

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	1-5
1.2 Interviews	1-6
1.3 References	1-7
1.4 Polygraph Notice	1-8
1.5 Drug and Alcohol Testing.....	1-9
1.5A Medical Examinations	1-10.1
1.6 Consumer Reports	1-10.2
1.6A Criminal Background Checks	1-11
1.6B Oklahoma “Ban the Box” Executive Order	1-13
1.7 Other Letters.....	1-14
1.8 Rejection Letters.....	1-14.1
1.9 Negligent Hiring and Retention	1-14.2
1.10 The Patient Protection and Affordable Care Act New Hire and Payroll Requirements	1-14.3
FORMS	
Form 1.1A Employment Application.....	1-15
Form 1.1A(1) Dispute Resolution Policy.....	1-20
Form 1.1A(2) Dispute Resolution Policy Acknowledgment of Receipt.....	1-20.11
Form 1.1B Employment Application.....	1-20.12
Form 1.1C Employment Application.....	1-25
Form 1.1D Information for Applicant	1-29
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 1.3A Reference Release Form	1-46
Form 1.3B Reference Questions	1-47
Form 1.4 Notice of Prohibition on Polygraph Testing	1-48
Form 1.4A Polygraph Protection Act Notice.....	1-48.1
Form 1.5A Applicant Substance Abuse Screening Program Policy	1-48.2
Form 1.5B Alcohol and Drug Testing Policy	1-49
Form 1.5C Informed Consent and Release for Drug or Alcohol Testing	1-56

TABLE OF CONTENTS

Form 1.5D Sample Letter to Applicant/Employee Regarding Positive Drug/Alcohol Test Result 1-57

Form 1.5E Suspected Drug/Alcohol Abuse Behavior Documentation Form. 1-58

Form 1.6A Fair Credit Reporting Act Disclosure 1-59

Form 1.6B A Summary of Your Rights under the Fair Credit Reporting Act—Attachment 1-60

Form 1.6C Sample FCRA Adverse Action Disclosure 1-64.2

Form 1.7A Offer Letter 1-64.3

Form 1.7B Offer Letter 1-65

Form 1.8A Rejection Letter. 1-66

Form 1.8B Rejection Letter. 1-67

Form 1.10A Model Notice for Employers Who Offer a Health Plan to Some or All Employees (Prepared by U.S. Department of Labor) 1-68

Form 1.10B Model Notice for Employers Who Do Not Offer a Health Plan (Prepared by U.S. Department of Labor) 1-71

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 2-7

 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

 2.2.6A 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 2-11

 2.2.9 Protections against Employee’s Obligations to a Former Employer 2-11

 2.2.10 Non-Waiver of Rights 2-12

 2.2.11 Integration Clause and Subsequent Amendments 2-12

FORMS

Form 2.1 Checklist for Contractor Status Oklahoma Unemployment Insurance 2-13

Form 2.1A Short-Form Independent Contractor Letter Agreement 2-15

Form 2.1B Independent Contractor Agreement. 2-16

Form 2.2A Employment Agreement with Restrictive Covenant;
 One-Year Term with Right to Terminate without
 Cause on 30 Days' Notice; Transfer of
 Intellectual Property to Employer 2-21

Form 2.2B Employment Agreement for Definite Term;
 Subject to Limited Rights to Terminate for
 Cause; Arbitration Clause 2-33

Form 2.2C At-Will Agreement Emphasizing Trade Secrets,
 Intellectual Property Protection, and
 Restrictive Covenant 2-38.1

Form 2.2D Executive Employment Agreement for Specified Term;
 Termination for Cause; Resignation for Good Reason;
 Severance Benefits. 2-46

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 2-63

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 2-66

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 Joint Employment under the FLSA 3-4

