

# LEGALities

FROM MIKE FARHI

A NEWSLETTER FOR CLIENTS, THEIR FAMILIES AND FRIENDS

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## FAQs: *Employee Handbooks*

### *What is an employee handbook?*

An employee handbook or manual describes an employer's expectations of its employees, to minimize "gray areas" in the employment relationship. All employees, especially new ones, should read the handbook to understand the company's rules and expectations – and his or her rights. In most cases, an employee must sign a form to show that he or she received the handbook. An employee should never discard it, but an employer can ask for its return at the time of a termination or resignation. At the same time that a handbook is given, an employer can also ask that a confidentiality agreement be signed, to protect trade secrets and other information – this can be a condition of employment.

### *Can the employee handbook be considered a binding contract?*

In New Jersey, an employee handbook can be a binding contract concerning job security, discipline and discharge. But it has to be distributed to all or most of the workforce and be specific in its terms. Most important, it must be without a "clear and prominent disclaimer" of any promises or guarantees, especially of continuing employment or termination procedures. When the disclaimer says that the employment is "at will" and may be terminated at any time, for any reason or no reason, an employee's right to challenge a firing is limited, short of discrimination or other unlawful action.

### *What are some topics that should be included in the Employee Handbook?*

While there is no set of guidelines for an Employee Handbook, there are some basics that should be included: compensation, benefits, leave policies, health issues and information, substance abuse – topics that frequently pop up in daily life. Employers may also include a corporate mission statement, corporate structure and the goals of their organization.

The Handbook can also cover topics that have become more timely - **Privacy** is an important issue since employers can now monitor computers, email, and telephones. Your policy should be clearly outlined as to what is expected from employees. In most cases, employers own the email system and employees should not use email or the Internet for anything other than business practices. Employers have the right to monitor email and internet activity to make sure employees are not engaging in personal use of these services.

But what about **Telecommuting**? If the equipment

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- Wage & Hour Laws: What Employers and Employees Should Know
- In the News: Michael Kates Wins One for the "Little Guy"
- NKNR&E: Specialists in Estate and Tax Planning

# Wage & Hour Laws

*What employers and workers should know*

The U. S. Department of Labor audits one in five employers for violation of wage-and-hour laws under the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act, according to a new survey by Business and Legal Report. Last year, the fines cost companies hundreds of millions of dollars, huge chunks of company time, and in some cases, double back pay. The new FLSA rules attempt to make it easier for employers to understand the federal compliance requirements. However, some state laws offer greater protection to employees. Here are some suggestions to avoid problems:

- **REVIEW JOB DESCRIPTIONS** – Employers should make sure that all of its job descriptions are accurate and up to date. Workers should get a copy of the description.
- **LIMIT OVERTIME HOURS** – Employees with workers who are on the line between exempt and non-exempt, should make them non-exempt. This allows more overtime protection. Employees should make themselves aware of such a change in their status.
- **KNOW THE LAWS** – Both employers and workers should be sure to familiarize themselves with the new FLSA laws - it's not enough to know the federal laws...be sure to bone up on the up-to-date state laws as well.

For more information,  
call Mike Farhi at 201-488-7211  
or email mfarhi@nklaw.com

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belongs to the employer, the same rules apply. The employee should be required to sign an inventory of all office equipment, to be returned upon termination. Employees who telecommute introduce a whole new set of policies - to comply with federal and possibly state wage and hour laws, non-exempt employees should submit a record of hours worked. Plus, there should be some requirements for face-to-face interaction and/or telephone communication. These policies are solely at the discretion of the employer.

Outlining a company's **Nonharassment** policy right in the Employee Handbook can prove to be integral in the event of a lawsuit. A definition of terms and specifically how they apply to the office setting, business-related travel, and "on the road" should be detailed. This policy should also cover all employees, managers, clients and vendors so that in the event of an incident, the employer can limit, change or terminate a relationship with the person(s) who is the source of the harassment. Additionally, the handbook should detail the reporting procedure for a victim or a witness to a harassment incident - how to report it, how the employer will investigate the claim, how an employee can appeal a claim, what sanctions may be imposed.

With mandatory arbitration becoming more popular as a less expensive alternative to litigation, the handbook should include a section on **Alternative Dispute Resolutions**. Both employers and employees should know what their options are should the need for litigation arise.

