

Table of Contents

CHAPTER 1. HIRING	1-1
1.1 Employment Applications	1-2
1.1.1 What Should Be Avoided	1-2
1.1.2 What Should Be Included	1-6
1.2 Interviews	1-7
1.2A Social Media Sites	1-8
1.3 References	1-8.1
1.4 Polygraph Testing	1-8.2
1.5 Drug and Alcohol Testing	1-9
1.5A Medical Examinations	1-12
1.5B Criminal Background Checks	1-12
1.6 Consumer Reports	1-12.3
1.7 Offer Letters	1-13
1.8 Rejection Letters	1-14
1.9 Negligent Hiring and Retention	1-14
1.10 New Hires	1-15
1.10.1 Hiring Veterans	1-16
1.11 Apprenticeship Programs	1-16
1.12 The Patient Protection and Affordable Care Act, New Hire and Payroll Requirements	1-16.1
FORMS	1-16.2
Form 1.1A Employment Application	1-16.2
Form 1.1B Employment Application	1-21
Form 1.1C Employment Application	1-25
Form 1.1D Information for Applicant	1-30
Form 1.1E Equal Employment Opportunity Information Form	1-31
Form 1.1F Employment Eligibility Verification, Form I-9	1-33
Form 1.2A Hiring—Interview Tips	1-38.13
Form 1.2B Interview Form	1-39
Form 1.2C Sample General Guidelines for Pre-employment Inquiries	1-42
Form 1.2D Policy for Management Personnel Regarding the Use of Social Media Sites and Other Internet Sources in the Hiring Process	1-45
Form 1.3A Reference Release Form	1-46
Form 1.3B Reference Questions	1-46
Form 1.5A Applicant Substance Abuse Screening Program Policy	1-47
Form 1.5B Alcohol- and Drug-Testing Policy	1-48

TABLE OF CONTENTS

Form 1.5C	Informed Consent and Release for Drug or Alcohol Testing	1-52
Form 1.5D	Sample Letter to Applicant/Employee Regarding Positive Drug/Alcohol Test Result	1-52
Form 1.5E	Suspected Drug/Alcohol Abuse Behavior Documentation Form.	1-53
Form 1.6A	Fair Credit Reporting Act Disclosure	1-54
Form 1.6B	A Summary of Your Rights Under the Fair Credit Reporting Act—Attachment	1-55
Form 1.6C	Sample FCRA Pre-Adverse Action Notice	1-58
Form 1.6D	Job Applicant Fairness Act Disclosure	1-59
Form 1.6E	Sample FCRA Adverse Action Disclosure	1-59
Form 1.7A	Offer Letter	1-60
Form 1.7B	Offer Letter	1-61
Form 1.8A	Rejection Letter.	1-62
Form 1.8B	Rejection Letter.	1-63
Form 1.10	Minnesota New Hire Registry Reporting Form	1-64

**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.	2-7
2.2.5	Restrictive Covenant, Trade Secret, and Confidentiality Provisions	2-8
2.2.6	Alternative Dispute Resolution	2-8
2.2.7	Waiver of Jury Trial and Statute of Limitations	2-8
2.2.8	Choice of Law and Forum Selection Clauses	2-10
2.2.9	Inventions and Improvements	2-10
2.2.10	Protections Against Employee’s Obligations to a Former Employer	2-10
2.2.11	Non-waiver of Rights	2-11
2.2.12	Integration Clause and Subsequent Amendments	2-11
2.3	Collective Bargaining.	2-12
2.4	Apprenticeship Programs.	2-12.1
2.5	Posting Requirements of National Labor Relations Act	2-12.2
	FORMS.	2-12.3
Form 2.1	Checklist for Contractor Status Unemployment Insurance. . . .	2-12.3
Form 2.1A	Short Form Independent Contractor Letter Agreement.	2-14