3.3 Oklahoma Minimum Wage and Overtime Requirements 3-4

3.4 Oklahoma Wage Payment Law 3-4.1

 3.4.1 Definition of Wage 3-5

 3.4.2 Payment of Wages 3-5

 3.4.3 Deductions from Wages and Payment of Wages
 upon Termination 3-5

 3.4.4 Actions to Recover Unpaid Wages and Other
 Penalties for Statutory Violations 3-6

3.5 Equal Pay for Equal Work 3-7

3.6 Posting of Statutory Provisions 3-7

3.7 Child Labor and Employment of Handicapped Individuals 3-7

3.8 Garnishment of Wages and Support Enforcement Withholdings 3-8

3.9 Workers' Compensation and Unemployment Insurance 3-8

3.10 Workers' Compensation Discrimination or Retaliation 3-8.2

TABLE OF CONTENTS

FORMS

Form 3.1A Employee FLSA Rights Notice 3-9

Form 3.2A Wage Law/FLSA Exempt Employee (Job Duties)
Classification Guide 3-10

Form 3.2B Policy Regarding Exempt/Nonexempt Employment
Categories 3-10.1

Form 3.2C Work Schedules 3-11

Form 3.2D Overtime Policy 3-11

Form 3.2E Overtime Policy 3-12

Form 3.2F Working Hours and Conditions 3-13

Form 3.2G Timekeeping 3-14

Form 3.4.2A Compensation Policy 3-15

Form 3.4.2B Paydays 3-16

Form 3.4.2C Administrative Pay Corrections 3-17

Form 3.4.3A Pay Deductions and Salary Advances 3-17

Form 3.4.3B Wage Withholding Authorization 3-18

Form 3.4.3C Wage Deduction Authorization 3-19

Form 3.4.3D Sample Repayment Agreement 3-19

Form 3.9 Workers' Compensation Insurance 3-20

Form 3.9A Ill/Injured Employee Release Form 3-20

CHAPTER 4. RECORD RETENTION 4-1

4.1 Federal Recordkeeping Requirements 4-2

4.1A Federal Contractors 4-4

4.2 Oklahoma Recordkeeping Requirements 4-4.3

4.3 How to Maintain Employment Records and Personnel Record
Policies 4-7

4.4 Record-Retention Policies 4-8

4.5 Litigation Considerations 4-10

4.6 Disposal of Records 4-11

FORMS

Form 4 Employment Record-Retention Chart Summary 4-12

Form 4.1 Excerpts, Standard Form 100 (EEO-1 Report) 4-16

Form 4.2 Employment Data 4-20

Form 4.3A Access to Personnel Files 4-21

Form 4.3B Information Changes 4-21

Form 4.3C Guidelines for Employee Personnel Files 4-21

Form 4.4A Short-Form Document-Retention Policy 4-23

Form 4.4B Short-Form Record-Retention Policy 4-24

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 Oklahoma 5-1

 5.1.1 The Administrative Process under the Oklahoma
 Anti-Discrimination Act 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 5-5

