

PUT HANDBOOK REVIEW ON YOUR 2009 “TO DO” LIST

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Not complying with current law can be expensive in today's legal climate. One of your New Year's resolutions should be to review your employee handbook and employment-related policies to make sure they are up to date. When doing so, remember to draft your handbooks so that your employees actually read them and follow your policies.

In this article we'll offer advice on how to write handbooks employees will actually read, and also identify 10 important policies that every employer should have in place to minimize the risks of employment-related litigation.

Making A Handbook Readable

First and foremost, consider your employee handbook as a management communication tool – not as merely a document for strict legal compliance. As such, your handbook should positively reflect the values of the upper management and create an employee-friendly environment.

In the world of handbook drafting, some handbooks are “integrity-based” and others are “compliance-based.” Integrity-based handbooks are proactive, morally oriented, management-directed, positive and encouraging. The policies in an integrity-based handbook reflect internal values, not external obligations.

On the other hand, compliance-based handbooks are defensive, legalistic, lawyer-driven, punitive and based on externally imposed rules. Where possible, employers should adopt the integrity-based model for their handbooks and hold employees to higher standards than those minimally required by applicable laws. Companies that set this positive

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tone in today's world are more likely to attract the next generation of workers and to succeed into the future.

Although many of the policies in a handbook will be common across industries, every employer should endeavor to tailor its handbook to its own unique situation. Tailoring the handbook should take into account your company's size, geographic location or scope of operations, your operating culture, employee expectations, and other relevant factors. Tailor your handbook to set the proper "tone" and to comply with the many laws that may apply.

Use Easily Understood, General Terms

A handbook is just a summary of benefits and your most important policies. It's not intended to be a comprehensive personnel procedures manual. Nor does it need to address every possible contingency that can be expected.

By way of example, the military leave policy does not need to go into every detail about what the company will do for service members while they are out on leave or when they return. Instead simply state that you support the concept of military leave, require employees to provide advance notice of military leave, and commit to comply with all applicable laws covering service members.

Similarly, sub-sections describing insurance or retirement benefits do not need to include deductible amounts or other coverage details that are likely to change from time to time. Instead, insurance-related sections should simply state that the employer provides such benefits, that benefit levels and costs are subject to change from time to time and that the employer pays the majority of the cost for such benefits. Employees with specific questions should be referred to either the Human Resources department or to the current Summary Plan Description document.

By using such general language, the handbook will be more readable and more dynamic in that it will not have to be revised and re-published every time specific benefits change. Generalities may also serve to allow management more discretion with specific situations that may arise.

Begin With A Personalized Message

Your handbook should begin with a letter from the company's founder or President welcoming employees to the organization. Following that personalized message, the handbook should contain a positive description of the

“History of the Company.” This section should inform the new employee about significant facts in the company’s history or about its plans for the future. The idea here is to portray the company in the most positive light and to make new employees feel that they are proud of their new employer’s standing in the industry or community.

Cover Company Benefits In The First Main Section

When employees read a handbook, they naturally want to know what the employer is going to “give” them for working there. To meet this expectation – and to make a positive first impression on the handbook reader – the first major section of the handbook should list all of the benefits and other things of value that you provide employees in addition to just their pay. Obviously, this part of the handbook should list all of the insurance and retirement benefits, preferably with a one paragraph or so description of each. Listing each such benefit in a separate paragraph allows the table of contents to include a heading for each benefit and makes the list of benefits have more impact on employees.

This section of the handbook should also include subsections on the employees’ pay, paid holidays, vacations, and other paid time off from work, such as sick or medical leave, bereavement leave, and civic duty leave. Leave that is not paid should also be listed here, including extended medical or family leave, military leave or personal leave. Other benefits, such as tuition-reimbursement programs, relocation benefits or employee discounts should also be listed here. Even *government-required* benefits should be included here as subsections, including social security, workers’ compensation, COBRA, modified duty or reasonable accommodation policies and other benefits which you provide should be addressed in this major section of the handbook.

Emphasize Safety and Security Issues

The handbook should stress your concern for safety in the workplace in the most employee-oriented way possible. No employer wants its employees to be injured at work and this message should come through loud and clear in the handbook. Employees that get this message will be positively influenced by the handbook.

Your safety programs, references to a safety committee and training, and to and policies covering drugs and alcohol, workplace security policy, weapons, driving and criminal

records, workplace chemicals and related matters will all reinforce an overarching concern for safety on the job.

Organize the Handbook with Many Headings

To make a handbook more readable by employees, use numerous headings and sub-headings as guides. Headings break up long stretches of text and help employees to understand the handbook's content. They also make it easier to find topics and for employees to actually use the handbook. A table of contents is essential and can also be used as an outline for the orientation process.

Having outlined a few ways to make an employee handbook more likely to be read by employees, summarized below are 10 important policies that every employee handbook should address. And all of them should be reviewed periodically for legal compliance.

