



Employee Handbooks:

Why You Should Have One, Policies You Need
and Mistakes To Avoid

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WHY EMPLOYERS SHOULD HAVE AN EMPLOYEE HANDBOOK

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Reasons to Create a Handbook for Employees

- Opportunity to formally welcome new employees, teach them about the company and lay down ground rules and expectations
- Ensures that each new employee receives copies of all company policies in a manner that is easy to access and review and sets expectations from the start
- Centralized place for employees to look for answers to common questions (benefits, pay procedure, dress code, sick time, PTO, etc.)
- Gives clarity and direction for managers and supervisors on how to handle employment issues and ensures that all issues are handled consistently and fairly with each employee



Protection for the Employer

- First line of defense in the event a suit is brought against you by a current or former employee - Handbooks and signed acknowledgements can assist in the legal defense
- Communicates information employers are legally obligated to provide so there is no confusion or disputes
- Provides the employee with employer's expectations from the start of their job
- Ensures and demonstrates compliance with federal and local laws



WHAT POLICIES MUST AND SHOULD BE INCLUDED IN AN EMPLOYEE HANDBOOK

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What Should be Included

- Introduction/Company overview: history, mission statement, vision statement, information about the company's culture, ethics
- Contact information for an employer representative who employees can contact if they do not understand or have questions about the policies
- Disclaimer: nothing in the handbook creates an employment contract, employer has the right to modify or delete policies without notice, employment relationship is at-will
- Payroll Practices and Compensation, workweek and business hours, pay period and payday, bonus information, timekeeping procedures, break & lunch periods, attendance policy



What Should be Included (cont.)

- Performance Review Policy
- Dress code and Grooming Policy
- Social Media Policy
- Substance Abuse in the Workplace Policy:
Marijuana Use Policy
- Employee Benefits Information



Handbook “Must Haves”

- Acknowledgment of receipt, review and understanding of the policies and procedures
 - minimizes potential for employees to claim ignorance of a policy
 - Employees should have to acknowledge receipt and understanding of handbook
 - Similar acknowledgment form should be used anytime the handbook or a certain policy is modified, deleted or added
- Equal Employment Opportunity Policy
 - not required by federal law
 - Demonstrates compliance with anti-discrimination laws
 - Outline a complaint procedure for employees who feels they have been discriminated against
 - Consider making this the first policy



Handbook “Must Haves” (cont.)

- Anti-Harassment Policy
 - not required by federal law
 - Prevent harassing behavior
 - Describe harassing behavior
- Anti-Retaliation Policy
 - Should be included in EEO and anti-harassment policies
 - Stand alone policy
- Disability Accommodations Policy under the ADA
 - Reasonable accommodations
- Complaint Procedure



Handbook Acknowledgement Form

Example Language

By signing this form, I acknowledge that I have received a copy of the Company's Employee Handbook. I understand that it contains important information about the Company's policies, that I am expected to read the Handbook and familiarize myself with its contents, and that the policies in the Handbook apply to me. I understand that nothing in the Handbook constitutes a contract or promise of continued employment and that the company may change the policies in the Handbook at any time.

I acknowledge that my employment is at will. I understand that I have the right to end the employment relationship at any time and for any reason, with or without notice, with or without cause, and that the Company has that same right. I acknowledge that neither the Company nor I have entered into an employment agreement for a specified period of time.

Signed _____

Date _____



“Must Haves” (cont.)

- Leave Policies
 - Family and Medical Leave (50+ employees)
 - Employees are eligible for FMLA leave if they have worked for the company for at least a year, for at least 1,250 hours over a year, and company as at least 50 employees within 75 miles of the employee’s location
 - Pregnancy Accommodation
 - Federal and Illinois law differ in regards to “pregnancy leave”
 - Under the Federal Pregnancy Discrimination Act, pregnancy must be treated the same as any other medical disability (FMLA)
 - In Illinois under the Illinois Human Rights Act , employers are required to include specific policies emphasizing that employees affected by pregnancy or have a medical/common condition related to pregnancy shall be accommodated
 - Sick/Personal Days
 - PTO
 - Paid sick leave
 - Jury duty leave
 - Military service leave



Hot Topic: Medical Marijuana

- 29 states and DC allow medical marijuana
- Under Illinois law, an employer cannot refuse to hire a candidate or terminate an employee based on them having a medical marijuana card however Illinois explicitly allows employers to prohibit marijuana use and intoxication at work
- Establish a “drug-free workplace” policy that includes accommodation language for off-site use for those with a medical marijuana card to avoid discrimination
- Update old policies that may not be in compliance



MISTAKES TO AVOID





Mistakes to Avoid

- Handbooks should be drafted in a manner that does not create legal obligations that the employer did not intend
- Employers should only include policies they intend to follow – failure to follow written policies can cause confusion and create legal liability
- Avoid using unnecessary complex language or legal terms-plain language should be used to explain policies and procedures
- Avoid providing too much detail- include just enough information that the policies can be understood but does not overwhelm employees
 - Handbooks do not need to contain every company procedure
- Uneven enforcement of policies can lead to discrimination claims



Mistakes to Avoid (cont.)