 5.2.2.1 The Conciliation Process 5-6.1

5.3 Sexual Harassment 5-6.2

 5.3.1 Definition of Sexual Harassment 5-7

 5.3.2 Employer Liability—Quid Pro Quo and Hostile
 Environment 5-8

 5.3.3 Devising an Effective Sexual Harassment Policy 5-9

 5.3.4 Conducting Harassment Training 5-10

 5.3.5 Investigating Employee Harassment Complaints and
 Taking Corrective Action 5-11

 5.3.6 Domestic Violence and Stalking 5-13

5.4 The Americans with Disabilities Act 5-14

 5.4.1 Requirements of the ADA 5-14

 5.4.1A Guidance for Mental Disabilities 5-18

 5.4.1B Guidance for Opioid Use Employment Issues 5-18.1

 5.4.2 Developing Job Descriptions 5-18.3

 5.4.3 Leave as a Reasonable Accommodation 5-18.4

 5.4.4 Website Compliance for the ADA 5-18.5

 5.4.5 COVID-19 and Discrimination and Harassment. 5-18.8

5.5 The Age Discrimination in Employment Act of 1967 5-18.9

5.6 Requirements for Equal Pay 5-19

5.6A Uniformed Services Employment and Reemployment Rights Act 5-20

5.7 Retaliation 5-20.1

5.7A EEOC Enforcement Guidance on Retaliation and Related Issues 5-20.2

5.7B The Patient Protection and Affordable Care Act 5-20.3

5.8 Common Law Tort Claims Arising Out of Discrimination 5-20.4

 5.8.1 Intentional Infliction of Emotional Distress 5-20.4

 5.8.2 Assault and Battery 5-20.4

 5.8.3 Defamation 5-20.5

 5.8.4 False Imprisonment 5-20.5

 5.8.5 Invasion of Privacy 5-20.5

FORMS

Form 5A Equal Employment Opportunity Policy 5-21

Form 5B Equal Employment Opportunity Policy 5-21

TABLE OF CONTENTS

Form 5C Equal Employment Opportunity Is the Law 5-22

Form 5.3.3A Short-Form Harassment Policy 5-23

Form 5.3.3B Long-Form Harassment Policy 5-23

Form 5.3.3C Long-Form Harassment Policy 5-24

Form 5.3.3D Combined Discrimination and Harassment
Policy 5-26

Form 5.3.3E Combined Discrimination and Harassment
Policy 5-27

Form 5.3.3F Complaint Form 5-28

Form 5.3.4A Acknowledgment Form for Harassment Policy
and Training 5-29

Form 5.3.5A Sexual Harassment Investigative Question
Checklist 5-30

Form 5.4A Americans with Disabilities Act of 1990
("ADA") Policy 5-32

Form 5.4B Americans with Disabilities Accommodations 5-32

Form 5.4C Policy for Management Personnel Describing
the Americans with Disabilities Act of 1990 ("ADA") 5-34

Form 5.4D Policy for Management Personnel Describing the
Americans with Disabilities Act 5-35

Form 5.4.1A Sample Job Description Form 5-37

**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 6-6

6.3.1 Progressive Discipline 6-6

6.3.2 Disciplining Employees 6-6.1

6.4 Problem Resolution 6-7

6.4.1 Formal Problem Resolution Policies 6-7

6.4.2 Informal "Open Door" Policies 6-8

6.5 COVID-19 Business Immunity 6-8

FORMS

Form 6.1.1A Introductory Period Policy 6-8.1

Form 6.1.1B Introductory Period Policy 6-9

Form 6.1.1C Review Following Orientation and Training Period 6-9

Form 6.1.2A Performance Review 6-10

Form 6.1.2B Performance Evaluation 6-10

Form 6.1.2C Performance Evaluations 6-10

Form 6.1.2D Performance Reviews 6-11

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 6-31

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 6-36

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

7.1 Family and Medical Leave Act of 1993 (as Amended in 2008) 7-2

7.2 Vacation Leave 7-4

7.3 Holidays 7-5

7.4 Sick Leave 7-5

7.4A Paid Leave for Federal Contractors 7-6

7.5 Leave for Jury Duty and Court Appearances 7-6.2

7.6 Voting Leave 7-7

7.7 Military Leave 7-7

7.8 Personal Leave 7-9

7.9 Bereavement Leave 7-9

7.10 Educational Leave 7-10

7.11 Religious Holidays and Observances 7-10

7.12 Paid Time Off Policies 7-11

7.13 Paid Coronavirus-Related Leave 7-11

TABLE OF CONTENTS

FORMS

Form 7.1A Short-Form Family and Medical Leave Act (FMLA) Policy 7-12.1

Form 7.1B Long-Form Family and Medical Leave Act (FMLA) Policy . . 7-12.2

Form 7.1B(1) Military Leave for Family and Medical Leave Policies 7-15

Form 7.1C Request for Family and Medical Leave. 7-16

Form 7.1D Employer Response to Employee Request for Family and Medical Leave 7-19

