Holiday Policy	7-30.1
Form 7.3 B	Paid Holidays	7-31
Form 7.4 A	Sample Policy for Employers Awarding Earned Sick and Safe Leave at the Beginning of the Year.	7-33
Form 7.4 B	Sample Policy for Employers Who Allow Employees to Accrue Leave Throughout the Year	7-34.1
Form 7.4 C	Sample Policy for Restaurant Employers with Tipped Employees	7-34.4
Form 7.4 D	Maryland Earned Sick and Safe Leave Employee Notice	7-34.7

Form 7.4 E	Maryland Healthy Working Families Act Frequently Asked Questions	7-34.9
Form 7.4 F	Montgomery County Earned Sick and Safe Leave Policy	7-34.23
Form 7.4 G	Paid Sick Leave for Federal Contractors	7-34.25
Form 7.5 A	Jury Leave Policy	7-34.26
Form 7.5 B	Jury Duty and Court Appearances	7-34.26
Form 7.6 A	Voting Leave Policy	7-35
Form 7.6 B	Voting Leave Policy	7-35
Form 7.7 A	Military Leave Policy	7-35
Form 7.7 B	Military Leave Form Letter	7-36
Form 7.7 C	Department of Labor—Rights under Uniformed Services Employment and Reemployment Rights Act	7-37
Form 7.8	Personal Leave Policy.	7-38
Form 7.9 A	Bereavement Leave Policy	7-39
Form 7.9 B	Bereavement Leave Policy	7-39
Form 7.10	Educational Leave Policy	7-39
Form 7.11 A	Religious Holidays and Observances	7-40
Form 7.11 B	Religious Holidays and Observances	7-40
Form 7.12	Paid Time Off Policy	7-41
Form 7.13	Request for Leave Form	7-43
Form 7.14	Flexible Leave Policy	7-44
Form 7.15	Organ and Bone Marrow Donation Leave Policy.	7-44
Form 7.16	Flexible Time Off Policy	7-45
CHAPTER 8.	EMPLOYEE HANDBOOKS	8-1
8.1	Reasons to Adopt an Employee Handbook	8-1
8.2	Adopting Policies and Procedures	8-2
8.2 A	National Labor Relations Act Concerns	8-3
8.3	Subjects to be Covered in Employee Handbooks	8-4.2
8.3.1	Employee Acknowledgment.	8-4.3
8.3.2	At-Will Employment.	8-4.3
8.3.3	Disclaimer of Contractual Rights.	8-6
8.3.4	Equal Employment Opportunity; Sexual Harassment and Other Unlawful Harassment	8-6
8.3.5	Americans with Disabilities Act (“ADA”); The Maryland Reasonable Accommodation for Disabilities Due to Pregnancy Act; and Baltimore City Lactation Accommodation	8-7

CONTENTS

8.3.6	Employment Classification as Non-exempt or Exempt.	8-7
8.3.7	Wages and Compensation.	8-7
8.3.8	Benefits and Leave	8-7
8.3.9	Performance, Discipline, and Problem Resolution	8-8
8.3.10	Attendance and Inclement Weather	8-8
8.3.11	Drug and Alcohol	8-8.1
8.3.12	Work Rules/Code of Conduct.	8-8.1
8.3.13	Dress Code	8-8.1
8.3.14	Search, Privacy and Use of Company Electronic Equipment.	8-8.2
8.3.14 A	Use of Social Media Services.	8-8.2
8.3.15	Use of Company Equipment and Cell Phones	8-8.6
8.3.16	Conflicts of Interest	8-9
8.3.17	Outside Employment/Moonlighting.	8-9
8.3.18	Solicitation	8-9
8.3.19	Other.	8-9
Form 8.3 A	Sample Index to a Comprehensive Employee Handbook for a Large Employer	8-10
Form 8.3 B	Employee Handbook Checklist	8-14
Form 8.3 C	Employee Handbook Review	8-18
Form 8.3.1 A	Employee Acknowledgment Form	8-21
Form 8.3.1 B	Employee Acknowledgment Form	8-22
Form 8.3.1 C	Employee Acknowledgment of New or Revised Policy	8-23
Form 8.3.2	“At-Will” Employment.	8-24
Form 8.3.3	Contract Disclaimer Provision	8-24
Form 8.3.4	Accommodation for Disabilities Due to Pregnancy	8-25
Form 8.3.10	Attendance and Punctuality	8-26
Form 8.3.10 A	Inclement Weather Conditions Policy	8-26
Form 8.3.11 A	Alcohol and the Workplace Policy for Private Employers.	8-26.1
Form 8.3.11 B	Alcohol Consumption at Business Functions.	8-26.1
Form 8.3.11 C	Drug and Alcohol Policy for Federal Contractors	8-26.2
Form 8.3.13	Professional Dress Code.	8-27
Form 8.3.13 A	Fragrance Free Workplace	8-28
Form 8.3.14 A	Use of Social Media—Social Networks, Web Logs, Web Forums, PDAs, etc.	8-28.1
Form 8.3.14 B	Social Media Policy	8-28.2
Form 8.3.14 C	Social Media Policy	8-28.6

