

Is Your Employee Handbook, Legal, Current & Effective?

Compliance - Employee Handbooks and Policy Manuals

Well-written and up-to-date employee handbooks inform employees of important policies, rules, company standards, and rights. They also can help prevent harassment and other forms of discrimination in the workplace or, if necessary, strengthen the company's defense should an employee complaint be filed.

But to be effective (and legal) handbooks must be examined and updated regularly. It's an ongoing process. A few of the points to consider as you review your handbook are discussed below. Remember, it may be wise to have your attorney review your handbook to ensure it complies with federal, state, and local law.

What's the difference between an HR Policy Manual and an Employee Handbook? Do we need both? Or... what is the story of the 500 pound gorilla and the baby chimp? HR Policy Manuals (the gorillas) are comprehensive guides written for managers and supervisors. They are intended to guide and structure managerial actions, ensure organizational consistency, and set forth the company's HR policies in some detail. They should be distributed to the HR department and managers and supervisors only.

Employee handbooks are much shorter and simpler documents that summarize the key policies that are appropriate for distribution to employees. It is generally recommended that all organizations should have employee handbooks and all organizations of any size (e.g., 25 or more employees) should probably have manuals as well.

Are companies legally required to have written policies? Is there a risk that the "policy police" will pay us a visit? Written policies are generally not legally required. However, a few may be required. Some policies may be necessary to demonstrate a company's good faith in complying with federal and state law, or they may be important in mounting a defense to an employee lawsuit. For example, courts have made it clear that employers need harassment policies to defend against employee lawsuits and some states require written harassment policies. The Family Medical Leave Act (FMLA) also requires that companies provide written information about the Act to their workers.

What about the words? Can they really be as important as the lawyers contend or are they just trying to increase their billings? Remember, what you say can and will be held against you. A plaintiff's attorney will dissect a handbook. Words do matter so be cautious. Avoid language that states that employees:

- Will only be terminated "for cause."
- Are "permanent."
- Will be terminated for the following reasons...
- Will be treated fairly or that supervisors will resolve problems that arise.
- Are terminated only for serious misconduct.
- Will "always" or "only" be treated a certain way.
- Are promised job security or long-term employment.
- Can expect a long and happy relationship with the company.
- Will be disciplined for the following reasons...

Closely review the language used so that it remains flexible and doesn't require the organization to act a certain way in every instance. Use words like "may," "generally," and "usually." Don't make promises that could create contracts and don't make all-inclusive lists.

So what should we say? What types of statements should be included in employee handbooks? Include statements making clear that:

- Policies only provide general guidance and don't create contracts.
- Policies are not promises.
- Policies may be changed or revoked at any time for any reason at the company's discretion, with or without notice.
- Employees are not guaranteed certain rights.
- The Company is an employer at-will.
- That no manager or supervisor other than [insert name, typically the President] has the authority to make any agreement that conflicts with your at-will policy.
- The company need not follow the policies in all instances (e.g., it may not always follow corrective action or termination procedures and so you'll deviate as necessary).

What else? There's got to be more to worry about? There's always more to worry about! Don't forget the following:

- A signed employee acknowledgement of receipt of the handbook & at-will status at time of hire. Have employees sign additional acknowledgements as necessary when you update the handbook and redistribute it.
- Incorporate federal, state & local law requirements. Remember that employment law differs greatly from state to state.
- Don't get too detailed. Also, as appropriate, refer employees to other documents for the specifics (e.g., insurance plans).
- Don't say it unless you do it. Don't include policies that you think you'll follow in the future or know that you should but don't. If you're policy language conflicts with your actions, resolve the differences.
- Train employees and managers – it is critical they understand the policies.
- It all sounds too complicated. Aren't we better off not having a handbook or writing anything down?

Good try, but unfortunately, no. A company without formal policies "creates" them through its practices and behaviors. Such practices tend to be inconsistent, sometimes unfair, and may not meet legal requirements. Handbooks are a little like going to the dentist; you'd prefer to avoid the experience but the consequences are bad if you do.

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