Form 2.1B	Independent Contractor Agreement.	2-15
Form 2.2A	Employment Agreement with Restrictive Covenant; 1-Year Term with Right to Terminate Without Cause on 30 Days' Notice; Transfer of Intellectual Property to Employer.	2-20
Form 2.2B	Employment Agreement for Definite Term; Subject to Limited Rights to Terminate for Cause, Arbitration Clause	2-32
Form 2.2C	At-Will Agreement Emphasizing Trade Secrets, Intellectual Property Protection, and Restrictive Covenant.	2-37
Form 2.2D	Executive Employment Agreement for Specified Term; Termination for Cause; Resignation for Good Reason; Severance Benefits.	2-45
Form 2.2E	Officer Employment Agreement for Term of Years; Conditions for Severance (Including Change of Control).	2-52
Form 2.2F	Offer Letter, Employment Agreement, Severance Benefits	2-62
Form 2.2.6A	Jury Trial Waiver Agreement for Inclusion in Employment Agreement	2-65
Form 2.2.6B	Jury Trial Waiver Agreement for Inclusion in Employment Agreement	2-65
Form 2.4	Employee Rights Under the National Labor Relations Act	2-66

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
3.2A	Break Time under the FLSA	3-3
3.2B	Internships	3-3
3.2C	Apprenticeships	3-4
3.2D	Joint Employment under the FLSA	3-5
3.2E	Updates to the Regulations Governing Overtime- Exempt Employees under the FLSA	3-6.1
3.3	Minnesota Minimum Wage and Overtime Requirements	3-6.5
3.3.1	Minneapolis Minimum Wage Ordinance	3-6.7
3.3.2	Minneapolis and St. Paul Sick Leave and Safe Time Ordinances	3-6.8
3.4	Minnesota Fair Labor Standards Act and Payment of Wages Act	3-6.10
3.4.1	Definition of Wage	3-6.11
3.4.2	Payment of Wages	3-6.12
3.4.3	Deductions from Wages and Payment of Wages upon Termination and Resignation	3-6.13
3.4.4	Employee Action to Recover Unpaid Wages	3-8

TABLE OF CONTENTS

3.5	Equal Pay for Equal Work	3-8
3.6	Posting of Regulations, Record Retention, and Inspection of Wage Records	3-9
3.7	Child Labor	3-9
3.8	Garnishment of Wages and Support Enforcement Withholdings	3-10
3.9	Workers' Compensation and Unemployment Insurance	3-11
3.10	Confidentiality and Wages	3-12
	FORMS	3-12.1
Form 3.2A	Wage Law/FLSA Exempt Employee (Job Duties) Classification Guide	3-12.1
Form 3.2B	Policy Regarding Exempt/Nonexempt Employment Categories	3-13
Form 3.2C	Work Schedules	3-14
Form 3.2D	Overtime Policy	3-14
Form 3.2E	Overtime Policy	3-15
Form 3.2F	Working Hours and Conditions	3-16
Form 3.2G	Timekeeping	3-17
Form 3.2H	Employee Rights Under the Fair Labor Standards Act	3-18.1
Form 3.4.2A	Compensation Policy	3-18.2
Form 3.4.2B	Paydays	3-19
Form 3.4.2C	Administrative Pay Corrections	3-19
Form 3.4.3A	Pay Deductions and Salary Advances	3-20
Form 3.4.3B	Wage Withholding Authorization	3-21
Form 3.4.3C	Wage Deduction Authorization	3-21
Form 3.9	Workers' Compensation Insurance	3-22
Form 3.9A	Ill/Injured Employee Release Form	3-22

CHAPTER 4. RECORD RETENTION 4-1

4.1	Federal Recordkeeping Requirements	4-2
4.2	Minnesota Recordkeeping Requirements	4-4
4.3	How to Maintain Employment Records and Personnel Record Policies	4-6
4.4	Record-Retention Policies	4-7
4.5	Litigation Considerations	4-9
	FORMS	4-11
Form 4.1A	Employment Record-Retention Chart Summary	4-11
Form 4.1B	Excerpts, Standard Form 100 (EEO-1 Report) (Announced January 27, 2006)	4-16
Form 4.3A	Notice of Rights Regarding Personnel Records	4-20
Form 4.3B	Information Changes	4-22
Form 4.3C	Guidelines for Employee Personnel Files	4-22
Form 4.4A	Short Form Document-Retention Policy	4-24

