

IS IT TIME FOR CHANGE? 5 REASONS YOUR DEALERSHIP MAY WANT TO CHANGE YOUR EMPLOYEE HANDBOOK FOR 2023

Insights
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'Tis the season for change. The weather is changing. The leaves are changing (or have changed). Twitter is changing. The political landscape is changing. Employment laws have changed or will be changing. The calendar will be changing to a new year before you know it and a ton of legal changes will become effective. Whoever said "the more things change the more they stay the same" may change their mind if they were here today. With all these changes, there may be a needed change that you have been putting off – your employee handbook.

Yep, that handbook. The one you've had on your to-do list forever. But then COVID came along. Then inventory shortages. Then employee shortages. And there were the day-to-day challenges associated with recruiting, hiring, and retaining employees in what seems to be an ever-shrinking pool of candidates. With all that going on, who has time to update a handbook, right? And besides, revising a handbook is not that exciting.

Well, in case you are so inclined to revise your handbook or have it revised, the end of the calendar year is a good time to do it. Nothing like starting off a new year with a shiny, new handbook that is legally compliant and accurately reflects the dealership's culture and policies. But if you're not so inclined, there are five legitimate business and legal reasons to consider revising your handbook for the new year.

- 1. Your current handbook does not reflect your current policies, practices, and benefits.** As stated above, things change. When written, your handbook reflected the

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policies, benefits, practices, and rules in place at that time. With the passage of time, the world, society, management, attitudes, and dealership policies and practices often change –which may make handbook policies out of date or obsolete. A handbook policy that is inconsistent with actual practice creates risks of confusion and inconsistency. It may be time to change your handbook to reflect your current policies and to incorporate those emails and stand-alone and piecemeal policies created when a certain issue arose.

2. **Your handbook does not reflect current legal requirements.** Many states have passed laws legalizing marijuana use either for medicinal or recreational purposes or both. Many states have passed laws mandating paid sick leave and other types of required leave in addition to leaves required under federal law. Other states have changed or implemented wage laws, disclosure laws, and privacy laws. A number of states have added new protected categories to their anti-discrimination and harassment laws. In some states, a catchall phrase such “all other protected categories” in EEO and No Harassment policies is disfavored.
3. **Your handbook contains policies that may be found to violate the National Labor Relations Act.** The National Labor Relations Board (NLRB) has begun again to scrutinize common workplace misconduct rules and policies to determine whether these rules and policies violate the National Labor Rights Act (NLRA) rights of employees. The NLRA provides nonsupervisory employees (both union and nonunion) the right to engage in concerted protected activity related to terms and conditions of employment. That law prohibits employers from interfering with those rights. Examples of policies and rules the NLRB could find interfere with those rights include policies prohibiting discussions of wages or benefits, policies related to access and use of company facilities and equipment, investigative confidentiality rules, video and recording rules, and rules about employee interactions with management. While the NLRB’s standard of review for these rules and policies remains unclear, a review of your handbook policies is a good first step to evaluate your risks.
4. **Your handbook does not have updated social media and other electronic use policies.** Speaking of change, nothing changes faster and more often than the world of

electronic communications. (Well, maybe popular emojis change faster.) In any event, if your current policies on this topic are “so last week,” a review and update may be in order.

5. Your handbook does not reflect modern reality.

Unfortunately and regrettably, active shooter policies have become more necessary and prevalent. Likewise, modern times brought about the remote work phenomenon that likely is to become the new normal for many businesses. A policy addressing the many moving parts of remote work may bring about uniformity and consistency (and eliminate some controversies). Finally, if your dealership has not adopted an arbitration policy that includes class and collective action waivers, there may be no better time to do so than we you issue the new handbook ([check out the new article by my colleague Matt Simpson covering this exact topic](#)).

Employee handbooks are like the subject of [Longfellow's poem written long ago](#). He wrote that when the little girl was good, she was very good – and when she was bad, she was horrid. While an out-of-date or poorly written handbook may not be horrid, it can cause problems. More importantly, not having a good employee handbook is a missed opportunity.

You're not in this alone. If you decide it is time to make a change (in your handbook), your favorite Fisher Phillips attorney is available to help you.

Conclusion

We will continue to monitor workplace law developments as they apply to employers in the auto dealer industry, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney on [our Auto Dealership Team](#).