



YIKES! New Laws and Decisions Require Reviewing Your Handbook.

Insights

7.25.15

Ted Boehm and I spoke to the July 23 Human Resources Management Association of the Gwinnett County Chamber, one of the best run chambers in the Country, on July 23 about the urgent need to revise Employee Handbooks and policies, and to retrain supervisors based on the expansive new NLRB, Wage-Hour and EEO changes.

The following materials are follow-ups we provided.

Employee Handbooks

As a jumping off point, here is an article I recently wrote in TLNT on employee handbooks generally:

What to Avoid to Keep From Getting Sued Over Your HR & Safety Policies

By Howard Mavity

February 5, 2015

TLNT

I have written several recent posts and spoken on the National Labor Relations Board's wholesale attack on a wide range of employer policies and procedures (Part 1 and Part 2).

However, I want to step back and discuss broader issues relating to safety and HR policies, including employee handbooks, employee agreements, and "safety programs."

As a starting point, some people argue that we should do away with many policies, and especially employee handbooks, or strip them down to almost nothing. Others take the more traditional view that an employee handbook should be used for a number of purposes (See my partner Bert Brannen's piece).

Common issues with employee policies

Regardless of which opinion you follow, we see certain common screw-ups on employer policies and procedures:

[CONTINUE at TLNT].

What Do I Need and Why is this Stuff in My Handbook?

Do you know all of the policies and procedures in place? are you sure? Start your review with these common sense questions.

1. Have you found all policies and procedures relating to employment issues?
2. List the policies, procedures and handbooks and ask:
3. Who drafted the policies, handbooks, and rules? 4. When were they drafted or last revised? 5. Were they based on "Form" documents? 6. Are they a "corporate" document? 7. Who/what departments were involved in their preparation?

Wage-Hour

Wage-Hour changes and general compliance questions were obviously important to the HRMA group, so we have LINKED to several resources, many from our Wage-Hour Blog site. Employers have not recognized the wide ranging effects of these proposed changes. In addition to the destruction of the exempt status of many employee classifications, how are employers going to deal with employees who use email, IPones and Tablets after hours if they are no longer exempt?

- Article: Department of Labor's New Proposed Rules May Call for Alternative Compensation Plans for Salaried Employees.
- <http://wage-hour.net/post/2015/03/26/Proposed-FLSA-Exemption-Changes-Still-In-Limbo.aspx>
- <http://wage-hour.net/post/2015/02/04/A-Substantial-Salary-Test-Jump-Is-Likely.aspx>
- <http://www.wage-hour.net/post/2014/03/17/President-Seeks-To-Curtail-Exemptions.aspx>

We are also holding a second wage-hour webinar on DOL's proposed changes on August 4 . Our site handles 1000 participants and filled up with the first webinar earlier this month!

OSHA

As we mentioned, Health Care employers should anticipate more OSHA focus, especially if they are an acute care facility, and expect serious ergonomic challenges. We have linked to Health Care magazine articles where I have discussed the new OSHA push:

- Corporate Counsel Article: OSHA Highlights Healthcare Workplace Dangers
- Modern Healthcare Magazine: OSHA Cracks Down on Healthcare Employers.

Georgia is in OSHA Region IV, which is also visiting warehouses, distribution, and logistics providers and demanding adherence to strict NIOSH and OSHA guidelines, even though there is no formal ergonomics standard.

- Here's a recent article I wrote on dealing with new twists in OSHA Inspections:
<http://www.laborlawyers.com/do-you-really-know-how-to-manage-and-osha-inspection>

- Look for Blog Posts soon on the [FP Workplace Safety Blog](#) on OSHA attacks on Restaurants (especially fast food) and retail stores (which don't normally see OSHA very often!).

NLRB

From one recent FP Article:

Are Your Employee Handbook Policies Unlawful? The NLRB Most Likely Thinks Yes.

Date: June 11, 2015

By [Mathew Parker](#)

Mathew Parker was a guest blogger for the *Columbus CEO* on June 11, 2015.

New jobs mean new workplaces to manage and that's why central Ohio employers should be aware of the National Labor Relations Board's (NLRB) general counsel's 30-page report identifying eight common handbook policies that now may fail to comply with the National Labor Relations Act (NLRA). These policies concern confidentiality, employee conduct, communication with third parties, use of the company's intellectual property, workplace photography and recording, leaving the workplace and conflicts of interest.

In the article, Mathew discusses how although the guidelines found within the NLRB's general counsel's 30-page report are vague, what is clear is that the general counsel may find your employee handbook policies unlawful if you:

- **Confidentiality.** Prohibit employees from disclosing "confidential information."
- **Conduct Towards Co-Workers.** Restrict inappropriate comments between employees.
- **Conduct Towards the Company and Management.** Prohibit conduct that may harm the reputation of the company or supervisors.
- **Communications with Third Parties.** Restrict employees from speaking to news media or government agencies.
- **Use of Company IP.** Ban the use of the company's IP.
- **Workplace Photography and Recording.** Prevent employees from taking photographs or making recordings.
- **Leaving the Workplace.** Restrict employees from leaving work.
- **Conflicts of Interest.** Prohibit employees from engaging in activities that conflict with the company's interests.

Mathew also provides employers with five things they should consider to minimize the risk of a future handbook challenge.

1. Reviewing the eight handbook policies identified in the report to determine whether they could be interpreted as “chilling” protected concerted activity — if it’s ambiguous or overbroad it’s most likely unlawful
2. Putting handbook policies in context by either keeping together any policies that must be read in tandem to understand their intended meaning or providing internal references in policies to other policies that would clarify their intended meaning
3. Explaining in the policy itself why the policy is important to the employer
4. Using more specific language in policies or providing specific examples of the behavior targeted by them
5. Noting that protected concerted activity is exempt from the policy

To read the full article, please visit [Columbus CEO](#).

Why do I need each of those policies?

Do I use them?

How do they help me run my business?

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Howard A. Mavity
Partner
404.240.4204
Email