Form 4.4B	Short Form Record-Retention Policy	4-25
Form 4.4C	Comprehensive Document-Retention Policy	4-25
CHAPTER 5. DISCRIMINATION AND HARASSMENT		5-1
5.1	State and Local Laws against Discrimination in Minnesota	5-1
5.1.1	The Administrative Process under the MDHR	5-3
5.2	Title VII of the Civil Rights Act of 1964	5-4
5.2.1	Scope of Title VII's Non-discrimination Provisions	5-4
5.2.2	The Administrative Process under Title VII	5-6
5.3	Sexual Harassment	5-8
5.3.1	Definition of Sexual Harassment	5-8
5.3.2	Employer Liability—Quid Pro Quo and Hostile Environment	5-8.2
5.3.3	Devising an Effective Sexual Harassment Policy	5-9
5.3.4	Conducting Harassment Training	5-9
5.3.5	Investigating Employee Harassment Complaints and Taking Corrective Action	5-10
5.4	The Americans with Disabilities Act	5-13
5.4.1	Requirements of the ADA	5-13
5.4.1A	Guidance for Mental Disabilities	5-16
5.4.2	Developing Job Descriptions	5-16.1
5.4.3	Leave as a Reasonable Accommodation	5-16.3
5.5	The Age Discrimination in Employment Act of 1967 and Minnesota Prohibition against Age Discrimination	5-16.4
5.6	Requirements for Equal Pay	5-18
5.6A	Uniformed Services Employment and Reemployment Rights Act	5-18.3
5.7	Retaliation	5-18.3
5.7A	EEOC Enforcement Guidance on Retaliation and Related Issues	5-18.6
5.7B	The Patient Protection and Affordable Care Act	5-18.8
5.7C	The Minnesota Whistleblower Act	5-18.8
5.7D	Guidelines on Avoiding Retaliation Claims	5-18.11
5.8	Minnesota Medical Cannabis	5-18.12
5.9	Common Law Tort Claims Arising Out of Discrimination	5-18.12
5.9.1	Intentional Infliction of Emotional Distress	5-18.12
5.9.2	Assault and Battery	5-19
5.9.3	Defamation	5-20
5.9.4	Wrongful or Abusive Discharge	5-20
5.9.5	False Imprisonment	5-21
5.9.6	Invasion of Privacy	5-21
FORMS		5-21
Form 5A	Equal Employment Opportunity Policy	5-21

TABLE OF CONTENTS

Form 5B	Equal Employment Opportunity Policy	5-22
Form 5C	Equal Employment Opportunity is the Law	5-23
Form 5.3.3A	Short Form Harassment Policy	5-24.1
Form 5.3.3B	Long Form Harassment Policy	5-24.1
Form 5.3.3C	Long Form Harassment Policy	5-25
Form 5.3.3D	Combined Discrimination and Harassment Policy	5-27
Form 5.3.3E	Combined Discrimination and Harassment Policy	5-29
Form 5.3.3F	Complaint Form	5-30
Form 5.3.4A	Acknowledgment Form of Harassment Policy and Training	5-32
Form 5.3.5A	Sexual Harassment Investigative Question Checklist	5-32
Form 5.4A	Americans with Disabilities Act of 1990 (“ADA”) Policy.	5-34
Form 5.4B	Americans with Disabilities Accommodations	5-34
Form 5.4C	Policy for Management Personnel Describing the Americans with Disabilities Act of 1990 (“ADA”).	5-36
Form 5.4D	Policy for Management Personnel Describing the Americans with Disabilities Act (“ADA”)	5-37
Form 5.4.1A	Sample Job Description Form	5-39

**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	6-5
6.3	Disciplinary Policies and Procedures	6-5
6.3.1	Progressive Discipline	6-6
6.3.2	Disciplining Employees	6-7
6.4	Problem Resolution	6-8
6.4.1	Formal Problem-Resolution Policies	6-8
6.4.2	Informal “Open Door” Policies.	6-8