Form 8.3.15 A	Use of Company Equipment	8-28.7
Form 8.3.15 B	Use of Phone and Mail Systems	8-29
Form 8.3.15 C	IT Equipment and Computer Check-Out Policy	8-30
Form 8.3.16	Conflicts of Interest	8-30.1
Form 8.3.17	Outside Employment (“Moonlighting”)	8-31
Form 8.3.18	Non-solicitation	8-32
Form 8.3.18 A	Non-solicitation and Distribution Policy	8-32.1
Form 8.3.19 A	Employment Reference Checks	8-33
Form 8.3.19 B	Cellular Phones	8-33
Form 8.3.19 C	Use of Camera Phones	8-34
Form 8.3.19 D	Workplace Safety Policy	8-34
Form 8.3.19 E	Workplace Safety/Security	8-35
Form 8.3.19 F	Business Travel Expenses	8-37
Form 8.3.19 G	Visitors in the Workplace	8-38
Form 8.3.19 H	Policy and Procedures for Receipt, Retention and Treatment of Complaints and Concerns Regarding Accounting Controls and Auditing Matters (Whistleblower Policy)	8-39
Form 8.3.19 I	Re-employment of Former Employees	8-41
Form 8.3.19 J	Return of Company Property	8-42
Form 8.3.19 K	Office Etiquette	8-43
Form 8.3.19 L	Employee Referral Policy	8-44
Form 8.3.19 M	Employment of Relatives	8-44
Form 8.3.19 N	Non-fraternization Policy	8-45
Form 8.3.19 O	Suggestions	8-45
Form 8.3.19 P	Bulletin Boards	8-46
Form 8.3.19 Q	Smoking and Tobacco Policy	8-46
Form 8.3.19 R	Tuition Reimbursement	8-46
Form 8.3.19 S	Parking Policy	8-48
Form 8.3.19 T(1)	Fitness Center Policy	8-48
Form 8.3.19 T(2)	Fitness Center Release and Waiver of Liability and Assumption of Risk	8-48
Form 8.3.19 U(1)	Employee Use of Private Vehicle Policy	8-51
Form 8.3.19 U(2)	Driving Check Request and Release from Liability	8-55
Form 8.3.19 U(3)	Responsibility for Personal Vehicle Safety and Insurance	8-56
Form 8.3.19 U(4)	Vehicle Accident Report (For Completion by Supervisor/Employer)	8-57
Form 8.3.19 U(5)	Employee’s First Report of Injury	8-59
Form 8.3.19 V	Infectious Disease Policy	8-60
Form 8.3.19 W	Non-Retaliation Policy	8-60
Form 8.3.19 X	No Weapons Policy	8-60
Form 8.3.19 Y	Lactation Breaks Policy (Baltimore City)	8-61

CONTENTS

CHAPTER 9. WORKPLACE PRIVACY 9-1

9.1 Low-Tech Traditional Search and Surveillance of Employees 9-2

9.1.1 Employee Privacy Tort Causes of Action 9-3

9.1.2 Traditional Search and Surveillance Policies. 9-4

9.2 Electronic Systems and Communications Present New Challenges 9-5

9.2.1 Statutory Limitations on Monitoring Electronic Communications 9-5

9.2.2 Electronic Use Policies. 9-7

9.2.3 The Computer Fraud and Abuse Act 9-8.1

9.3 Improper Disclosure of Private Information. 9-8.2

Form 9.1 A Workplace Searches 9-10.1

Form 9.1 B Workplace Privacy 9-10.1

Form 9.1 C Personal Mail Policy. 9-11

Form 9.1 D Employee Consent to Use Name or Likeness. 9-11

Form 9.2 A Short Form Use of Electronic Mail Systems and Voicemail (with Acknowledgment Form). 9-12

Form 9.2 B Long Form Use of the Company’s Electronic Systems Policy 9-13

Form 9.2 C Long Form Computer, E-Mail and Internet Policy 9-16

Form 9.2 D Employee Acknowledgment Form Concerning Use of Electronic Systems 9-21

Form 9.3 Employee Authorization to Allow Healthcare Provider to Disclose Protected Health Information to Employer. 9-21