10 POLICIES THAT SHOULD BE INCLUDED IN YOUR HANDBOOK

1. No Discrimination, Harassment or Retaliation

With harassment verdicts against employers sometimes running into millions of dollars, employers need written policies prohibiting all types of workplace discrimination, harassment and retaliation. Such policies should, at a minimum:

cover **all** applicable protected classifications, such as race, color, national origin, sex (including pregnancy and same sex), religion, age, disability and other categories, including categories that may be protected by state or local laws or regulations;

- contain specific examples of prohibited conduct;
- explain the consequences of policy violations;
- contain a specific reporting procedure;
- contain a "bypass" reporting procedure; and,
- prohibit retaliation against those who report violations.

2. Problem Solving or Grievance Procedures

An effective problem-solving procedure can help an employer to avoid liability for discrimination, harassment, retaliation, safety complaints and union activity, as well as improving employee morale. Such policies should include a

step-by-step procedure for addressing employee concerns for addressing complaints. Employees should follow the “chain of command,” but they also should have access to a “bypass” procedure for reporting concerns if for some reason they cannot follow the standard procedures. In recent years, the best advice has been to establish a “special” direct procedure for claims of discrimination, harassment and retaliation – outside of the “normal” chain of command.

3. At-will Statements

Employee handbooks and written policies should contain the necessary legal disclaimers in prominent places. For example, a handbook should state that it is not a “contract” and that employment is “at-will” under state law and can be terminated at any time, for any reason, with or without cause and without advance notice. Similar language should be included on the employment application and on a separate “acknowledgement of receipt” of handbook form signed by each employee and retained in the employee’s personnel file.

4. Rules of Conduct

Avoid both oral and written promises of “progressive” discipline and lists of specific work rules with levels of discipline. Instead, rules of conduct should state that employees can be discharged immediately for a variety of things. That statement should be followed by a list of broadly defined acts of misconduct, such as absenteeism or tardiness; breach of confidence or security; conflict of interest; damage to property; fighting, threats or weapons; fraud, dishonesty or false statements; harassment; insubordination; misuse of property; sleeping or inattention; solicitation or distribution; substance abuse; theft; unlawful activity; unsafe work practices; or other applicable misconduct. “Poor performance,” although technically not “misconduct,” also should be included as a basis for termination.

5. Drugs and Alcohol

Drug-and-alcohol policies should require as a condition of employment that applicants or employees not have drugs or prohibited amounts of alcohol “in their systems.” Employers should avoid policies that refer to being “under the influence” or “impaired” since those terms create a higher legal burden for employers. Such policies should state the consequences for testing positive or otherwise violating the

policy and that the employer reserves the right to test “at any time” and to conduct searches.

6. Workplace Security and No Weapons

In view of the increase in workplace violence, your policies should address workplace security and weapons. A workplace security policy should state that any employee who commits or threatens any violent act against any person while on company premises or at work will be subject to immediate discharge. The policy also should cover off-site conduct and procedures for reporting and investigating violent acts or threats. This policy should also reaffirm the your right to conduct background checks at any time during employment.

Of course, compliance with the Fair Credit Reporting Act is still required even with such language in the handbook. And several states now have some version of a “bring your gun to work” act, so be sure that your policy is in compliance with that, as well.

7. Safety

Similar to workplace security, safety should be workplace priority and a handbook should contain essential safety rules and procedures. In addition to listing specific safety rules and procedures, the handbook should include at least general references to the employer’s safety “program”, its safety committee, recordkeeping requirements, training procedures and overall safety program. Safety policies should reflect compliance with current standards and regulations and a “safety coordinator” should be specifically identified in the handbook.

8. Electronic Communications

With the extensive use of e-mail and other electronic communications systems, you’ll need to state your policies about the use of such tools. Among other things, specify your right to access such “systems” for business-related reasons; prohibit (or limit) personal use of such systems; prohibit insulting or offensive communications such as sexually explicit or offensive messages, jokes or cartoons, propositions or love letters, ethnic or racial slurs or any other harassing or disparaging messages; and require employees to follow the company’s encryption procedures.

Should a lawsuit arise, electronically stored and even deleted information likely will be accessible to the opposing party. In view of the recent changes to the Federal Rules of

Civil Procedure, you should also include references to your document retention and "litigation hold" policies.

9. Confidential Information and Conflicts of Interest

At a minimum, have policies in your handbook that protect the company's intellectual property, business relationships, information and similar assets. These policies should prohibit conflicts of interest and unauthorized use and disclosure of confidential information and trade secrets. A confidential information policy should state, among other things, that unauthorized use or disclosure of such information may result in discipline, up to and including immediate discharge or civil or criminal actions by the employer, as appropriate.

10. Family and Medical Leave

The Family and Medical Leave Act requires employers with 50 or more employees within a 75 mile radius to provide eligible employees with a leave of absence for family or medical reasons, benefits continuation, and reinstatement to the same job if the employee returns to work prior to the expiration of the leave. It also requires covered employers to include a family and medical leave policy in their handbooks, post a prescribed notice and follow certain unique notification procedures.

Conclusion

This article has offered some general guidance on making your employee handbook more user-friendly, while still offering protection to the company. For more specific advice regarding your own situation, contact your Fisher Phillips lawyer.