

Table of Contents

Introduction	1
A Word About Organization	1
Chapter 1: Pre-hire Considerations.....	3
Job Advertisements	3
Job Description	5
Job Applications.....	6
Sample Application for Employment.....	8
Accommodating the Disabled in the Application Process.....	11
Accommodation in Testing	11
Lawful and Unlawful Questions of Applicants	13
Lawful Questions	13
Unlawful Questions	14
ADA Considerations	17
Interviewing the Applicant	19
Interview Notes.....	20
Sample Applicant Interview Checklist.....	21
Sample Welcome Memo to Applicants.....	24
Pre-employment Testing	25
Specific Types of Tests.....	26
Religious Considerations in Testing	27
Drug and Alcohol Testing.....	27
Drugs	27
Alcohol	27
Physical and Medical Exams.....	27
Medical Examinations	27
Physical Examinations	29
Employment Reference Checks.....	30
Credit Checks.....	31
Criminal History Checks.....	32
Arrests	33
Convictions	34
The Offer of Employment	35
Covenants Not to Compete.....	36
Withdrawing Offers of Employment.....	39
Immigration Information to Obtain from Applicants	40
Temporary Employees.....	50
Chapter 2: Reasons for Rejecting an Applicant.....	51
Accommodation of Disability.....	51
Age	53
Federal Considerations.....	53
Indiana Considerations	54
Current Alcohol or Drug Use	54
Federal Considerations.....	55
Indiana Considerations	56
Appearance.....	56
Religious Accommodation.....	56

Arrest and Conviction Record.....	57
Attendance.....	57
Blacklisting.....	58
Communicable Disease.....	58
Dependent Children.....	59
Disability.....	60
Self.....	60
Family.....	61
Education Requirements.....	61
Employment References.....	62
Falsification of Job Application.....	62
Family Health Issues (Non-disability).....	63
Full-time Employee Rule.....	64
Honesty and Graphology Tests.....	64
Immigration Status.....	65
Inability to Speak English.....	66
Inability to Work the Necessary Schedule.....	66
ADA Considerations.....	66
Religious Accommodation.....	67
Insurance-related Issues.....	68
License or Certification Requirements.....	69
Marital Status.....	69
Military Status.....	70
Nepotism.....	71
Negligent Hire.....	71
Political or Social Opinions.....	72
Polygraph Tests.....	73
Preference of Coworkers and Customers.....	74
Pregnancy.....	75
Qualifications.....	75
Race or National Origin.....	76
Rehire of Former Employee.....	77
Religion and Accommodation of Religious Practices.....	77
Dress.....	78
Work Schedules.....	78
Sex.....	78
Sexual Orientation.....	79
Federal Law.....	79
Indiana Law.....	79
Skills Testing.....	79
Smoking and Tobacco Use.....	80
Social Security Numbers.....	81
National Origin Discrimination.....	81
Religious Discrimination.....	82
Union Activity and Union Organizers.....	83
Weight and Height Requirements.....	84
Worker's Compensation History.....	84

Chapter 3: Post-hire Considerations	87
Employee Handbook	87
Employment Contract	88
Investigating Conduct Warranting Discipline	89
Interviewing the Alleged Wrongdoer	90
Witness Interviews	91
Non-employee Interviews	92
Hearsay	92
Physical Evidence	93
Electronic Surveillance	94
Private Investigators	95
Graphologists and Questioned Document Examiners (QDEs).....	96
Disciplinary Interview	96
Documenting Discipline	98
Progressive Discipline	99
Sample Corrective Action Form	102
Performance Reviews	103
Defamation.....	104
Privacy Concerns	106
Retaliation.....	108
Arbitration.....	110
Unemployment Compensation Proceedings.....	111
Worker’s Compensation Proceedings.....	112
Covered Injury	112
Benefits.....	113
Affirmative Defenses	120
Discipline of Employees.....	121
Refusal of Employee to Submit to Treatment and/or Examination.....	121
Limitations.....	122
Reporting Requirements and Procedures.....	122
Chapter 4: Discipline and Termination	125
Accommodation of Disability.....	125
Age	126
Alcohol and Drug Use and Testing	126
Appearance.....	128
Arrest and Conviction Record	128
Assault on a Fellow Employee	129
Attendance	130
Attitude	133
Benefit Cost.....	133
Cellular Phone and Pagers.....	134
Clothing.....	134
Communicable Diseases	135
Confidential Information.....	136
Conflict of Interest (Moonlighting)	137
Constructive Discharge	138
Critical Remarks About Employer, Product or Coworker	139
Customer Complaints.....	140
Dependent Children.....	140
Difficulty in Dealing with Coworkers	141

Disability (Self).....	142
ADA.....	142
Disability (Family)	142
ADA.....	142
FMLA	143
Discussing Wage or Benefit Information	144
Discriminatory Conduct by an Employee	144
Dishonesty	145
Drug Use and Testing	145
NLRA Issues.....	148
Employee Handbook and Rule Violations.....	148
Falsification of an Employment Application	150
Falsification of Records	150
Failure to Cooperate in Investigations	151
Failure to Report an On-the-Job Injury	151
Fighting	152
Gossip.....	152
Group Employee Activity.....	153
Hairstyle or Length.....	155
Harassment	156
Horseplay.....	157
Immigration Status.....	158
Inability to Meet Job Standards and/or Perform the Job	164
Injury to a Coworker.....	164
Injuries on the Job	165
Indiana’s Worker’s Compensation Act	165
ADA.....	165
Light Duty	166
Injuries off the Job	166
FMLA	166
ADA.....	167
Insubordination.....	168
Insurance-related Concerns.....	169
Jury Duty and Witness Duty.....	169
Marital Status	170
Military Status	170
Negligent Retention	172
Nepotism.....	172
No Cause.....	173
Political Orientation.....	174
Pay Disputes.....	175
Pregnancy	175
Race.....	176
Religion	177
Retaliation	178
Sabotage.....	179
Safety Violations	180
Sex.....	180
Sexual Harassment.....	181
Sexual Orientation.....	186

Strike-related Misconduct	186
Sleeping on the Job.....	187
Theft	188
Trade Secrets Disclosure	188
Union Activity	189
Violence and Outbursts of Temper	190
Vulgar or Obscene Conduct.....	192
Weapons in the Workplace	192
Weight and Height.....	192
“Whistle-blowing”	193
Chapter 5: Layoff Procedures	195
Circumstances Warranting Layoffs	195
Procedures for Reduction in Force	195
Layoff Notices (Including Bargaining).....	198
WARN Requirements	199
Chapter 6: Entitlements on Separation	201
Final Pay	201
Severance Pay	201
Vacation Pay	202
Sick Pay	203
Bonuses and Commissions	203
Medical Insurance Continuation (COBRA).....	204
Service Letter.....	205
Access to Personnel File	206
Access to Medical File.....	206
Chapter 7: Responding to Reference Checks	209
Defamation.....	209
Employment References	211
Chapter 8: Record-Keeping Requirements	213
One Year.....	213
Two Years.....	214
Three Years.....	214
Five Years.....	215
Six Years	215
30 Years.....	215
Until Final Disposition of Charge or Action.....	215
Time Period Not Specified.....	216
Period Plan or System Is in Effect Plus One Year.....	216
Managing Electronically Stored Information.....	216
Chapter 9: Employment Discrimination Statutes	219
Appendix: Glossary of Terms.....	221
Index.....	224