

EMPLOYEE HANDBOOK

2018 Top 10 Updates

1. Vaping - Make sure smoking policy addresses vaping.

Employers should consider updating their policies on smoking to address vaping, which has become increasingly popular. Vaping devices are used to smoke tobacco and marijuana products, among other products.

2. Reporting Policies - Make sure handbook provisions do not discourage employees from reporting potential legal violations to government agencies.

The Defend Trade Secrets Act of 2016 provides businesses with a legal remedy if trade secrets are misused. However, for employers to recover attorney's fees and punitive damages, they must provide workers with notice about their right to immunity if they report potentially illegal activity to a government agency or an attorney

The Occupational Safety and Health Administration began enforcing new anti-retaliation provisions on Dec. 1, 2016. Under these rules, employers cannot retaliate against employees for reporting a workplace injury. The agency noted that it would be looking at employer policies to ensure they would not lead a reasonable employee to believe such retaliation may occur if they reported an injury. Automatic drug testing after every accident is viewed as problematic under the new guidelines.

The Equal Employment Opportunity Commission and the Securities and Exchange Commission also have targeted any policy or agreement that may be interpreted to curb an employee's right to go to these agencies—or other agencies—to report violations of the law.

3. Bullying – Make sure your policies address workplace bullying.

Workplace bullying is a topic of increased scrutiny among employees and employers alike. Now is the time to get in front of the curve and ensure that you have proper policies in place.

4. Political Affiliation & Transgender Policies – Are you complying with the law and furthering company values?

If you operate in a location with a local or state law that prohibits discrimination based on gender identity or political affiliation, then you should ensure that your equal employment opportunity, discrimination, and harassment policies, as well as your complaint procedures, are updated to reflect coverage. If you are a government contractor/subcontractor update your EEO policy to include gender identity and sexual orientation as protected classes.

5. At-Will Statement – Ensure you have a comprehensive and robust at-will statement

Review your at-will statement and make sure that it states: 1) that the employer can terminate an employee with or without cause and with or without notice; 2) it supersedes any prior agreements or understandings; 3) it can only be changed in writing signed by the owner/president.

6. Retaliation Policies – They must cover alleged victims and witness

Many handbooks say the organization will not tolerate retaliation, but not all such passages state that they protect witnesses and others who participate in an investigation of a discrimination claim or oppose an unlawful practice. In addition, the handbook should state that the employer cannot promise confidentiality for people who make retaliation or discrimination complaints. Instead, it can say that their identities will be revealed only on a need-to-know basis. The process must be fair for both the person making the retaliation or discrimination claim and the individual who is being accused.

7. Drug Policy – Address changes to medical marijuana laws

Many states, including Florida, have now made marijuana legal, either for medical use or recreational use. It is, however, still illegal on a federal level, so your employee drug policy can simply state that no illegal drugs are allowed. You should also include information on your drug-testing policy.

8. Lactation Policy – Make sure you have one

The Patient Protection and Affordable Care Act (ACA) requires employers subject to the Fair Labor Standards Act (FLSA), (*unless they have fewer than 50 employees and can demonstrate that compliance would impose an undue hardship*), to provide unpaid, reasonable break time for an employee to express breast milk for one year after her child's birth. Several states and some municipalities have similar requirements.

9. Salaried Exempt Employees Safe Harbor Policy – Ensure that have the safe harbor provision specifically articulated.

The Department of Labor (DOL) has provided employers with an affirmative defense if improper deductions are erroneously made by the employer. An employee will not lose his or her exempt status if the employer has a clearly communicated policy that prohibits improper deductions and sets forth a clear complaint procedure. The DOL has found that such a policy would be considered clearly communicated if it is published in an Employee Handbook or located on the company intranet. The employer must also include information that indicates how an employee should report the violation, such as to notify the human resources department, supervisor or owner in writing.

10. Other Stand Alone Policies

There are additional stand-alone policies and forms that you all should have.

- a. FCRA Packet.
- b. FMLA Packet.
- c. Arbitration Agreement (if applicable).
- d. I-9 procedures.
- e. HIPAA procedures.

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