Form 9.3 A Employee Consent for Release of Personnel File 9-23

Form 9.4 Checklist for Avoiding Employee Privacy Claims. 9-23

CHAPTER 10. TRADE SECRETS, RESTRICTIVE COVENANTS, AND CONFIDENTIALITY AGREEMENTS 10-1

10.1 Trade Secrets Statutory and Case Law Considerations 10-1

10.1 A The Defend Trade Secrets Act 10-6

10.2 Preventing the Misappropriation of Trade Secrets 10-6

10.3 Employee Covenants of Non-Competition and Non-Solicitation. 10-7

10.3.1 Consideration 10-8.1

	10.3.2	Business Interests	10-9
	10.3.3	Scope	10-10
	10.3.4	Additional Necessary Provisions	10-12
	10.3.5	Enforcement and Remedies	10-13
	10.3.6	Potential Tort Liability	10-14.2
10.4		Confidentiality and Non-Disclosure Agreements	10-14.4
Form 10.2 A		Sample Memorandum Reminding Employees of Confidentiality Obligations	10-15
Form 10.2 B		Checklist for Protecting Trade Secrets	10-17
Form 10.3 A		Non-Competition, Non-Solicitation and Confidentiality Agreement	10-19
Form 10.3 B		Non-Competition, Non-Solicitation and Confidentiality Agreement	10-22
Form 10.3 C		Restrictive Covenant and Confidentiality Agreement	10-25
Form 10.3 D		Confidentiality, Intellectual Property and Non-Competition Agreement	10-27
Form 10.3 E		Sample Letter to Former Employee Regarding Restrictive Covenant Obligations (Agreement)	10-34
Form 10.3 F		Sample Letter to Former Employee Regarding Continuing Confidentiality Obligations (No Written Agreement)	10-35
Form 10.3 F(1)		Sample Letter to Former Employee Regarding Continuing Confidentiality and Trade Secret Obligations	10-36
Form 10.3 G		Letter to New Employer Regarding Former Employee’s Restrictive Covenant Agreement and Knowledge of Trade Secrets	10-38
Form 10.3.5 A		Non-Compete Provision with Liquidated Damages Clause for Inclusion in Employment Agreement	10-38.1
Form 10.4 A		Employee Handbook Confidentiality Provision	10-38.3
Form 10.4 B		Confidentiality Agreement	10-38.4
Form 10.4 C		Non-Disclosure and Confidentiality Agreement	10-42
Form 10.5		New Employee Acknowledgment Agreement Regarding Prior Employment Related Covenant Restrictions	10-44
Form 10.6		Agreement to Amend/Buy-Out Business Protection Covenant	10-45
Form 10.7		Certification for Destruction of Confidential Property and Documents	10-47

