

Disclaimers in hr communications: literature review sample

[Literature](#), [Russian Literature](#)



Introduction

This review intends to discuss the literature on Disclaimers in the context of HR Communications. Disclaimers are statements which appear in a document, action or in a communication in order to specify in advance the limits of legal possibilities, ownership, effects or reactions of these documents and actions and communications. Often the disclaimers are used as a tool to avoid predicted damages caused by possible legal actions. However, the legal validity of disclaimers in general is loose and is often dependent on the interpretation by the jurisdiction varying from case to case.

Disclaimers in the context of Human Resource Management include the entire gamut of employee life cycle activities which are hiring, rating, training and firing. The job advertisement released to find a suitable candidate, the contract document which defines the boundaries and the other terms and conditions of the job, the policies which come into prominence on various occasions during an employee's stay in the organization and finally the end of the contract which could be through retirement, a resignation or a termination - all these stages of the employee's life cycle demand necessary and apt disclaimers to be used. The absence of disclaimers leaves a huge scope for interpretation and there in the organization could face heavy legal damages.

This literature review discusses how key texts in the subject of Human Resource Management have viewed disclaimers over the course of time. In that, themes such as disclaimers in job advertisement and job offers, employee handbooks, HR policies and cases by or against employees are

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being discussed from the point of view of texts referred to. Research from journals on the topic of disclaimers has also been included in the review.

- Literature on Hiring-Related Disclaimers

An advertisement calling for applications for a particular role are often designed to attract the right candidates. However in the process one might miss out on key disclaimer information to be posted in the advertisement. Often, the job posting disclaimers relate to segregation. A particular role might demand only male employees while some might require female employees. Such advertisements could be taken to court on the grounds of breach of equal opportunity. Apt disclaimers can help avoid such a situation. John David Skrentny in his 2004 book *The Minority Rights Revolution* discusses the EEOC or Equal Employment Opportunity Commission's standpoint on disclaimers in job advertisements. In the case of a gender-discriminatory advertisement, the EEOC had ruled in September 1965 that the practice of requesting for candidates of a particular gender was agreeable as long as the advertisement clearly stated through a disclaimer that the position was open to both the sexes. However after the newspaper association -ANPA complained that they feared a pull back from advertising corporations as well as wastage of print space, the EEOC relaxed its stand and asked for such disclaimers to be done away with .

On the topic of discrimination and disclaimers, Garrett and Taylor, point that " All too often employees think that equal opportunities are the responsibility of their employers alone, while employers believe that by adding a disclaimer to the Job advertisement they have done all that is necessary" .

The literature on disclaimers in job advertisements has taken a view on the

ethical as well as the legal aspects. Legally, as it comes out clearly from the EEOC ruling, the disclaimer is only a pacifier or a line to appeal to the emotions. The presence or removal of the disclaimer has no legal standing on the act of discrimination as such. The EEOC completely reversed its decision of inserting a disclaimer based on the fact that the newspaper complained of it affecting their economies. This goes on to imply that the disclaimers were first asked to be inserted merely to pacify both ends of the discrimination gradient and further stressed the point that disclaimers act as an additive cushion to the businesses whose primary motive is to make a profit.

Secondly, the ethical aspect of disclaimers in job advertisement was highlighted through the arguments in Garret and Taylor's book. This leads to a proposition that the literature on disclaimers has looked at the softer aspect of the concept. The thought being established here and in similar works is that the disclaimer can't be useful as a disinterested byline but should instead be applied in spirit. While accusing the employees of passing the buck, the employers have been blamed for considering the disclaimer to be the end of all problems. While in reality, only a genuine in-spirit initiative towards what the disclaimers claim will establish the intent of the Human Resource team of the organization and in turn, the organization itself.

2. Literature on Disclaimers in Employee Handbooks and Policy Documents

Employee handbooks are the documents through which the HR policies of the companies are communicated to the employees. While the policies themselves are documented officially in long and tiresome text, the handbooks aim to shorten these and provide a smaller version to the

employees in a presentable and accessible manner. However, while shortening the policies to fit the presentable format, one is likely to omit a lot of clauses and sub clauses that had been meticulously designed to protect the organization from legal hassles arising out of the employees' dissatisfaction. It is in this context that some primary and basic disclaimers in the HR handbook or the employee handbook are important. They bring in the much needed reality to the handbook warning the employees that the information in the handbook is a smaller version of the larger picture. For an accurate and full reading of the policy, one must visit the contents of the original policy handbook.

As opposed to this, the full-fledged policy document - used interchangeably with Employee handbook in some of the literature being quoted in the following paragraphs - also needs a disclaimer for it to be declared as the final authority on all matters relating to the employees HR lifecycle matters. This disclaimer, as opposed to the one in the shortened handbook, is to re-affirm authority and not to deny responsibility. It is suggested as a necessary practice that the full-fledged Employee handbooks include some standard disclaimers.

Various books such as Design your own effective employee handbook by Michael Devon guide the HR manager to write down appropriate disclaimers. In his guide to the handbook disclaimer, Devon includes:

The information in this Employee Handbook and its properly filed and distributed updates supersede all verbal information relayed to the employee. If the employee has been given verbal information or instructions that conflict with this employee handbook, then the employee handbook is

the final authority on the company policy, and the employees should adhere to all policies in the employee handbook at all times .