Form 7.1D(1) Designation Notice for Family and Medical Leave (“FMLA”) 7-22.1

Form 7.1E Department of Labor Rights—under the Family and Medical Leave Act. 7-22.3

Form 7.1E(1) Military Family Leave 7-23

Form 7.1F Certification of Health Care Provider for Employee’s Serious Health Condition (Family and Medical Leave Act of 1993 (“FMLA”)) 7-24

Form 7.1F(1) Certification of Health Care Provider for Family Member’s Serious Health Condition (Family and Medical Leave Act of 1993 (“FMLA”)) 7-28

Form 7.1F(2) Certification of Qualifying Exigency for Military Family Leave (Family and Medical Leave Act of 1993 (“FMLA”)) 7-32

Form 7.1F(3) Certification for Serious Injury or Illness of Covered Servicemember (Family and Medical Leave Act of 1993 (“FMLA”)) 7-34.2

Form 7.1F(4) Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (Family and Medical Leave Act) . . . 7-34.6

Form 7.1G Family and Medical Leave of Absence Return to Work Certification 7-34.10

Form 7.1H Sample Letter Concerning Family and Medical Leave Expiration 7-34.11

Form 7.1I Medical Leave of Absence Policy (for Employers with Less than 50 Employees) 7-34.12

Form 7.1J FMLA Notification to Key Employee 7-34.13

Form 7.2A Vacation Policy 7-34.13

Form 7.2B Vacation Policy 7-34.14

Form 7.3A Holiday Policy 7-35

Form 7.3B Paid Holidays 7-36

Form 7.4A Sick Leave Policy 7-36

Form 7.4B Sick Leave Policy 7-37

Form 7.4C Paid Sick Leave for Federal Contractors 7-38.1

Form 7.5A Jury Leave Policy 7-38.2

Form 7.5B Jury Duty and Court Appearances 7-38.2

Form 7.6A Voting Leave Policy 7-39

Form 7.6B Voting Leave Policy 7-39

Form 7.7A Military Leave Policy 7-40

Form 7.7B Military Leave Form Letter 7-40

Form 7.7C Department of Labor—Rights under Uniformed
Services Employment and Reemployment Rights Act 7-41