- Avoid using language that may come across as promises to employees
 - “Our company always promotes from within”
 - “Employment will be terminated only if the following offenses are committed...”
 - “If employees meet expectations, they will remain employed for as long as they wish”
- Avoid using vague terms that could result in different enforcement of policies by different people within the company
 - “Our company pays salaries that are competitive within the industry”
 - “Employees will only be terminated for misconduct”
 - “All employees will be treated fairly”



Mistakes to Avoid (cont.)

- If creating a handbook from existing policies, employer should conduct an audit to confirm all existing policies are up-to-date
- Policies should be consistent and not contradict each other
- Confirm that policies comply with the National Labor Relations Act so that policies and handbooks do not infringe on rights employees have under the Act



NATIONAL LABOR RELATIONS BOARD'S GUIDANCE ON EMPLOYEE HANDBOOK RULES POST-*BOEING*

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- The National Labor Relations Board (NLRB) General Counsel's office issued guidance in the aftermath of the NLRB's decision in *The Boeing Company*, 365 NLRB 154 (Dec. 14, 2017).
- The NLRB overruled *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), which articulated the Board's previous standard governing whether facially neutral workplace rules, policies and employee handbook provisions unlawfully interfere with the exercise of rights protected by the National Labor Relations Act (NLRA).
- Under the prior *Lutheran Heritage* standard, the Board found that employers violated the NLRA by maintaining workplace rules that do not explicitly prohibit protected activities, were not adopted in response to such activities, and were not applied to restrict such activities, if the rules would be "reasonably construed" by an employee to prohibit the exercise of NLRA rights.



- *Boeing* established a new standard for workplace policies that balances employee rights to engage in protected concerted activity and a business's right to maintain order, discipline and productivity (legitimate business justifications).
- *Boeing* divided rules into three categories:
 - 1. rules that are generally lawful to maintain;
 - 2. Rules warranting individualized scrutiny; and
 - 3. Rules that are unlawful to maintain
- Rules are no longer interpreted against the drafter, and generalized provisions should not be interpreted as banning all activity that could conceivably be included.
- The application of a facially neutral rule against employees engaged in protected concerted activity is still unlawful and a neutral handbook rule does not render protected activity unprotected.



Category 1: Rules That are Generally Lawful to Maintain

There are rules that do not tend to infringe on employee Section 7 rights and are outweighed by legitimate business justifications (avoiding an unsafe and hostile work environment). Included are:

- Rules prohibiting uncivil behavior, such as name-calling, disparaging the company's employees, rude unbusinesslike behavior, offensive language, rudeness;
- Rules prohibiting photography and recording at work or requiring approval;
- Rules against insubordination, non-cooperation, or on the job conduct that adversely affects operations;
- Rules prohibiting disruptive behavior, such as boisterous and disruptive conduct, creating a disturbance on the premises, disorderly conduct on the premises and/or during work hours (no disruption rules that explicitly ban walk-outs or strikes are not category 1 rules);
- Rules protecting confidential, proprietary, and customer information or documents ;
- Rules against defamation or misrepresentation;
- Rules against using employer logos or intellectual property;
- Rules requiring authorization to speak for company;
- Rules banning disloyalty, nepotism or self-enrichment.



Category 2: Rules Warranting Individualized Scrutiny

These rules are not obviously lawful or unlawful, and must be evaluated on a case-by-case basis to determine whether they would interfere with protected rights, and, if so, whether any adverse impact on those rights is outweighed by legitimate business justifications. Often, legality will depend on context. Examples include:

- Broad conflict of interest rules that do not specifically target fraud and self-enrichment and do not restrict membership in, or voting for, a union;
- Confidentiality rules broadly encompassing “employer business” or “employee information,” rather than confidential, proprietary, or customer information or documents;
- Rules prohibiting disparagement or criticism of the employer (as opposed to civility rules regarding disparagement of employees);
- Rules regulating use of the employer’s name (as opposed to rules regulating use of the employer’s logo or trademark);
- Rules generally restricting speaking to the media or third parties ;
- Rules banning off-duty conduct that might harm the employer or rules specifically banning participation in outside organizations;
- Rules against making false or inaccurate statements.



Category 3: Rules That Are Unlawful to Maintain

Rules in the final category are generally unlawful because they would prohibit or limit protected conduct and the adverse impact on these rights would outweigh any legitimate business justification. Included are:

- Confidentiality rules specifically regarding wages, benefits, or working conditions and rules expressly prohibiting discussion of working conditions or other terms of employment;
- Rules against joining outside organizations or voting on matters concerning employer (generally interpreted as prohibiting union participation)