New Year Corporate Housekeeping: Your Employee Handbook

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As your company settles into the new year, it is the perfect time to consider reviewing and updating your employee handbook or, if your company does not currently have a handbook, to prepare and implement one. There are many considerations to keep in mind as you undertake this process.

Section I – Practical Considerations

Your company's employee handbook serves many purposes and may be the central communication resource between the company and its employees. There are several common pitfalls to avoid when drafting or updating its handbook:

• Avoid adopting "form" handbooks or blindly following sample forms. Your handbook should be tailored to your workplace so that it does not contain irrelevant polices, omit important material, or make promises that the company cannot meet.

• Avoid conflicting policies and practices. Take note of workplace practices and include them, if appropriate, in your handbook. If there is no policy for a common and important practice at your company, create one. Once created, policies should be uniformly and consistently applied.

• Avoid being too wordy. State policies accurately and succinctly. When possible, keep the language simple. Some policies are more complex than others and will require more verbiage. However, even the more complicated policies should be limited to the extent possible and should not use legalese.

• Avoid using language that might be perceived as creating rights contrary to an employment at will policy, as the handbook is not a contract. If separate contractual agreements (for example, non-competition or employee invention agreements) are a necessary part of your business, those agreements should be executed separate and apart from the handbook.

• Avoid contradicting state law. Employment laws vary widely by state. It is essential to determine the state laws applicable to your company and ensure that the policies contained in the handbook are in-line with those laws. You might also consider including a caveat in your handbook informing employees that in the event any policies conflict with any applicable law, that law controls.

• Avoid handbook provisions that do not adequately address privacy concerns. Given the prevalence of technology in the workplace, your handbook must convey the requirements of employees and management in relation to electronic and more traditional, hard copy communications.

• Avoid unrealistic policies. The

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company should not commit to policies that it will be unable or unwilling to enforce. Avoid rigidity in the language of your policies to make them more user-friendly.

• Avoid missing an opportunity for training. Once the handbook is written, it must be periodically reviewed and updated, and training should take place on a regular basis.

Section II – The Must-Have Policies

There are certain policies that need to be included in your employee handbook. The specifics of those policies vary depending on a variety of factors, such as relevant state laws and the type and number of employees in your company. While there may be some variations, inclusion of certain fundamental policies – or "must-haves" – is essential for your company's operations:

• Assuming it is consistent with the law in your jurisdiction, your handbook must contain an employment at will policy. This informs employees that their employment can be terminated for any reason at any time, with or without cause. In certain jurisdictions, it is critical to state and display this policy clearly and prominently. Inclusion of this policy will help protect the company's rights and will reinforce that the handbook is not a contract.

• Every handbook should contain an Acknowledgment of Receipt. This should be executed by the employee and a copy of the executed receipt should be maintained in the employee's personnel file.

• An equal employment opportunity policy should be set out in the handbook, explaining to employees the company's commitment to equal opportunity for its applicants and employees.

• The anti-harassment and anti-discrimination policy tends to be one of the more complex policies in the handbook. The inclusion of a properly drafted, enforced and implemented policy is a critical step in solidifying legal defenses that may be available to employers facing discrimination complaints or charges. The policy is equally important to convey the seriousness with which the company treats harassment and discrimination.

• Your handbook should include a section addressing business hours, work scheduling practices, and any unique policies that impact scheduling, such as telecommuting or flex-time.

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• The company's payroll practices and procedures also should be included in the handbook, explaining such topics as the company's pay period, pay day requirements, timekeeping procedures, overtime practices, and payroll deductions.

• Wage and hour issues have become increasingly prevalent in today's workplace. Your handbook should contain an explanation of the various employee classifications used in your company (for example, "regular full-time employee," "introductory employee"). In addition, there should be an explanation of exempt vs. non-exempt overtime status under federal and state wage and hour laws.

• Your handbook should contain an explanation of the benefits offered and eligibility for those benefits, along with a disclaimer explaining the handbook contains only an overview of benefits, and the benefits are controlled by master documents. Also, identify the appropriate contact for benefits inquiries.

• Time away from work spans many areas. The handbook should explain company policies regarding attendance and punctuality, vacation, sick and personal days, and accommodations for religious purposes.

• There are many federal and state statutes that should be addressed in your handbook, but only if appropriate and necessary. For example, the federal Family and Medical Leave Act will be appropriate to include, but should not be included if your company is not covered by this law.

• Your handbook should include employee conduct policies, as they are often called, such as rules of conduct, drug and alcohol policies, dress codes, workplace violence policies, and disciplinary practices.

• Your handbook should address employee use of company technology, including e-mail, the internet, and mobile devices, such as laptops and cell phones. Consider whether personal use of company's technology is permitted and under what circumstances, as well as related privacy issues.

• Finally, your employee handbook should address termination of the employment relationship, including, final paychecks, exit interviews, benefits continuation, and references.

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Section III – Customizing Your Handbook

There are many different ways in which to customize your handbook. Customizing begins at the planning stage, continues throughout the drafting process, and concludes with the distribution of the handbook to employees:

• In the planning stages, the company should consider whether to "start from scratch" and create a new handbook or to work with existing policies. This is an opportune time to implement policy revisions and obtain employee feedback concerning the company's existing policies and practices.

• Consider your drafting format and ensure the handbook is user-friendly. Be mindful of the tone of the handbook, while clearly conveying the company's expectations.

• The format of the handbook is an important consideration. The goal is to make the handbook user-friendly. Including a Table of Contents or Index, using appropriate spacing and bold-faced headings, and properly labeled chapters or subsections, are all ways in which to clearly present policies.

• Consider if multiple handbooks are necessary. Larger companies or multi-state employers may implement a handbook unique to each jurisdiction or may simply use addenda to describe state policy variations. You also may want to consider different handbooks for management employees, field employees, union employees, or other types of employees affected by distinct policies.

• The presentation of the final product is important and should be consistent with the tone of the handbook. Options to consider include: print vs. electronic format; three-ring binders vs. bound booklets; distribution in-person vs. electronically (via intranet, internet, or e-mail).

• Do not forget to collect the executed Acknowledgment of Receipt and again consider whether an executed hard copy, electronic copy, or both, will be necessary. Also, keep in mind how the company will handle employees who refuse to sign the Acknowledgment.

• Prior to taking any actions to finalize the handbook, it is wise to have the handbook reviewed by an attorney.

As you can see, the employee handbook process can be challenging. There are myriad issues to consider in creating and implementing a handbook that thoroughly and accurately meets the company's goals and needs.

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