FORMS. 6-9

Form 6.1.1A	Probationary Period Policy	6-9
Form 6.1.1B	Probationary Period Policy	6-9
Form 6.1.1C	Review Following Orientation and Training Period	6-10
Form 6.1.2A	Performance Review	6-10
Form 6.1.2B	Performance Evaluation	6-10
Form 6.1.2C	Performance Evaluations.	6-11
Form 6.1.2D	Performance Reviews	6-12

Form 6.1.2E	Performance Appraisal Worksheet	6-12
Form 6.1.2F	Self-Evaluation	6-15
Form 6.1.2G	Self-Appraisal	6-17
Form 6.2A	Standards of Conduct	6-19
Form 6.2B	Employee Conduct and Work Rules	6-20
Form 6.3	Disciplinary Policy	6-21
Form 6.3.1A	Code of Conduct and Progressive Discipline Policy.	6-21
Form 6.3.1B	Standards of Conduct and Progressive Discipline.	6-23
Form 6.3.2A	Discipline Documentation Form	6-25
Form 6.3.2B	Discipline Checklist for Use by Supervisors and Managers	6-27
Form 6.3.2C	Employee Warning Notice	6-28
Form 6.3.2D	Employee Plan for Improvement.	6-29
Form 6.3.2E	Sample Memo to File—Oral Reprimand	6-30
Form 6.3.2F	Written Reprimand	6-31
Form 6.4.1A	Employee Complaints/Problem Resolution	6-32
Form 6.4.1B	Formal Complaint Procedure	6-33
Form 6.4.1C	Problem Resolution	6-34
Form 6.4.2A	Open Door Communications.	6-35
Form 6.4.2B	Open Communication Policy	6-35

CHAPTER 7. FAMILY AND MEDICAL LEAVE AND OTHER LEAVES OF ABSENCE 7-1

7.1	Family and Medical Leave Act of 1993, Minnesota Pregnancy and Parental Leave Law, Minnesota Sick or Injured Child Care Leave	7-1
7.2	Vacation Leave	7-5
7.3	Holidays	7-6
7.4	Sick Leave	7-7
7.4A	Paid Leave for Federal Contractors	7-8
7.5	Leave for Jury Duty and Court Appearances	7-8.2
7.6	Voting Leave	7-8.3
7.7	Military Leave	7-8.4
7.8	Personal Leave	7-10
7.9	Bereavement Leave	7-10.1
7.10	Educational Leave	7-11
7.11	Bone Marrow Donation Leave	7-11
7.12	Civil Air Patrol Leave.	7-11
7.13	Elected Union Officials Leave	7-11
7.14	Nursing Mothers Break Time.	7-11
7.15	Religious Holidays and Observances.	7-12
7.16	Paid Time Off Policies	7-12

TABLE OF CONTENTS

FORMS.....	7-13
Form 7.1A	Short Form FMLA, Parental Leave, and Sick or Injured Child Care Leave Policy 7-13
Form 7.1B	Long Form FMLA, Parental Leave, and Sick or Injured Child Care Leave Policy 7-14
Form 7.1B(1)	Military Leave Insert for Family and Medical Leave Policies 7-17
Form 7.1C	Request for Family and Medical Leave, Parental Leave, or Sick or Injured Child Care Leave 7-18
Form 7.1D	Employer Response to Employee Request for Family and Medical Leave 7-21
Form 7.1D(1)	Designation Notice for Family and Medical Leave. 7-23
Form 7.1E	Department of Labor — Rights under the Family and Medical Leave Act 7-24
Form 7.1E(1)	Military Family Leave..... 7-25
Form 7.1F	Certification of Health Care Provider for Employee’s Serious Health Condition (Family and Medical Leave Act of 1993 (“FMLA”)) 7-27
Form 7.1F(1)	Certificate of Health Care Provider for Family Member’s Serious Health Condition (Family and Medical Leave Act of 1993 (“FMLA”)) 7-31
Form 7.1F(2)	Certificate of Qualifying Exigency for Military Family Leave (Family and Medical Leave Act of 1993 (“FMLA”)) 7-32.3
Form 7.1F(3)	Certificate for Serious Injury or Illness of Covered Service Member (Family and Medical Leave Act of 1993 (“FMLA”)) 7-32.6
Form 7.1G	Family and Medical Leave of Absence Return to Work Certification..... 7-32.11
Form 7.1H	Sample Letter Concerning Family and Medical Leave Expiration 7-32.12
Form 7.1I	Medical Leave of Absence Policy (for Employers with Less than 21 Employees)..... 7-33
Form 7.2A	Vacation Policy 7-34
Form 7.2B	Vacation Policy 7-35
Form 7.3A	Holiday Policy..... 7-36
Form 7.3B	Paid Holidays 7-37
Form 7.4A	Sick Leave Policy 7-37
Form 7.4B	Sick Leave Policy 7-38
Form 7.4C	Sick and Safe Time Policy (Minneapolis Compliant)..... 7-39
Form 7.4D	Sick and Safe Time Policy (Saint Paul Compliant)..... 7-40.2
Form 7.4E	Sick and Safe Time Policy (Duluth Compliant) 7-40.4
Form 7.4F	Sick or Injured Child Care Leave Policy 7-40.6
Form 7.4G	Bone Marrow Leave Policy..... 7-40.7

