



Did Your DUI Lawyer Draft Your Employee Handbook?

Insights

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Of course not. I just wanted to get your attention. The real question is when is the last time you reviewed your employee handbook to ensure, not only that it is legally compliant, but also to ensure that it accurately reflects your current policies and practices? That long, huh? If your handbook (along with your sense of fashion and hairstyle) is stuck in the 80s, 90s or early 2000s, it may be time for an update. An outdated handbook can create potential risks for employers and convert what should be your best friend into your worst enemy.

How do you know if your handbook is outdated? Well, if any of the following are true, it may be time for an update:

- your DUI lawyer really did draft it;
- the clip art looks like a first grade art project;
- it has a Y2K policy and makes several references to pagers;
- it has more volumes than a Time-Life collection;
- its handheld-device policy references pagers only;
- there is carbon-copy residue on the pages;
- your company's name is written over white-out throughout the handbook.

Seriously, many handbooks suffer from the same problems. For example, one common problem is the failure to have adequate EEOC and no harassment policies that address all types of illegal harassment and discrimination, including that covered by applicable state law.

Another related problem is the failure to have a procedure that provides employees with alternative avenues to report concerns about discrimination and harassment to ensure that proper management receives notice of the concern so that it can properly respond. Simply requiring an employee to report concerns to the direct supervisor leaves the company vulnerable. What if that supervisor is the problem? What if that supervisor fails to respond to the complaint? Or worse, chastises the employee for bringing it up?

Many handbooks lack social media and electronic communications policies at all, or have policies that are inconsistent with the rapidly changing world and legal requirements. Do the policies address the use of devices while driving? Does the policy allow the company to view personal e-mail accounts accessed through company equipment? Other handbook policies fail to take into account the changes to the leave laws or have leave provisions that may be inconsistent with the ADA's requirement and the EEOC's enforcement position regarding unpaid leave as a reasonable accommodation.

In addition to legal compliance issues, some handbooks simply do not reflect the employer's current policies, rules, and culture. Handbooks that include policies and practices that have not been followed since the disco era should be revised to reflect current practices. For example, if you have a reporting off procedure that requires employees to personally call their supervisors but your company allows employees to report off by email or text, what is your real policy?

Finally, one mistake many employers make in drafting an employee handbook is that they want the handbook to be all things to all people. This approach generally fails on both accounts. For example, many handbooks have multiple paragraphs explaining exempt versus non-exempt status, and some try to explain the morass related to compensable time for travel. Others include detailed explanations of the health and medical benefits that often are inconsistent with the actual plan documents governing the benefit.

Bottom line: handbooks should not be viewed or drafted to be the "answer book" for all questions and should not be used as a replacement for actually managing employees and making decisions.

If your handbook has these and other "issues," you're not alone – we see many handbooks that lag behind the ever changing world of technology, culture, and the law. Even those employers that realize that an out-of-date or poorly drafted handbook greatly diminishes its value oftentimes don't get around to making the needed changes. Other more pressing problems, including lack of available funds, often relegate the handbook project to back burner status, thereby leaving you vulnerable. Many times the "I'll get to it" time never comes.

It's never too late to make the changes and to update your handbook. You may want to consider including a handbook review on your to-do list. By the way, if you decide to do it and need help reviewing your handbook, it probably isn't the best idea to contact your DUI lawyer.

For more information, contact the author at tcoffey@laborlawyers.com or (404) 231-1400.

Related People





Tillman Y. Coffey

Partner

404.240.4222

Email