

Employee Handbooks: The Mistakes and Must-Haves

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Employment law attorneys point to a dozen mistakes that cause employers their biggest headaches. If you want to make a plaintiff's attorney salivate, show him or her an employee handbook that involves any of these issues:

1. Form handbooks. One size doesn't fit all. Your employee handbook should reflect your organization, its policies and the laws in your state. The risk of using a form handbook: It may include items that aren't relevant to your organization, or it may miss important topics that you need to address.

2. Conflicting policies. While editing your handbook, you may discover that some policies are out of sync with others. Resolve such conflicts before publishing the handbook.

3. Probation trap (also known as "the at-will killer"). If you promise a worker that she'll become a "permanent employee" after completing a probationary period, you may be unknowingly contracting to keep her on forever. Employees with contracts are no longer at-will employees.

4. Being too specific. Organizations can wall themselves in if they spell out every detail. It's better for employers to stay flexible so they can deal with unforeseen circumstances.

5. Inconsistency with company documents. Writing or modifying an employee handbook allows an employer to look at the big policy-and-procedure picture. Resolve conflicts between policies or policy and procedure before publishing them in the handbook.

6. No disclaimer (also known as "the accidental contract"). The disclaimer must state that the employee handbook isn't a contract. Make sure you generously sprinkle disclaimers concerning job security and employees' at-will status throughout the manual.

7. 'Do as I say, not as I do.' Company policies and procedures must match the statements in your handbook. Inconsistencies serve only to anger employees and enrich their attorneys.

8. Conflicts with state and local laws. Any item in your handbook that conflicts with state law is invalid, so don't invite trouble by inserting that kind of statement.

9. Failure to update. Old information can lead to confusion, discontent and litigation. Always keep the handbook up to date.

10. Unrealistic rules. Any rules that your supervisors probably won't enforce aren't worth the paper they're printed on. Such rules shake an employer's credibility.

11. Broad-brush rules. Rules that go beyond business necessity and federal and state legal mandates may violate other laws.

12. Over-the-top anti-union statements. Even though you're entitled to make a reasoned case for keeping your company a nonunion shop, some comments go too far and may create legal problems in the future.

Keep in mind also that your handbook may inadvertently contain language which could be viewed as dissuading employees from speaking out about pay or working conditions, or filing a report with a regulator. Watch closely for restrictive language in:

Confidentiality clauses. You're really just trying to warn staff from disseminating trade secrets. But restrictive terminology could make a rare employee think, "They're trying to keep me from telling someone at another company that I don't like my job!"

Privacy policies. A broad ban on either the recording of conversations or photography on company property might be asking for it, as the National Labor Relations Board (NLRB) might perceive this as an attempt to keep unflattering images or statements out of regulators' view.

Warnings about your intellectual property rights. If a worker's going to whine about his hours on Facebook, you can certainly keep him from slapping your company logo on his post, right? Not so fast. It may be your trademark, but his right to talk about protected matters may trump its use. And if you're going to insist that all work created by employees while they're employed by you belongs to the company now and forever, make sure you're on sound legal footing to do so. Social media especially creates gray areas when it comes to IP rights.

General statements about confidentiality in case of HR investigations. Confidentiality in such cases is difficult to expect or provide anyway, and in the NLRB's view, trying to restrict what people talk about with co-workers during an investigation is perhaps meant to discourage protected forms of dissent.

Fire cautiously ... with handbook in hand

Know how the fire department cleverly recommends you use your Daylight Saving Time clock update to also check the batteries in your smoke detector? Well, you need to use every upcoming termination to double-check your employee handbook to make sure the termination is justified and not in conflict with a published policy. Ask yourself: Is there something in the handbook that this employee could seize on to cry, "Unfair!"?

Your handbook topic checklist

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|---|------------------------------------------|---|--------------------------------------------------------------------------------------------------------|
| ✓ | Corporate welcome | ✓ | Absenteeism and tardiness |
| ✓ | Brief history and corporate philosophy | ✓ | Leaves of absence (refer to a separate manual) |
| ✓ | Employee classifications | ✓ | Benefits (refer to a summary plan description) |
| ✓ | Equal employment opportunity statement | ✓ | Grievance policy (refer to an arbitration agreement or collective bargaining agreement, if applicable) |
| ✓ | Sexual harassment policy | ✓ | Resignation and terminations |
| ✓ | Transfer policies | ✓ | Confidentiality |
| ✓ | Promotion policy | ✓ | Business ethics |
| ✓ | Definition of workweek and working hours | ✓ | Email, Internet, phone use |
| ✓ | Meal and break periods | ✓ | Dress code |
| ✓ | Overtime policy | ✓ | Company vehicles |
| ✓ | Time records | ✓ | Safety rules |
| ✓ | Flexible schedule policy | ✓ | Smoking |
| ✓ | Pay periods | ✓ | Drug-free workplace |
| ✓ | Performance appraisals | ✓ | Substance abuse |
| ✓ | Disciplinary rules | | |
| ✓ | Holidays | | |
| ✓ | Vacations | | |
| ✓ | Paid sick leave | | |

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