Form 7.8 Personal Leave Policy 7-43

Form 7.9A Bereavement Leave Policy 7-43

Form 7.9B Bereavement Leave Policy 7-44

Form 7.10 Educational Leave Policy 7-44

Form 7.11A Religious Holidays and Observances 7-45

Form 7.11B Religious Holidays and Observances 7-45

Form 7.12 Paid Time Off Policy 7-45

Form 7.13 Request for Leave 7-48

Form 7.14 Sample ARPA Sick Leave Policy 7-49

Form 7.15 Sample American Rescue Plan Act Time Off Form 7-59

CHAPTER 8. EMPLOYEE HANDBOOKS..... 8-1

8.1 Reasons to Adopt an Employee Handbook 8-1

8.2 Adopting Policies and Procedures 8-2

8.3 Subjects to be Covered in Employee Handbooks 8-3

8.3.1 Employee Acknowledgment 8-4.2

8.3.2 At-Will Employment 8-5

8.3.3 Disclaimer of Contractual Rights 8-6

8.3.4 Equal Employment Opportunity; Sexual Harassment
and Other Unlawful Harassment 8-7

8.3.5 Americans with Disabilities Act (“ADA”) 8-7

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 8-8

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 8-9

8.3.12 Work Rules/Code of Conduct 8-10

8.3.13 Dress Code 8-10

8.3.14 Search, Privacy, and Use of Company Electronic
Equipment 8-10

8.3.14A Use of Social Media Services 8-10

8.3.15 Use of Company Equipment and Cell Phones 8-10.4

8.3.16 Conflicts of Interest 8-10.4

8.3.17 Outside Employment/Moonlighting 8-10.4

TABLE OF CONTENTS

8.3.18 Solicitation 8-10.5
 8.3.19 Other 8-10.5

FORMS

Form 8.3A Sample Index to a Comprehensive Employee Handbook
 for a Large Employer. 8-10.6
 Form 8.3B Employee Handbook Checklist 8-14
 Form 8.3C Employee Handbook Review 8-18
 Form 8.3.1A Employee Acknowledgment Form 8-21
 Form 8.3.1B Employee Acknowledgment Form 8-22
 Form 8.3.1C Employee Acknowledgment of New or Revised Policy 8-23
 Form 8.3.1D Acknowledgment of Drug and Alcohol Use and
 Testing Policy 8-24
 Form 8.3.2 “At-Will” Employment 8-24
 Form 8.3.3 Contract Disclaimer Provision 8-24.1
 Form 8.3.10 Attendance and Punctuality. 8-25
 Form 8.3.11A Alcohol and the Workplace Policy for Private
 Employers 8-25
 Form 8.3.11B Alcohol Consumption at Business Functions 8-26
 Form 8.3.11C Drug and Alcohol Policy for Federal Contractors. 8-26
 Form 8.3.13 Professional Dress Code 8-27
 Form 8.3.14 Fragrance Free Workplace. 8-29
 Form 8.3.14A Use of Social Media—Social Networks, Web Logs,
 Web Forums, PDAs, etc. 8-29
 Form 8.3.14B Social Media Policy. 8-31
 Form 8.3.14C Social Media Policy. 8-32.2
 Form 8.3.15A Use of Company Equipment. 8-32.3
 Form 8.3.15B Use of Phone and Mail Systems 8-32.4
 Form 8.3.15C IT Equipment and Computer Check-Out Policy 8-32.4
 Form 8.3.16 Conflicts of Interest 8-32.6
 Form 8.3.17 Outside Employment (Moonlighting) 8-32.7
 Form 8.3.18 Non-Solicitation 8-32.7
 Form 8.3.18A Non-Solicitation and Distribution Policy 8-32.8
 Form 8.3.19A Employment Reference Checks 8-32.9
 Form 8.3.19B Cellular Phones 8-33
 Form 8.3.19C Use of Camera Phones 8-34
 Form 8.3.19D Workplace Safety. 8-34
 Form 8.3.19E Workplace Safety/Security 8-35
 Form 8.3.19F Business Travel Expenses 8-37
 Form 8.3.19G Visitors in the Workplace 8-38
 Form 8.3.19H Policy and Procedures for Receipt, Retention, and
 Treatment of Complaints and Concerns Regarding
 Accounting Controls and Auditing Matters
 (Whistleblower Policy) 8-38

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 9-5

9.2 Electronic Systems and Communications Present
New Challenges 9-6

 9.2.1 Statutory Limitations on Monitoring Electronic
 Communications 9-7

 9.2.2 Electronic Use Policies 9-8

 9.2.3 The Computer Fraud and Abuse Act 9-11

9.3 Improper Disclosure of Private Information 9-12

FORMS

Form 9.1A Workplace Searches. 9-14

Form 9.1B No Employee Expectation of Workplace Privacy 9-14.1

Form 9.1C Personal Mail Policy 9-14.2

Form 9.1D Employee Consent to Use Name or Likeness 9-15

Form 9.2A Short-Form Use of Electronic Mail Systems and
Voice Mail (with Acknowledgment Form) 9-15

Form 9.2B Long-Form Use of the Company’s Electronic
Systems Policy 9-16

Form 9.2C Long-Form Computer, E-Mail, and Internet Policy 9-19

Form 9.2D Employee Acknowledgment Form Concerning
Use of Electronic Systems. 9-24

Form 9.3 Employee Authorization Form to Use and Disclose
Protected Health Information 9-24

