

***Employee Handbooks:
The Basics***



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Styles of Employee Handbooks

- Kitchen-Sink Approach
 - 100+ Pages
 - Sections, Sub-parts, etc.
- Minimalist Approach
 - A few pages
 - Just the basics
- Nothing



Employee Handbooks

What is required?

NOTHING.

Employee Handbooks

Then, why do I have one?

Purposes of Employee Handbooks

- Communication between the employer and employee
- Outline the mission and goals of your company
- Advise employees of policies and expectations
- Explain work rules
- ***Proactively address potential litigation!***

Legal Dangers

- Labor law is constantly changing
- State/local law requirements
- Fairness for the employer and employee
- Failures to update/seek attorney review for compliance

Drafting the Employee Handbook

- Assemble pre-existing policies, memos, statements, individual employment contracts, pamphlets, benefits information, etc.
- Outline subjects and topics you wish to include
- Check state/local law
 - Involve legal counsel and seek advice
- Draft, proofread, and **proofread again**

Employee Handbook “Must Haves” (from a Legal Perspective)

- At-Will Employment Disclaimer
- Equal Employment Opportunity Statement
- Anti-Harassment Policy
- FMLA (if applicable)
- Fringe Benefits (eligibility and participation requirements)
- Privacy (Computer, Phone, etc.)
- Progressive Discipline (But, stick to it)
- Drug-Testing Policy
- Acknowledgement Forms

At-Will Employment Disclaimer

- Explicitly state that the Employee Handbook **does not** create an employment contract
- Emphasize that the employer-employee relationship is **at will** and nothing included in the Employee Handbook is intended to alter or change that relationship
 - The Employee can leave at any time, for any reason
 - The Employer can terminate the employee at any time, for any reason (so long as it is not an illegal or discriminatory reason)
- Include this disclaimer in **BOLD** and *Italics*
 - Make sure it is clear and conspicuous in font, language, and location

Equal Employment Opportunity Statement

- Provides that discrimination is prohibited for **all** categories protected by law
 - Religion, Age, Sex/Gender, Disability, Race, Ethnicity, etc.
- Emphasizes that discrimination is prohibited in any manner or method
 - E.g., promotion decisions, hiring decisions, termination decisions, disciplinary decisions, pay decisions, etc.
- Outlines a mechanism for employees to pursue if they feel they have been discriminated against
 - Make sure there are alternative methods in the event that the employee feels uncomfortable reporting the alleged discrimination to the designated employee

Anti-Harassment Policy

- Provides that harassment is prohibited for **all** categories protected by law
 - Religion, Age, Sex/Gender, Disability, Race, Ethnicity, etc.
- Includes a complaint procedure for employees to follow if they believe they have been harassed
 - It is necessary to include multiple avenues for complaints to limit any claims that the procedures were insufficient
- Contains an anti-retaliation provision, indicating the employees who report suspected harassment ***will not be retaliated against for making such reports***

Family and Medical Leave Act (FMLA)

- If the organization is covered...then:
- Basics:
 - Employee Eligibility Requirements—12 weeks and 1,250 hours
 - 12 weeks of UNPAID leave
 - Serious health condition, birth, adoption or placement of child, qualifying exigency leave (military leave), military caregiver
 - Explain how the 12-month entitlement period calculated
 - Detail what is expected from employees to request FMLA leave
- Do you require employees to exhaust Paid Time Off (PTO)?
 - If so, the requirement must be in writing

Benefits

- Detail the benefits available to employees
- Describe **who** is eligible to receive benefits and **when**:
 - Define eligible classes (i.e, classifications/hours worked)
 - Include Vesting Schedules, if applicable

Computer and Phone Privacy

- Clearly state that employees enjoy **no right of privacy** for company computers and phones
- Reserve the right to inspect, collect, and listen to contents of employee computers and phones
- Prohibit accessing “bad” content
 - Indicate that violations of this policy could expose an employee to disciplinary action

Other Privacy Concerns

- Video Surveillance/Security Cameras
 - No video cameras in areas designed for health or personal comfort of employees
 - i.e., break room, bathroom, etc.
 - No audio recordings
- Indicate that desks, lockers, company vehicles, and any other physical property of the employer are the employer's property and may be inspected and searched at any time and for any reason

Progressive Discipline

- Outline “no nos” for employees
 - BUT, indicate that the examples provided are **not intended as an exhaustive list**
- Outline a progressive disciplinary policy (i.e., verbal counseling, written reprimand, suspension, termination, etc.)
 - BUT, reserve the right to abandon the progressive disciplinary steps and skip right to termination

Drug-Testing Policy

- If you choose to include, follow the West Virginia Safer Workplaces Act
 - Must be distributed to every employee subject to testing and available for review by prospective employees
 - Permits testing for drugs and alcohol
 - Includes notice provisions
 - Includes specific testing procedures that must be followed for collections
 - Outlines when testing can be completed, including, for example:
 - Pre-hiring
 - Deterrence/Detection of illicit drug use
 - Investigation of potential impairment by an employee
 - Investigations into workplace accidents, theft, or misconduct
 - Maintenance of safety or productivity
 - Outlines disciplinary procedures for positive drug/alcohol tests

Arbitration Agreements

- Outlines that all disputes between the parties will be subject to arbitration
- Provides what laws apply in arbitration
- Outlines the types of disputes that are governed by the arbitration agreement
 - E.g., discrimination, harassment, wrongful termination, wage-and-hour disputes, etc.

Other General Workplace Policies

- Work hours, work week, attendance policy
- Leaves: Jury duty, funeral, vacation, sick leave
- Workers' Compensation provisions
- Reserve the right to modify policies without notice—there are some modifications that require notice by law
 - Check with an attorney before making a modification
- Reference release
- Workplace Violence prevention policies
 - Code of Conduct
 - Prohibition on Drugs, Alcohol, and Weapons
 - Anti-Harassment Policy

Acknowledgment Forms

- Content of Acknowledgment Forms:
 - Read, understood, and had the opportunity to ask questions
 - Promise to abide by the policies contained in the Employee Handbook
- Get Acknowledgment Forms signed **early and often**
- Update your Employee Handbook often, and have employees sign receipt/acknowledgment forms soon after each update
- Get specific acknowledgement for specific policies (e.g., harassment policy, Code of Conduct, Arbitration Agreement, etc.)
- Place Acknowledgement Forms in the employee personnel files so they are easily accessible should the need arise

Tips for Multi-State Employers

- Options for ensuring compliance with various state laws:
 - Separate Employee Handbooks for each state
 - An Employee Handbook in compliance with federal law including state addendums/supplements
 - Base your Employee Handbook on the state law with the most protective statutes/regulations

Distribution and Training

- Provide hard copies to all employees at the time of hire and at the time of any updates
- Upload copies to your Intranet or company platform
- Obtain acknowledgments reflecting distributions
- Training:
 - Inform employees of the policies in the Employee Handbook
 - Provide opportunities and outlets for questions
 - Train managers on implementation and enforcement of the policies
 - Train all supervisors on the Progressive Disciplinary Policy and all documentation needed for disciplinary actions
 - Train supervisors on what to do if they encounter a question (i.e., who to ask)

Key Learning Points

General Tips

- Get an attorney to review your Employee Handbook for compliance with state and federal law
- Regularly review and update your Employee Handbook
 - Laws change periodically, so you need to ensure you are compliant
- Be clear and specific in your policies
- Once written, **follow the policies in your Employee Handbook**
 - If you do not follow your own Handbook, it can become your worst enemy in litigation
- Ensure that Acknowledgment Forms are timely received and placed in a safe place.

Questions?

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