There are many other subjects that should be covered in the employee handbook - cell phone use (for those employees whose position requires them to drive to do their jobs), a wage and hour policy which complies with the Fair Labor Standards Act, a confidentiality clause - the list goes on and on. Employers and employees both will find that a comprehensive employee handbook is beneficial to a successful employment relationship.

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*In our Next Issue –  
Joel Ellis on  
“Mediation Instead of Litigation.”*

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# In the News

Just recently, **NKNR&E** partner Michael Kates won an important case that caught the attention – and opinions – of residents from all around the state of New Jersey.

The case revolved around eminent domain – the power of a government to take private property for public use; the 5th Amendment of the US Constitution and articles in many state constitutions allow this practice provided that just compensation is made.

In this case, Kates championed the rights of owners and residents of two separate trailer parks in Lodi, NJ, as city officials attempted a “land grab” to take over the properties that have been home to several hundred low-income seniors and other residents in mobile homes.

The city had planned to condemn the Costa Trailer Park and Brown’s Trailer Park along State Highway 46 and use the land for redevelopment, leaving hundreds homeless as they sought to make millions by selling off the property to a private developer.

Kates took on the case for Save Our Homes, a coalition of 200 residents from the Lodi trailer parks targeted by the City for private retail development and a senior-living community.

Many of the residents pay less than \$500 per month and were worried about finding affordable housing.

In a fierce fight to save their homes, Kates argued the case before State Superior Court Judge Richard Donahue, who finally ruled in Kates’ and the residents’ favor in the beginning of October.

Kates summed up the case: “The borough attempted to replace a needy community, an elderly community, an affordable housing community with upscale housing and the judge saw through it.”



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## Experts in Probate, Estate and Tax Planning, and Elder Law

**NKNR&E** also provides clients with all levels of estate, probate and tax planning, from simple wills through complex estate and tax planning.

We are experienced in strategies that can help you protect your children’s inheritance. We keep current with changes in this complex area of law, and employ insurance trusts, family limited partnerships, and other estate planning tools so that our clients receive the maximum benefit potential.

We also handle Elder Law issues, assisting clients in maintaining control of their life and continuing their independence. Matters related to health, such as Medicare, Medicaid, contracting with in-home caregivers, financing long-term care, guardianship, and independent living options can be handled by Medical Powers of Attorney, Guardianships, and Living Trusts.

Among his expertise in several areas, **NKNR&E** partner **Bruce Nussman** specializes in drafting wills, insurance trusts, family limited partnerships and other

plans necessary to establish estates of any size, no matter how complex. He was admitted to practice in New Jersey, in the United States Tax Court, and the United States Custom Court, and is a member of the Bergen County and American Bar Associations. Bruce is also the President of the Board of Directors of the New Jersey Federation of YMHA and the chair of its Scholarship Committee.

**Rick Rapone** also specializes in estate planning. He has been with the firm since 1978, when he was admitted to practice in New Jersey and before the U.S. District Court for the District of New Jersey. He is a former member of the Advisory Council of the University of Bridgeport College of Chiropractic and of the National Association of Chiropractic Attorneys.

To contact either Bruce Nussman or Rick Rapone, call 201-488-7211 or visit the **NKNR&E** website at <http://nashelkates.lawoffice.com/attorneys.htm> to send an email.

Since 1913, the members of Nashel, Kates, Nussman, Rapone & Ellis, LLP, have served as outstanding litigators, legal advisors and valued members of their communities. The firm's attorneys believe that the practice of law requires an unstinting dedication to their clients and the legal matters for which they are retained. The firm provides legal representation of the highest caliber in the areas of:

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190 Moore Street, Suite 306 • Hackensack, New Jersey 07601 • 201-488-7211 • fax: 201-488-1210

### Michael Farhi, Esq.

For a **FREE** Phone Consultation, call **201.488.7211** or e mail [mfarhi@nklaw.com](mailto:mfarhi@nklaw.com)

- Family Law & Divorce
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**Michael Farhi, Esq.**  
Of Counsel to Nashel Kates  
190 Moore Street - Suite 306  
Hackensack, N.J. 07601

*This issue of Legal-ities focuses on important issues in the workplace for Employers and Employess including Employee Handbooks, Wage-and-Hour Laws, and Estate Planning. The information contained in this issue is intended to help you or someone you know keep abreast of developments in the ever-changing work place.*