Form 9.3A Employee Consent for Release of Personnel File 9-26

Form 9.4 Checklist for Avoiding Employee Privacy Claims 9-26

**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 10-5

10.2 Preventing the Misappropriation of Trade Secrets 10-5

10.3 Employee Covenants of Non-Solicitation 10-6.1

 10.3.1 Consideration 10-8

 10.3.2 Business Interests 10-8

 10.3.3 Scope 10-9

 10.3.4 Additional Necessary Provisions 10-10

 10.3.5 Enforcement and Remedies 10-12

10.4 Confidentiality and Non-Disclosure Agreements 10-13

TABLE OF CONTENTS

FORMS

Form 10.2A Sample Memorandum Reminding Employees of Confidentiality Obligations 10-14

Form 10.2B Checklist for Protecting Trade Secrets 10-16

Form 10.3A Confidentiality and Non-Solicitation Agreement 10-18

Form 10.3B Non-Competition, Non-Solicitation, and Confidentiality Agreement 10-22.3

Form 10.3C Restrictive Covenant and Confidentiality Agreement 10-22.5

Form 10.3D Confidentiality, Intellectual Property, and Non-Competition Agreement 10-25

Form 10.3E Sample Letter to Former Employee Regarding Restrictive Covenant Obligations (Agreement). 10-31

Form 10.3F Sample Letter to Former Employee Regarding Continuing Confidentiality Obligations (No Written Agreement). 10-32

Form 10.3G Letter to New Employer Regarding Former Employee’s Restrictive Covenant Agreement and Knowledge of Trade Secrets. 10-33

Form 10.3.5G Non-Solicitation Provision with Liquidated Damages Clause for Inclusion in Employment Agreement 10-34

Form 10.4A Employee Handbook Confidentiality Provision 10-35

Form 10.4B Confidentiality Agreement 10-36

Form 10.4C Non-Disclosure and Confidentiality Agreement 10-40

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 11-5

11.1.2.1 Implied Contracts 11-5

11.1.2.2 Wrongful Discharge in Violation of Public Policy 11-6

11.2 Termination of Employment for a Definite Term 11-6

11.3 Employee Resignation as Constructive Discharge 11-6.2

11.4 Pre-Termination Review 11-7

11.5 Termination Policies 11-8

11.5.1 Final Paychecks and Benefits 11-8

11.5.2 Re-Employment and References 11-9

11.5.3 Exit Interviews 11-10

11.6 Termination Letters 11-10

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

11.8 Employment Separation and Termination Agreements 11-12

11.8.1 Severance Payment 11-12

11.8.1A Nonqualified Deferred Compensation Plans under Section 409A 11-13

11.8.2 Release of Claims 11-16.2

11.8.3 Additional Terms in Separation and Termination Agreements 11-18

11.9 Employee Settlement Agreements 11-19

FORMS

Form 11.4 Pre-Dismissal Risk Assessment. 11-19

Form 11.5A Termination Policy 11-21

Form 11.5B Termination Policy 11-22

Form 11.5C Termination/Severance Policy. 11-24

Form 11.5D Continuation of Health Coverage (“COBRA”) Policy 11-25

Form 11.5D(1) Model General Notice of COBRA Continuation Coverage Rights 11-26.1

Form 11.5D(2) Model COBRA Continuation Coverage Election Notice 11-26.7

Form 11.5E Checklist for COBRA Administration 11-26.16

Form 11.5F Employee Departure; Return of Company Property Policy 11-27

Form 11.5G Rehire Policy 11-28

Form 11.5H Reference Policy 11-28

Form 11.5I Sample Reference Letter 11-28

Form 11.5J Reference Authorization and Release of Liability 11-29

Form 11.5K Exit Interview Policy. 11-29

Form 11.5L Employee Exit Interview/Separation Checklist. 11-30

Form 11.5M Exit Interview Information (for Employer to Complete) 11-31

Form 11.5N Separation Survey (for Employee to Complete) 11-32

Form 11.6A Termination Letter for At-Will Employee. 11-34

Form 11.6B Termination Letter (Reminding Employee of Contractual Obligations). 11-35

