

# Table of Contents

<b>CHAPTER 1. HIRING.....</b>	<b>1-1</b>
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
1.3 References .....	1-8
1.4 Polygraph Testing .....	1-8
1.5 Drug and Alcohol Testing .....	1-9
1.6 Consumer Reports .....	1-11
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
Form 1.1A Employment Application .....	1-16
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
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 .....	1-45
Form 1.3B Reference Questions .....	1-45
Form 1.5A Applicant Substance Abuse Screening Program Policy .....	1-47
Form 1.5B Alcohol- and Drug-Testing Policy .....	1-48
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 1.7A Offer Letter .....	1-58
Form 1.7B Offer Letter .....	1-59
Form 1.8A Rejection Letter .....	1-60

TABLE OF CONTENTS

Form 1.8B Rejection Letter. . . . . 1-61  
 Form 1.10 Minnesota New Hire Registry Reporting Form . . . . . 1-62

**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  
 Form 2.1 Checklist for Contractor Status Unemployment Insurance. . . . . 2-12  
 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) . . . . . 2-51  
 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

**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

3.3 Minnesota Minimum Wage and Overtime Requirements ..... 3-3

3.4 Minnesota Fair Labor Standards Act and Payment of Wages Act ..... 3-4

    3.4.1 Definition of Wage ..... 3-4

    3.4.2 Payment of Wages ..... 3-5

    3.4.3 Deductions from Wages and Payment of Wages upon Termination and Resignation ..... 3-6

    3.4.4 Employee Action to Recover Unpaid Wages ..... 3-8

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

Form 3.2A Wage Law/FLSA Exempt Employee (Job Duties) Classification Guide ..... 3-12

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 Time Keeping ..... 3-17

Form 3.4.2A Compensation Policy ..... 3-18

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

TABLE OF CONTENTS

4.5 Litigation Considerations . . . . . 4-9

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 Law 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 . . . . . 5-5

5.3 Sexual Harassment . . . . . 5-6

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 . . . . . 5-9

5.3.5 Investigating Employee Harassment Complaints  
and Taking Corrective Action . . . . . 5-10

5.4 The Americans with Disabilities Act . . . . . 5-12

5.4.1 Requirements of the ADA . . . . . 5-13

5.4.2 Developing Job Descriptions . . . . . 5-14.1

5.5 The Age Discrimination in Employment Act of 1967  
and Minnesota Prohibition against Age Discrimination . . . . . 5-15

5.6 Requirements for Equal Pay . . . . . 5-16

5.7 Retaliation . . . . . 5-17

5.8 Common Law Tort claims Arising Out of Discrimination . . . . . 5-18.1

5.8.1 Intentional Infliction of Emotional Distress . . . . . 5-18.1

5.8.2 Assault and Battery . . . . . 5-19

5.8.3 Defamation . . . . . 5-20

5.8.4 Wrongful or Abusive Discharge . . . . . 5-20

5.8.5 False Imprisonment . . . . . 5-21

5.8.6 Invasion of Privacy . . . . . 5-21

Form 5A Equal Employment Opportunity Policy . . . . . 5-21

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
Form 5.3.3B	Long Form Harassment Policy	5-24
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
<b>CHAPTER 6.</b>	<b>EMPLOYEE PERFORMANCE, WORK RULES, DISCIPLINE, AND PROBLEM RESOLUTION</b>	<b>6-1</b>
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
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

TABLE OF CONTENTS

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 Parental Leave Law, Minnesota Sick or Injured Child Care Leave . . . . .	7-2
7.2	Vacation Leave . . . . .	7-4
7.3	Holidays . . . . .	7-5
7.4	Sick Leave . . . . .	7-6
7.5	Leave for Jury Duty and Court Appearances . . . . .	7-6
7.6	Voting Leave . . . . .	7-7
7.7	Military Leave . . . . .	7-8
7.8	Personal Leave . . . . .	7-10
7.9	Bereavement Leave . . . . .	7-10
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
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 . . . . .	7-26
Form 7.1F	Certification of Health Care Provider for Employees’ Serious Health Condition (Family and Medical Leave Act of 1993 (“FMLA”)) . . . . .	7-27
Form 7.1 F(1)	Certification of Health Care Provider for Family Member’s Serious Health Condition (Family and Medical Leave Act of 1993 (“FMLA”)) . . . . .	7-31
Form 7.1 F(2)	Certification of Qualifying Exigency for Military Family Leave (Family and Medical Leave Act of 1993 (“FMLA”)) . . . . .	7-32.3
Form 7.1 F(3)	Certification 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 . . . . .	7-32.10
Form 7.1H	Sample Letter Concerning Family and Medical Leave Expiration . . . . .	7-32.11
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 7.5A	Jury Leave Policy . . . . .	7-39
Form 7.5B	Jury Duty and Court Appearances Policy . . . . .	7-39
Form 7.6A	Voting Leave Policy . . . . .	7-40
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