Doherty, Helms and Wright (2005, p. 97) argue that the inclusion of a disclaimer makes all the difference between the terms and conditions in an employee hand book. Claiming that the text in the employee manuals and policy documents are generally loose, the authors cite examples from court cases to show that the disclaimer at various instances has played a crucial role in the decision being in the favor of the employer. The authors thus urge the HR policy makers of the organization to help achieve this balance in the case of legal findings though the use of disclaimers .

2. 1 Prominence of the Disclaimer

Smith and Mazim have written about how prominent these disclaimers in the HR handbook need to be. Their book which primarily focuses on a layman's version of the HR handbook deals with minute aspects such as positioning, font and size. Now while these might not be great contributors to the literature on disclaimers in terms of context and history and conceptual association, these do stress on an important symbolic relationship . The point being made in the book is that the disclaimers need not be small in text. The very size of the text in the disclaimer which in many finance related documents is almost unreadable can be the cause of concern. These could go on to further dent employee morale and hence motivate the affect employee to take legal action which could later be justified. The stress therefore is to make the text smaller.

In a similar vein, Muller stresses on the prominence of disclaimers in the book the legal side of HR . The thought in this literature is similar to that of

Smith and Mazim where in the focus is being laid on the prominence not only from an ethical or moral point of view but also from a legal angle. More importantly and interestingly the book focusses on delivering the practicality behind a prominent disclaimer. The fundamental thought here is that even for practical reasons the HR must ensure that the disclaimers are prominent. The reasons which are being called as practical here in this context consist of an HR attitude of transparency which the book says is a must in order to ensure employee morale. Prominence of the disclaimer goes a long way in establishing this morale as the employee feels the HR department as well as the organization itself has nothing to hide from him. Psychologically, this goes on to decrease a lot of legal possibilities as the problem is often solved in the mind of the employee itself.

Both the above examples go on to stress on how the literature on disclaimers in HR handbooks stress on prominence as one of the key parameters in as far as display of the disclaimers is concerned. Widely speaking the literature agrees on the fact that the days of minute font disclaimers or other marketing flash techniques such as “ conditions apply” are over. The call of the day for the HR department is to maintain transparency and disclaimers in fact provide an opportunity to do so.

3. The Employment at Will Doctrine and Consequences of Disclaimers

Lawson argues that an employee handbook can be a valuable legal defense for an employer faced with an employee lawsuit alleging that the former employee was certain length of employment or permanent status . With this Lawson opened up a host of literature that attempt to capture the arguments that surround the “ Employment at will” doctrine and the associated

consequences on disclaimers and their use. Ford, Notestine and Hill bring to the table the Nevada example to throw further light on the entire dogma that besets the employee to go to court with an “ employment at will” argument .

The decisions at Nevada as highlighted in this book agree with the rest of the literature on the subject that this is the one instance of HR manpower lifecycle handling that the disclaimer plays a key role in. While the disclaimers are otherwise only loose statements with not a consistent legal standing, their greatest role is in protecting the employer from many employment at will demands from the past employees. Some of these cases including those discussed in the Nevada example throw light on how even existing employees have gone to court with such demands and on how the disclaimers have come to the management’s aid.

Nailing the point, the 9th edition of Problems in health care law by Robert Miller, points out how the Supreme court of Delaware ruled stating that unless the employee handbook contain a clear disclaimer stating that the handbook cannot act as a job offer, the handbook is liable to be considered as a contract between the employee and the employer . This decision has been vastly considered to be a ruling that has gone on the impact the very nature of all disclaimer related cases in human resource management.

The Economics of Law and Employment Law , Managing an HR Department , 5 Tips for creating HR policies that uphold in court , 2006) and HR Policies and Procedures: Manuals for Medical Practices are all books and reports which have gone a long way in establishing the importance of the disclaimer in the contest of the Employment at will doctrine. These books along with the

other literature quoted in this section have brought out the paradigm facing the HR managers of today in order to establish a context for further research.

4. Conclusions of Literature Review

The literature thus far focused on a mass of literature from books reports and journals based on the context setting of disclaimers in the HR practice. The literature accessed has in unison claimed that the legal binding of disclaimers in general and in relation to HR documents is not heavy but instead depends on the particular case. In the case of job advertisements and discrimination accusations the literature has called for a more in-spirit implementation of the content of the disclaimer, while claiming that cases can go either way as shown by the example mentioned in the review here. A section of the literature on disclaimers in HR has also focused on the prominence of the disclaimers as being a key to winning court decisions as well as projecting a transparent picture of the organization. The most significant contribution of this literature to the topic however is in the plethora of texts that touch upon the doctrine of “ employment at will” and how disclaimers are crucial to ensuring that the doctrine is not used against the organization –something the HR department must ensure at all costs. In conclusion, the literature as opened up avenues for further research in the area of how disclaimers can be worded in a way that the legal consideration rate or legal success rate of the cases fought on the hinge of the disclaimer are higher. The current literature suggests that there is further scope for study in this particular area, among others.

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