Form 11.7A Sample Warn Letter to State 11-37

Form 11.7B Sample Warn Letter to Employee 11-38

Form 11.8A Short Form Checklist of Points for Consideration of Items That May Be Included in Any Separation and/or Settlement Agreement 11-39

Form 11.8B Employment Separation Agreement and Release (Employee 40 Years of Age and Older). 11-40

Form 11.8C Employment Separation Agreement and Release (Employee under 40 Years Old) 11-44

Form 11.8C2 Negotiated Reference (Attachment) 11-47

Form 11.8D Long-Form Separation Agreement and Mutual Release with Restrictive Covenants and Arbitration (for Executive 40 Years of Age and Older) 11-48

Form 11.8.2 Family and Medical Leave Act Provision for Inclusion in Separation/Settlement Agreement. 11-59

TABLE OF CONTENTS

Form 11.9A Short-Form Settlement Agreement of Litigation Claims with Mutual Releases (Employee under 40 Years Old) 11-59

Form 11.9B Long-Form Settlement Agreement of Claims and General Release (Employee 40 Years of Age and Older) 11-62

Form 11.10 Internal Revenue Code Section 409A Compliance Checklist for Employment Separation/Severance Agreements Providing for Nonqualified Deferred Compensation 11-67

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 12-4

12.4.1 Legal Basis of Employment Arbitration 12-5

12.4.2 Arbitration Policies and Agreements 12-7

12.4.2.1 What Kind of Document Is Required for an Arbitration Agreement? 12-8

12.4.2.2 Consideration Required to Support the Arbitration Agreement 12-9

12.4.2.3 Fairness Concerns 12-10

12.4.3 Specific Provisions for Inclusion in Arbitration Agreements 12-11

FORMS

Form 12.3A Stand-Alone, Short-Form Policy for Mediation of Employment Disputes (Non-Mandatory, Pre-Dispute) 12-18

Form 12.3B Policy with Procedure for Mediation of Employment Disputes (Mandatory, Pre-Dispute, with Acknowledgment Form) 12-18

Form 12.3B2 Agreement to Mediation of Employment Disputes (Attachment) 12-20

Form 12.3C Agreement to Mediate and Maintain Confidentiality (Short-Form Post-Dispute) 12-21

Form 12.3D Employment Mediation Rules (AAA Rules and Procedure) 12-22

Form 12.3E Four-Step Dispute Resolution Procedure; Open Door Policy, Peer Review, Mediation, Arbitration 12-26

Form 12.3E2 Signature and Acknowledgment Form (Attachment) 12-28

Form 12.3F Employee Dispute Resolution Program (Mandatory Mediation, Arbitration) 12-28

Form 12.4A Comprehensive Agreement to Arbitrate 12-31

Form 12.4B At-Will Employment Agreement (with Mandatory Arbitration Provision in the Nature of Private Litigation) 12-39

Form 12.4B2 The Company’s Dispute Resolution Policies and Procedures (Attachment). 12-42

Form 12.4C Application for Employment, Agreement to Arbitrate 12-44

Form 12.4D Arbitration Clause in Employment Agreement 12-46

Form 12.4E Arbitration Clause in Employment Agreement 12-47

Form 12.4F Post-Dispute Arbitration Agreement 12-47

Form 12.4G American Arbitration Association—Employment Arbitration Rules—Demand for Arbitration Form 12-50

Form 12.4H American Arbitration Association Rules for Arbitration: National Rules for the Resolution of Employment Disputes 12-52

INDICES

Forms Index INDEX-1

Table of Cases INDEX-9

Subject Index INDEX-16