TABLE OF CONTENTS

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
<b>CHAPTER 8. EMPLOYEE HANDBOOKS . . . . .</b>		<b>8-1</b>
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
8.3.9	Performance, Discipline, and Problem Resolution . . . . .	8-7
8.3.10	Attendance . . . . .	8-8
8.3.11	Drug and Alcohol . . . . .	8-8
8.3.12	Work Rules/Code of Conduct . . . . .	8-8
8.3.13	Dress Code . . . . .	8-8
8.3.14	Search, Privacy and Use of Company Electronic Equipment . . . . .	8-9
8.3.15	Use of Company Equipment . . . . .	8-9
8.3.16	Conflicts of Interest . . . . .	8-9
8.3.17	Outside Employment/Moonlighting . . . . .	8-9
8.3.18	Solicitation . . . . .	8-9
8.3.19	Confidentiality . . . . .	8-9
8.3.20	Notice of Right to Access Personnel Files . . . . .	8-10
8.3.21	Other . . . . .	8-10
Form 8.3A	Sample Index to a Comprehensive Employee Handbook for a Large Employer . . . . .	8-11
Form 8.3B	Employee Handbook Checklist . . . . .	8-15
Form 8.3C	Employee Handbook Review . . . . .	8-19
Form 8.3.1A	Employee Acknowledgment Form . . . . .	8-23
Form 8.3.1B	Employee Acknowledgment Form . . . . .	8-24
Form 8.3.1C	Employee Acknowledgment of New or Revised Policy. . . . .	8-24
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 8.3.15A Use of Company Equipment . . . . . 8-33

Form 8.3.15B Use of Phone and Mail Systems . . . . . 8-34

Form 8.3.15C IT Equipment and Computer Check-out Policy . . . . . 8-34

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

**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 . . . . . 9-4

    9.2.2 Electronic Use Policies . . . . . 9-6

9.3 Improper Disclosure of Private Information . . . . . 9-7

Form 9.1A Workplace Searches . . . . . 9-10.1

Form 9.1B Workplace Privacy . . . . . 9-11

Form 9.1C Personal Email 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

TABLE OF CONTENTS

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 9.4	Checklist for Avoiding Employee Privacy Claims . . . . .	9-23
<b>CHAPTER 10. TRADE SECRETS, RESTRICTIVE COVENANTS, AND CONFIDENTIALITY AGREEMENTS . . . . .</b>		<b>10-1</b>
10.1	Trade Secrets Statutory and Case Law Considerations . . . . .	10-1
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
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 . . . . .	10-25
Form 10.3D	Confidentiality, Intellectual Property, and Non-competition Agreement . . . . .	10-28
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 . . . . .	10-42

**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

11.2 Termination of Employment for a Definite Term .....11-6

11.3 Employee Resignation as Constructive Discharge .....11-7

11.4 Pre-termination Review .....11-7

11.5 Termination Policies .....11-8

    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 Release of Claims Additional Terms in Separation and Termination Agreements .....11-14

11.9 Employee Settlement Agreements .....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

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

TABLE OF CONTENTS

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) . . . . . 11-51

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 11.8.2A Family and Medical Leave Act Provision for  
Inclusion in Separation/Settlement Agreement. . . . . 11-74

Form 11.9A Short Form Settlement Agreement of Litigation  
Claims with Mutual Releases (Employee under 40 Years Old) . . . 11-75

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

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
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-7
Table of Minnesota Laws . . . . .	Index-12
Table of Federal Laws . . . . .	Index-16
Table of Cases . . . . .	Index-20