Form 7.4H	Parental Leave of Absence Policy	7-40.7
Form 7.4I	Paid Sick Leave for Federal Contractors	7-40.8
Form 7.5A	Jury Leave Policy	7-40.9
Form 7.5B	Jury Duty and Court Appearances Policy	7-40.9
Form 7.6A	Voting Leave Policy	7-40.10
Form 7.6B	Voting Leave Policy	7-41
Form 7.7A	Military Leave Policy	7-41
Form 7.7B	Military Leave Form Letter	7-41
Form 7.7C	Department of Labor—Rights under Uniformed Services Employment and Reemployment Rights Act	7-42
Form 7.8	Personal Leave Policy	7-44
Form 7.9A	Bereavement Leave Policy	7-45
Form 7.9B	Bereavement Leave Policy	7-46
Form 7.10	Educational Leave Policy	7-46
Form 7.15A	Religious Holidays and Observances	7-46
Form 7.15B	Religious Holidays and Observances	7-47
Form 7.16	Paid Time Off Policy	7-47

CHAPTER 8. EMPLOYEE HANDBOOKS 8-1

8.1	Reasons to Adopt an Employee Handbook	8-1
8.2	Adopting Policies and Procedures	8-3
8.3	Subjects to Be Covered in Employee Handbooks	8-4
8.3.1	Employee Acknowledgment	8-4
8.3.2	At-Will Employment	8-5
8.3.3	Disclaimer of Contractual Rights	8-5
8.3.4	Equal Employment Opportunity; Sexual Harassment and Other Unlawful Harassment	8-6
8.3.5	Americans with Disabilities Act (“ADA”)	8-6
8.3.6	Employment Classification as Non-Exempt or Exempt	8-6
8.3.7	Wages, Compensation, and Hours of Work	8-6.1
8.3.8	Benefits and Leave	8-7
8.3.8.1	Health Insurance Benefits: Compliance with the Patient Protection and Affordable Care Act (PPACA)	8-7
8.3.8.2	Health Insurance Benefits: Cost-Benefit Analysis and Tips for Implementation	8-8.2
8.3.9	Performance, Discipline, and Problem Resolution	8-8.4
8.3.10	Attendance and Inclement Weather	8-8.4
8.3.11	Drug and Alcohol	8-8.4
8.3.12	Work Rules/Code of Conduct	8-9

