

## How Employee Policies and Contractor Agreements Protect Your Business

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When employing individuals as employees or contractors, it is very important to set forth company policies and, in the case of contractors, have a written agreement. Employee policy statement and contractor agreement legal forms by the author are available for purchase [here](#).

### The Difference Between Employees and Contractors

The legal difference between employees and contractors is based on a series of factors:

- If the work is done on the company premises
- Who provides the tools and resources to complete the work
- Who controls the work and work product
- Duration of the relationship
- Skill required
- Whether the hiring party has the right to assign additional projects
- The hired party's discretion over how long and when to work
- The method of payment
- The hired party's role in hiring and paying assistants
- Whether the work is part of the regular business of the hiring party
- Whether the hiring party is in business
- Whether or not benefits are provided
- The tax treatment of the hired party

In determining whether a relationship was employment or contract, the court will weigh the above factors to make a determination.

### Obligations to Employees vs. Contractors

<b>Obligations<sup>1</sup></b>	<b>Employee</b>	<b>Contractor</b>
<i>Required relationship time minimum</i>	None unless otherwise stated in an agreement	None unless otherwise stated in an agreement.
<i>Agreement required</i>	No	No
<i>Agreement recommended by author</i>	No	Yes
<i>Required to deduct taxes</i>	Yes	No
<i>Insurance covers acts of</i>	Yes	No, usually

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<sup>1</sup> These can vary substantially for companies who handle projects for and receiving funding from the state, county or federal government and considerably between states, so readers are cautioned to not to rely on this information and to consult an attorney in their state. Readers are cautioned not to rely on this article as legal advice as it is no substitution for a consultation with an attorney in your state. Based on jurisdiction and time, the law varies and changes.

<i>Liable for acts legally</i>	Yes in performance of employment	Usually no, but depends on degree of control and circumstances
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### Employee Policies

The purpose of company policies for employees is to give notice and to set uniform treatment and instruction for employees on performance and behavior at the work place. Generally, it is a good idea to have employees sign the end of the policy statement or another document stating that they have received this information and that they agree to it. It is important to present the information in the initial hiring session to be sure that it is legally effective as a binding agreement.

It is important to carefully draft and periodically review the company policies to be sure that they reflect the actual actions and procedures of the company. A company's failure to follow its own policies can cause very bad legal results.

### Typical Minimum Policy Provisions

#### Employment Is At-Will

The Policy should include a statement notifying the employee that employment is at will and that his or her duties, promotion or demotion, salary, relocation and all items regarding work are at the discretion of the employer.

#### Notice of Inappropriate Acts

The Policy should include a statement instructing the employees not to engage in criminal acts, not consume or be "high" on drugs or alcohol at work, not to use the company resources and equipment, including email and the phone, for harassing, criminal, defaming, political, personal or sexual acts.

The Policy should include a statement defining sexual, race, disability and religious harassment, how to report it and how the company handles the reports.

#### Notice of Proper Handling of Confidential Information

The Policy should include a statement to employees of their exposure to the confidential information of the company and third parties, what kinds of information are confidential and employees' obligation not to disclose or personally use confidential information, during and after employment, and the employee's agreement to this.

#### Notice of Ownership of Work Product

The Policy should include a statement to employees that all of the product of their work and all intellectual property rights in that work, is owned by the company and not to be used by them personally outside work or by their future employers.

### Other Employee Policy Provisions

#### Non-Solicitation

Some policies include agreement by employees not to solicit employees to leave the company and work elsewhere for a certain time period following employment.

#### Non-Compete

Some policies include agreement by employees not to work for competitors of company. Non-competes are regulated in time period by state law and in scope of industry and/or geography through case law.

Be aware that employee agreements or policies that are too restrictive or unreasonable will be rewritten or thrown out by courts. However, for the many employees who either do not know or do not have the funds to hire an attorney, the policies may be an effective deterrent nevertheless. On the flip side, be aware that onerous employee policies are a strong negative to educated and talented employees and word will spread among them.

### Contractor Agreements

The primary purpose of a contractor agreement is to ensure that an individual who is a contractor is aware of his or her obligations, that the parties agree on the services to be performed and the amounts to be paid, and that the company owns the work product. While companies may choose, unwisely, to operate without any employee policies, failing to have a contractor agreement can be worse because the contractor, by law, owns her own work product unless otherwise set forth in a writing.

### Contractor Agreement Provisions

#### Services

It is important to clearly define the services to be performed and any deadlines for work product or performance. Failure to clearly define what is to be done can lead to each party, even in good faith, having different ideas and not discovering this until the work is completed and the company is not satisfied. The more detail stated in the contract about the relationship, the less risk of misunderstanding later.

#### Payment

The agreement should include a provision that states how much the company is going to pay the contractor and the procedures for payment.

#### Relationship

The agreement should include a provision that clearly states that the relationship is not employer-employee and that none of the benefits or tax results typical to that relationship apply.

#### Inappropriate Acts

The agreement should include a provision instructing the contractor not to engage in criminal acts, not consume or be “high” on drugs or alcohol while on company premises or performing services, not to engage in harassing, criminal, defaming, political, personal or sexual acts while performing services, on company premises or using company resources. This should also include a definition of sexual, race, disability and religious harassment, how to report it and how the company handles the reports.

#### Confidential Information

A provision alerting the contractor to his exposure to the company's and third parties' confidential information and the contractor's agreement not to disclose or misuse such information during performance of services or thereafter.

#### Ownership of Work Product

A provision to the contractor stating that the company owns all intellectual property rights in the work product produced. This clause *must* be in accordance with the language required under copyright law.

#### Non-Solicitation

The agreement usually includes a clause stating that the contractor agrees not to solicit employees to leave the company and work elsewhere.

#### Non-Compete

Some agreements include a provision for contractors not to work for the company's competitors. This is generally regarded as a bit onerous as contractors, by nature, must perform services for many parties and usually, due to their skill set, it is in one industry for similar companies.

#### Representations and Warranties

The agreement may include the following, or other, warranties:

- That the contractor will re-perform defective or non-conforming services for a time period indicated
- That the contractor is a US citizen or authorized to work in the US
- That the contractor will not infringe third party rights in performing services
- That the contractor is not violating any other agreement by performing services

#### Indemnification

A provision stating that the contractor will indemnify the company for any breaches of the warranties. Indemnification means that the contractor has to pay the company for any litigation costs resulting from her breach of the warranties.

#### Termination and Term

A provision that regarding how long the contractor will perform the services and how the either party may end the relationship.

#### Conclusion

Having employees receive and sign company policies and contracting individuals sign agreements can greatly reduce both risk and confusion in your business. Employee policy statement and contractor agreement legal forms by the author are available for purchase [here](#).