CONTENTS

CHAPTER 11. TERMINATION OF THE EMPLOYMENT RELATIONSHIP 11-1

11.1 Termination of At-Will Employees, Exceptions to At-Will Employment 11-1

11.1.1 Statutory Exceptions to At-Will Employment 11-2

11.1.2 Judicial Exceptions to At-Will Employment 11-6

11.1.2.1 Implied Contracts 11-6

11.1.2.2 Wrongful Discharge in Violation of Public Policy 11-6.1

11.2 Termination of Employment for a Definite Term 11-6.3

11.3 Employee Resignation as Constructive Discharge 11-8

11.4 Pre-Termination Review 11-9

11.5 Termination Policies 11-10

11.5.1 Final Paychecks and Benefits 11-10

11.5.2 Re-Employment and References 11-12

11.5.3 Exit Interviews 11-12

11.6 Termination Letters 11-12.1

11.7 Reductions in Force (“RIF”) 11-13

11.8 Employment Separation and Termination Agreements 11-14.2

11.8.1 Severance Payment 11-15

11.8.1 A Nonqualified Deferred Compensation Plans Under Section 409A 11-15

11.8.2 Release of Claims 11-18.2

11.8.3 Additional Terms in Separation and Termination Agreements 11-19

11.9 Employee Settlement Agreements 11-19

Form 11.1.1 A OSHA Job Safety and Health – It’s the Law! 11-20

Form 11.1.1 B Notice: Employee Polygraph Protection Act 11-20.1

Form 11.4 Pre-Dismissal Risk Assessment 11-20.2

Form 11.5 A Termination Policy 11-22

Form 11.5 B Termination Policy 11-23

Form 11.5 C Termination/Severance Policy 11-25

Form 11.5 D Continuation of Health Coverage (“COBRA”) Policy 11-26

Form 11.5 D(1) Model General Notice of COBRA Continuation Coverage Rights 11-27

Form 11.5 D(2) Model COBRA Continuation Coverage Election Notice 11-28.5

Form 11.5 E	Checklist for COBRA Administration	11-28.14
Form 11.5 E(1)	Maryland Continuation Coverage.	11-28.15
Form 11.5 F	Employee Departure; Return of Company Property Policy	11-28.25
Form 11.5 G	Rehire Policy	11-29
Form 11.5 H	Reference Policy.	11-29
Form 11.5 I	Sample Reference Letter	11-29
Form 11.5 J	Reference Authorization and Release of Liability	11-30
Form 11.5 K	Exit Interview Policy	11-30
Form 11.5 L	Employee Exit Interview/Separation Checklist	11-30
Form 11.5 M	Exit Interview Information (For Employer to Complete)	11-33
Form 11.5 N	Separation Survey (For Employee to Complete)	11-34
Form 11.6 A	Termination Letter for At-Will Employee	11-36
Form 11.6 B	Termination Letter	11-37
Form 11.7 A	Sample Warn Letter to State.	11-39
Form 11.7 B	Sample Warn Letter to Employee.	11-40
Form 11.8 A	Short Form Checklist of Points for Consideration of Items That May Be Included in Any Separation and/or Settlement Agreement	11-41
Form 11.8 B	Employment Separation Agreement and Release (Employee 40 Years of Age & Older)	11-42
Form 11.8 C	Employment Severance or Separation Agreement and Release (Employee under 40 Years Old)	11-47
Form 11.8 C(2)	Negotiated Reference (Attachment).	11-50
Form 11.8 D	Long Form Separation Agreement and Mutual Release with Restrictive Covenants (For Executive 40 Years of Age & Older).	11-50
Form 11.8 E	Sample Waiver and General Release: Group Layoffs of Employees Age 40 and Over	11-64
Form 11.8.2 A	Family & Medical Leave Act Provision for Inclusion in Separation/Settlement Agreement	11-64.3
Form 11.9 A	Short Form Settlement Agreement and Mutual Release (Employee under 40 Years Old)	11-64.3
Form 11.9 B	Long Form Settlement Agreement of Claims and General Release (Employee 40 Years of Age & Older)	11-66.1
Form 11.10	Internal Revenue Code Section 409A Compliance Checklist for Employment Separation/Severance	

CONTENTS

	Agreements Providing for Nonqualified Deferred Compensation	11-72
CHAPTER 12.	ALTERNATIVE DISPUTE RESOLUTION	12-1
12.1	What is ADR?	12-1
12.2	The Advantages and Disadvantages of ADR	12-2
12.3	Mediation	12-3
12.4	Arbitration	12-3
	12.4.1 Legal Basis of Employment Arbitration	12-4
	12.4.2 Arbitration Policies and Agreements	12-5
	12.4.2.1 What Kind of Document Is Required for an Arbitration Agreement?	12-6
	12.4.2.2 Consideration Required to Support the Arbitration Agreement	12-7
	12.4.2.3 Fairness Concerns.	12-9
	12.4.3 Specific Provisions for Inclusion in Arbitration Agreements	12-10
Form 12.3 A	Stand-Alone, Short-Form Policy for Mediation of Employment Disputes (Non-Mandatory, Pre-Dispute)	12-16
Form 12.3 B	Policy with Procedure for Mediation of Employment Disputes (Mandatory, Pre-Dispute, with Acknowledgment Form)	12-16
Form 12.3 B(2)	Agreement to Mediation of Employment Disputes (Attachment)	12-19
Form 12.3 C	Agreement to Mediate and Maintain Confidentiality (Short Form Post-Dispute).	12-19
Form 12.3 D	Employment Mediation Rules (AAA Rules and Procedure).	12-20
Form 12.3 E	Four Step Dispute Resolution Procedure; Open Door Policy, Peer Review, Mediation, Arbitration	12-24
Form 12.3 E(2)	Signature and Acknowledgment Form (Attachment).	12-26
Form 12.3 F	Employee Dispute Resolution Program (Mandatory Mediation, Arbitration).	12-27
Form 12.4 A	Comprehensive Agreement to Arbitrate	12-30
Form 12.4 B	At-Will Employment Agreement (with Mandatory Arbitration Provision in the Nature of Private Litigation).	12-38

Form 12.4 B(2)	The Company’s Dispute Resolution Policies and Procedures (Attachment)	12-41
Form 12.4 C	Application for Employment, Agreement to Arbitrate	12-44
Form 12.4 D	Arbitration Clause in Employment Agreement	12-46
Form 12.4 E	Arbitration Clause in Employment Agreement	12-46
Form 12.4 F	Post-dispute Arbitration Agreement	12-47
Form 12.4 G	American Arbitration Association – Employment Arbitration Rules – Demand For Arbitration Form	12-50
Form 12.4 H	American Arbitration Association Rules for Arbitration: National Rules for the Resolution of Employment Disputes.	12-51
Form 12.4 I	Class Action Waiver for Arbitration Agreement.	12-68

INDICES

<i>Forms Index</i>	INDEX-1
<i>Table of Maryland Laws</i>	INDEX-14
<i>Table of Federal Laws</i>	INDEX-20
<i>Table of Cases</i>	INDEX-28
<i>General Index</i>	INDEX-37