TABLE OF CONTENTS

8.3.13	Dress Code	8-9
8.3.14	Search, Privacy, and Use of Company Electronic Equipment	8-9
8.3.14A	Use of Social Media Services	8-9
8.3.15	Use of Company Equipment	8-10.2
8.3.16	Conflicts of Interest	8-10.2
8.3.17	Outside Employment/Moonlighting	8-11
8.3.18	Solicitation	8-11
8.3.19	Confidentiality	8-11
8.3.20	Notice of Right to Access Personnel Files	8-11
8.3.21	Other	8-11
FORMS		8-12
Form 8.3A	Sample Index to a Comprehensive Employee Handbook for a Large Employer	8-12
Form 8.3B	Employee Handbook Checklist	8-17
Form 8.3C	Employee Handbook Review	8-21
Form 8.3.1A	Employee Acknowledgment Form	8-24
Form 8.3.1B	Employee Acknowledgment Form	8-24.1
Form 8.3.1C	Employee Acknowledgment of New or Revised Policy	8-24.1
Form 8.3.2	“At-Will” Employment	8-25
Form 8.3.3	Contract Disclaimer Provision	8-25
Form 8.3.10	Attendance and Punctuality	8-26
Form 8.3.11A	Alcohol and the Workplace Policy for Private Employers	8-26
Form 8.3.11B	Alcohol Consumption at Business Functions	8-27
Form 8.3.11C	Drug and Alcohol Policy for Federal Contractors	8-27
Form 8.3.11D	Drug and Alcohol Testing	8-28
Form 8.3.11E	Certificate of Receipt	8-31
Form 8.3.13	Professional Dress Code	8-32
Form 8.3.13A	Fragrance Free Workplace	8-34
Form 8.3.14A	Use of Social Media – Social Networks, Web Logs, Web Forums, PDAs, etc.	8-34
Form 8.3.14B	Social Media Policy	8-34.2
Form 8.3.15A	Use of Company Equipment	8-34.5
Form 8.3.15B	Use of Phone and Mail Systems	8-34.5
Form 8.3.15C	IT Equipment and Computer Check-out Policy	8-34.6
Form 8.3.16	Conflicts of Interest	8-35
Form 8.3.17	Outside Employment (Moonlighting)	8-36
Form 8.3.18	Non-solicitation	8-36
Form 8.3.19A	Employment Reference Checks	8-37
Form 8.3.19B	Cellular Phone	8-38
Form 8.3.19C	Use of Camera Phones	8-38
Form 8.3.19D	Workplace Safety	8-39

Form 8.3.19E	Workplace Safety/Security	8-40
Form 8.3.19F	Business Travel Expenses	8-41
Form 8.3.19G	Visitors in the Workplace	8-42
Form 8.3.19H	Policy and Procedures for Receipt, Retention, and Treatment of Complaints and Concerns Regarding Accounting Controls and Auditing Matters (Whistleblower Policy)	8-43
Form 8.3.19I	Re-Employment of Former Employees	8-45
Form 8.3.19J	Return of Company Property	8-46
Form 8.3.19K	Office Etiquette	8-46
Form 8.3.19L	Employee Referral Policy	8-47
Form 8.3.19M	Employment of Relatives	8-47
Form 8.3.19N	Non-Fraternization Policy	8-48
Form 8.3.19O	Suggestions	8-48
Form 8.3.19P	Bulletin Boards	8-49
Form 8.3.19Q	Smoking and Tobacco Policy	8-49
Form 8.3.19R	Tuition Reimbursement	8-50
Form 8.3.19S	Parking Policy	8-51
Form 8.3.19T(1)	Fitness Center Policy	8-51
Form 8.3.19T(2)	Fitness Center Release and Waiver of Liability and Assumption of Risk	8-51
Form 8.3.19U(1)	Employee Use of Private Vehicle Policy	8-53
Form 8.3.19U(2)	Driving Check Request and Release from Liability	8-58
Form 8.3.19U(3)	Responsibility for Personal Vehicle Safety and Insurance	8-58
Form 8.3.19U(4)	Vehicle Accident Report (For Completion by Supervisor/Employer)	8-59
Form 8.3.19U(5)	Employee's First Report of Injury	8-62
Form 8.3.19V	Infectious Disease Policy	8-63
Form 8.3.19W	Non-Retaliation Policy	8-63

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	9-3
9.2	Electronic Systems and Communications Present New Challenges	9-4
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
9.3	Improper Disclosure of Private Information	9-8.1

