



The New Year Requires A New Look at Your California Employee Handbook

Insights

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As we approach a new year, California employers should take a fresh look at their employee handbook to ensure that it is up to date. Unless it was revised recently, it's probably outdated. What are the main revisions that need to be made in order to keep up with the times as we head into 2021?

New Family Leave Obligations

The principal change for 2021 is the expansion of the California Family Rights Act (CFRA). The CFRA now differs significantly from the Family and Medical Leave Act (FMLA) in several respects, such that if you have a combined FMLA/CFRA policy you will need to split them apart. Further, if you have no FMLA/CFRA policy because you do not have 50 employees, you will need to have a CFRA policy in the new year as long as you have five or more employees.

The CFRA will soon apply to smaller employers (five to 49 employees), and there is no requirement that any number of employees be within a 75-mile radius. The CFRA still includes the requirement that an employee have worked for at least a year and for 1,250 hours prior to the start of a protected leave.

The CFRA will also permit employees to take leave to care for a broader range of relatives than previously permitted. An eligible employee may take CFRA leave for the following reasons:

- The employee's own serious health condition.
- To care for a parent, child (regardless of age), spouse, sibling, grandparent, grandchild, or registered domestic partner with a serious health condition.
- Care for and bonding with a newborn or newly adopted child.
- Because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States.

Also, under the FMLA, if both parents work for the same employer, they are only entitled to a total of 12 weeks of leave combined for bonding with a new child. Not so under the amended CFRA. Under this new law each parent is entitled to take up to 12 weeks apiece for baby-bonding leave. Moreover, the CFRA no longer contains a "key employee" exception. These important differences between the FMLA and CFRA will require a revision to your employee handbook.

FMLA and CFRA will require a revision to your employee handbook.

Rest Break Update

Another policy that should be reviewed is your rest break policy. As the result of a California Supreme Court decision a few years ago and the California Labor Commissioner's subsequent change of position, employees no longer may be prohibited from leaving the premises during their 10-minute rest breaks.

While it may be impracticable for employees to leave the premises and return within 10 minutes, you may not place any restrictions on how employees use their time during their rest breaks. If you have an old rest break policy prohibiting employees from leaving (or otherwise restricting their activities) during their rest breaks, you will need to change it.

Anti-Harassment Language

You should examine your policy against harassment – and specifically the means provided for employees to complain about harassment. You should provide a telephone “hotline” for harassment complaints if possible, but you should also provide an email address for employees to use to report harassment.

The goal is to make it as easy as possible for employees to report harassment – especially with so many employees working remotely – so that they will easily report it internally. This will increase the chances that the problem can be remedied before it gets into the hands of a lawyer or the EEOC.

Personal Cell Phone Use

You should have a policy in your employee handbook addressing personal cell phone use. If employees are required to use their personal cell phones for business purposes, such as calling customers or clients, reporting on the status of jobs, etc., they must be paid a monthly stipend for the business use of their device.

If employees are not required to use their personal cell phones while at work, you should have a policy stating that employees are not authorized to use their personal cell phones for any business purpose. Calling in to get a work schedule, for example, would not constitute business use of a personal cell phone.

Arbitration Agreements

Finally, a good time to distribute a new arbitration agreement is when you distribute a new employee handbook, so you should review your arbitration agreement to see if it needs to be updated. It should clearly prohibit class and collective actions, and it should be easily readable. It should not be written in small font or use legal jargon, long-running sentences or unexplained references to statutes or regulations. The “Company” in the agreement should be defined to include parent, subsidiary, affiliated and client entities, as well as all of their current and former owners, directors, officers, managers, employees, agents, contractors, attorneys, benefit plan administrators and insurers. The agreement should state that the company will pay the costs of the arbitration.

Conclusion

Now is the perfect time to begin plotting out your New Year's resolutions, and one of them should be ensuring your California handbook is up to date for 2021. Make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information throughout the new year and beyond. If your employee handbook needs updating for the new year, contact your Fisher Phillips attorney or [an attorney in any of our six California offices](#).

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