

Human Resources

By Stephanie Ramsey



HR REALITY CHECK ✓

HR CASE
STUDY #22

Yep, the Stories are True!

Scenario: Sally and Steve Mooney started Weacrematieu Cremation and Funeral Services 25 years ago. Located in the heart of a popular tourist area in the Southeastern United States, the local population continues to expand as jobs are readily available and the cost of living reasonable. Weacrematieu has experienced significant growth each year in the number of families it serves, which has created challenges for Sally and Steve in terms of hiring licensed qualified staff and creating attractive benefit programs to retain them. It has been difficult to find employees who see working at Weacrematieu as a “calling” rather than just a “paycheck.”

To encourage employees to have long-term vision, some of the benefits require employees to be employed for extended periods prior to qualification, such as the retirement plan. Sally has created an employee handbook that provides a summary of some of these benefits and does her best to update it and provide the updated version to the employees and new hires.

Recently, a licensed funeral director, Gavin, who had been working for Weacrematieu for just under a year was terminated “for cause.” He was terminated for taking unauthorized vacation. After receiving his final paycheck, Gavin sent an email to Sally asking for the money from his retirement funds stating that per the employee handbook, he qualified to participate in the retirement plan after 90 days but was never given the paperwork to sign up. It was his perception that Weacrematieu owed him the amount it would have contributed if he had participated in the plan. Sally decided she needed to reach out for professional help to determine what the business was obligated to pay to its terminated employee.

What Are the Rules?

It is important to note that employers are not obligated to provide any type of retirement plans for their employees under federal laws. However, if they do provide such plans, they must follow the guidelines of those plans for all employees.

Qualified retirement plans that are typically administered by a third party have very clear guidelines on how participants qualify and can contribute to the plan as well as the employer’s obligation. These qualified retirement plan documents are the determining agreements and supersede any other documents that refer to the retirement plan benefits associated with the qualified retirement plan offered by the employer.

Employee benefits (such as retirement benefits) that are summarized or mentioned in an employee

handbook are not typically intended to be contractual commitments by the employer unless it is so stated or implied. When identified in the employee handbook, they are intended to be merely descriptive of the benefits available to employees. Such benefits typically are complex and the details of the full benefits and how they can be utilized by the employee can be found in plan summaries provided by the vendors or third-party administrators. Additionally, employers usually reserve the right to revoke, change or supplement employee benefits identified in the employee handbook at any time without notice. Also, it is common for employers to include a statement in their employee handbooks that states, “No policies within employee handbooks are intended as a guarantee of continuity of benefits or rights.”

Were Mistakes Made?

Yes, Weacrematieu’s employee handbook did have a policy section on the retirement plan that indicated that employees would become eligible to participate after 90 days of employment. An investigation revealed several facts:

1. The retirement plan was a qualified 401(k) plan with a third-party administrator. The following eligibility rules applied to the plan:

- a. Employees must be 21 years of age.
- b. Full-time employees become eligible after one year from the date of employment.
- c. After one year of employment, they can enroll for the plan on the first or seventh month of the plan year (Jan. 1 or July 1).

2. The language in the employee handbook was in error and was referring to the qualification for health insurance. This led to confusion on the part of the terminated employee.

3. The employee was never enrolled in the plan because he was terminated prior to the time in which he could formally enroll based on the guidelines of the plan.

Resolution of the Issue

Sally and Steve worked with their third-party administrator and other professionals to create a written response to clearly illustrate to Gavin why he was never enrolled in the qualified retirement plan. As he was never enrolled in the plan, the employers never made any contributions on behalf of the terminated employee, so he did not suffer any loss of benefit in this situation. Gavin did point out the error in the language under the retirement plan section in the employee handbook, however, that same section clearly indicated that, “Because of the complexity of the plan, employees should refer to the Summary Plan Description for specific information.” Gavin never requested this information on the retirement plan. It was important to make sure that Sally and Steve understood that the response to Gavin needed to be simple and straightforward. Regardless of his belief that he should have been compensated for the lost opportunity, the opportunity never existed, which is the most critical point in this situation. The fact that he felt that he would have been contributing to the plan if he had the opportunity is an argument that is senseless to pursue or defend.

Preventive Measures

It is important that references to benefits in employee handbooks accurately state the required guidelines for eligibility or simply refer the employee to the summary plan description. This will avoid situations that could lead to litigation or complaints filed with the U.S. Department of Labor. A general statement at the beginning of the employee handbook clearly stating that the manual is not intended to be a contractual commitment or guarantee of continuity of benefits or rights is critical. If you are not sure if your employee handbook is properly worded, please contact us. •