TABLE OF CONTENTS

FORMS.....	9-10.2
Form 9.1A	Workplace Searches..... 9-10.2
Form 9.1B	Workplace Privacy..... 9-11
Form 9.1C	Personal Mail Policy..... 9-11
Form 9.1D	Employee Consent to Use Name or Likeness..... 9-12
Form 9.2A	Short Form Use of Electronic Mail Systems and Voice Mail (with Acknowledgment Form)..... 9-12
Form 9.2B	Long Form Use of the Company's Electronic Systems Policy..... 9-14
Form 9.2C	Long Form Computer, E-mail, and Internet Policy..... 9-17
Form 9.2D	Employee Acknowledgment Form Concerning Use of Electronic Systems..... 9-21
Form 9.3	Employee Authorization Form to Use and Disclose Protected Health Information..... 9-21
Form 9.3A	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
10.1A	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.....	10-9
10.3.2	Business Interests.....	10-9
10.3.3	Scope.....	10-11
10.3.4	Additional Necessary Provisions.....	10-12
10.3.5	Enforcement and Remedies.....	10-14
10.4	Confidentiality and Non-disclosure Agreements.....	10-16
FORMS.....		10-17
Form 10.2A	Sample Memorandum Reminding Employees of Confidentiality Obligations.....	10-17
Form 10.2B	Checklist for Protecting Trade Secrets.....	10-19
Form 10.3A	Non-competition, Non-solicitation, and Confidentiality Agreement.....	10-21
Form 10.3B	Non-competition, Non-solicitation, and Confidentiality Agreement.....	10-23
Form 10.3C	Restrictive Covenant and Confidentiality Agreement.....	10-26
Form 10.3D	Confidentiality, Intellectual Property, and Non-competition Agreement.....	10-28.1
Form 10.3E	Sample Letter to Former Employee Regarding Restrictive Covenant Obligations (Agreement).....	10-34

Form 10.3F	Sample Letter to Former Employee Regarding Continuing Confidentiality Obligations (No Written Agreement)	10-35
Form 10.3G	Letter to New Employer Regarding Former Employee's Restrictive Covenant Agreement and Knowledge of Trade Secrets	10-36
Form 10.3.5A	Non-compete Provision with Liquidated Damages Clause for Inclusion in Employment Agreement	10-37
Form 10.4A	Employee Handbook Confidentiality Provision	10-38
Form 10.4B	Confidentiality Agreement	10-39
Form 10.4C	Non-disclosure and Confidentiality Agreement	10-43

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.	11-4
11.1.2.1	Implied Contracts	11-4
11.1.2.2	Wrongful Discharge in Violation of Public Policy	11-5
11.2	Termination of Employment for a Definite Term	11-6.1
11.3	Employee Resignation as Constructive Discharge	11-7
11.4	Pre-termination Review	11-7
11.5	Termination Policies	11-8.1
11.5.1	Final Paychecks and Benefits	11-9
11.5.2	Re-employment and References	11-10
11.5.3	Exit Interviews	11-10
11.6	Termination Letters	11-11
11.7	Reductions in Force ("RIF")	11-12
11.8	Employment Separation and Termination Agreements	11-13
11.8.1	Severance Payment	11-13
11.8.1A	Nonqualified Deferred Compensation Plans under Section 409A	11-14
11.8.2	Release of Claims	11-17
11.8.3	Additional Terms in Separation and Termination Agreements	11-20
11.9	Employee Settlement Agreements	11-20
FORMS.		11-20
Form 11.4	Pre-dismissal Risk Assessment	11-20
Form 11.5A	Termination Policy	11-22
Form 11.5B	Termination Policy	11-23

TABLE OF CONTENTS

Form 11.5C	Termination/Severance Policy	11-25
Form 11.5D	Continuation of Health Coverage (“COBRA”) Policy	11-26
Form 11.5E	Checklist for COBRA Administration	11-27
Form 11.5F	Employee Departure; Return of Company Property Policy.	11-28.1
Form 11.5G	Rehire Policy	11-29
Form 11.5H	Reference Policy	11-29
Form 11.5I	Sample Reference Letter	11-30
Form 11.5J	Reference Authorization and Release of Liability	11-30
Form 11.5K	Exit Interview Policy.	11-30
Form 11.5L	Employee Exit Interview/Separation Checklist.	11-31
Form 11.5M	Exit Interview Information (for Employer to Complete)	11-32
Form 11.5N	Separation Survey (for Employee to Complete)	11-33
Form 11.6A	Termination Letter for At-Will Employee	11-36
Form 11.6B	Termination Letter (Reminding Employee of Contractual Obligations)	11-37
Form 11.6C	Truthful Reason for Termination.	11-39
Form 11.7A	Sample Warn Letter to State	11-39
Form 11.7B	Sample Warn Letter to Employee	11-40
Form 11.8A	Short Form Checklist of Points for Consideration of Items That May Be Included in Any Separation and/or Settlement Agreement	11-40
Form 11.8B	Employment Separation Agreement and Release (Employee 40 Years of Age and Older).	11-42
Form 11.8C	Employment Separation Agreement and Release (Employee under 40 Years Old)	11-46
Form 11.8C2	Negotiated Reference (Attachment)	11-50
Form 11.8D	Long Form Separation Agreement and Mutual Release with Restrictive Covenants and Arbitration (for Executive 40 Years of Age and Older)	11-51
Form 11.8E	Long Form Separation Agreement and Mutual Release with Restrictive Covenants and Arbitration (for Executive under 40 Years of Age)	11-63
Form 11.8E2	Sample Waiver and General Release: Group Layoffs of Employees Age 40 and Over.	11-74
Form 11.8.2A	Family and Medical Leave Act Provision for Inclusion in Separation/Settlement Agreement.	11-76.1
Form 11.9A	Short Form Settlement Agreement of Litigation Claims with Mutual Releases (Employee under 40 Years Old).	11-76.1
Form 11.9B	Short Form Settlement Agreement of Litigation Claims with Mutual Releases (Employee 40 Years of Age and Older)	11-78

Form 11.9C	Long Form Settlement Agreement of Claims and General Release (Employee 40 Years of Age and Older)	11-82
Form 11.9D	Long Form Settlement Agreement of Claims and General Release (Employee under 40 Years of Age).	11-87
Form 11.10	Internal Revenue Code Section 409A Compliance Checklist for Employment Separation/Severance Agreements Providing for Nonqualified Deferred Compensation	11-92

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.	12-6
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	Bargaining Power	12-8
12.4.3	Specific Provisions for Inclusion in Arbitration Agreements	12-8
FORMS.	12-14
Form 12.3A	Stand-Alone, Short Form Policy for Mediation of Employment Disputes (Non-mandatory, Pre-dispute)	12-14
Form 12.3B	Policy with Procedure for Mediation of Employment Disputes (Mandatory, Pre-dispute, with Acknowledgment Form)	12-15
Form 12.3B2	Agreement to Mediate Employment Disputes (Attachment)	12-17
Form 12.3C	Agreement to Mediate and Maintain Confidentiality (Short Form Post-dispute)	12-17
Form 12.3D	Employment Mediation Rules (AAA Rules and Procedure)	12-19
Form 12.3E1	Four-Step Dispute-Resolution Procedure; Open Door Policy, Peer Review, Mediation, Arbitration	12-22
Form 12.3E2	Signature and Acknowledgment Form (Attachment)	12-24
Form 12.3F	Employee Dispute-Resolution Program (Mandatory Mediation, Arbitration)	12-25
Form 12.4A	Comprehensive Agreement to Arbitrate	12-27

TABLE OF CONTENTS

Form 12.4B At-Will Employment Agreement (with Mandatory
Arbitration Provision in the Nature of Private Litigation) 12-35

Form 12.4B2 The Company’s Dispute-Resolution Policies and
Procedures (Attachment). 12-38

Form 12.4C Application for Employment, Agreement to Arbitrate 12-40

Form 12.4D Arbitration Clause in Executive Employment Agreement 12-42

Form 12.4E Arbitration Clause in Employment Agreement. 12-43

Form 12.4F Post-dispute Arbitration Agreement 12-43

Form 12.4G American Arbitration Association—Employment
Arbitration Rules—Demand for Arbitration Form 12-46

Form 12.4H American Arbitration Association Rules for
Arbitration: National Rules for the Resolution of
Employment Disputes 12-48

INDICES

Forms Index Index-1

Subject Index Index-14

Table of Minnesota Laws Index-19

Table of Federal Laws. Index-23

Table of Cases Index-27