EMPLOYEE HANDBOOKS

Top 10 things you should know about California employee handbooks

by Ryan McCoy

Perhaps there’s no greater asset to help avoid an employment lawsuit than a clear and concise employee handbook. It’s the perfect vehicle to communicate your policies about issues such as hiring, employment classification, hours, benefits, leave, conduct, and a host of others that — without the protection of the handbook — may well find their way into a courtroom. But more important, the handbook helps build and grow your business. Here are the top 10 things you should know about California employee handbooks.

Tonight’s Top 10 list . . .

(1) What is an employee handbook? The handbook is a written compilation of a company’s policies, procedures, and other important information that is distributed to employees.

(2) Is there a universal handbook I can find and use for my own company? Unfortunately, there is no recipe for developing a universal handbook because each company has its own unique operations and personnel needs. Also, some federal and state laws apply only to companies of a certain size. For example, the Family and Medical Leave Act and the California Family Rights Act apply only to employers with 50 or more employees.

(3) How much time and effort should I put into drafting a handbook? Like most things in life, you get what you put into it. In other words, the degree of usefulness of a final product is directly related to the amount of energy, care, and knowledge devoted to the preparation and review process.

(4) Are there any policies I must include in my company’s handbook? While there is no legal requirement that an employer prepare and distribute a handbook, numerous federal, state, and local laws affect the content of the handbook’s policies. So if your company decides to use a handbook, there are certain policies that are “must haves,” including:

- a statement that the current handbook supersedes all previous handbooks and representations and isn’t a contract of employment;
- an at-will-employment policy;
- an equal employment opportunity policy;
- an antiharassment policy, including an internal complaint procedure, a description of how to contact the California Department of Fair Employment and Housing and the Fair Employment and Housing Commission, and the remedies and complaint process available through those agencies;
- leave-of-absence policies;
- certain wage and hour policies, including meal and rest break and overtime policies; and
- an acknowledgment of receipt and review of the employee handbook.

(5) Do I simply give the handbook to each employee and hope they read it? No. At the time an employee is provided the handbook and any time it’s updated, you should obtain (and retain) a signed acknowledgment from the employee that he has received and reviewed the handbook.

(6) But wouldn’t a handbook limit my company’s flexibility to deal with its employees? One may think that a handbook would bind a company to certain policies that would prevent it from appropriately handling a unique issue. But the company can take precautions at the drafting stage to take advantage of the handbook’s notification purpose while still maintaining the flexibility necessary to deal with the day-to-day issues that arise.

For example, handbooks should reserve your right to revise, rescind, supplement, or vary from the handbook’s provisions when you deem it necessary, except for the at-will policy. It’s also possible for you to expressly reserve the right to decline to follow provisions in an employee handbook when, in your discretion, circumstances warrant it.

(7) How does my company make sure its supervisors are correctly applying the handbook’s personnel policies and practices? One major benefit to employee handbooks is the uniformity they bring with respect to a company’s policies and practices. Nevertheless, that benefit is lost — and the likelihood of employer liability increases — if a supervisor fails to apply personnel policies and practices consistently. As a result, it’s very important to train those who manage and supervise employees so that company policies are enforced consistently.

(8) Why include the company’s at-will-employment policy when employment in California is presumed to be “at will”? It’s risky to rely entirely on the presumption of at-will employment, so you should take every opportunity to expressly notify, remind, and remind again that employment is indeed at will. The signed acknowledgment included in the handbook should disclaim any intent to make an express contract of employment and should affirm that the employment relationship remains terminable at will. This acknowledgment can be very useful in litigation if an employee claims to have never received the handbook and argues she shouldn’t be bound by its terms.

(9) How else does a handbook help me avoid litigation? A quality handbook plays a significant role in decreasing your exposure to civil liability for claims like sexual harassment and certain wage and hour claims. The U.S. Supreme Court recognized the importance of a handbook by ruling that California employers can better protect themselves by offering a clear employee handbook that outlines employee rights and requirements.
For example, you may reduce or avoid liability in a sexual harassment case by outlining the company’s “zero tolerance” policy and reporting requirements in instances in which the employee never brought the alleged harassment to the company’s attention. Or in the wage and hour context, the company may avoid liability by demonstrating that it had policies in place and that the employee (not the employer) violated them.

(10) Are there any benefits that don’t involve lawyers? 
Yes. A well-drafted handbook can enhance employee morale and efficiency by setting forth clear standards of what you expect. It’s also a valuable recruitment tool, as a brief description in the handbook of the types of employee benefits you provide will enable those in charge of recruiting new employees to have a readily available source of company benefits.

For current employees, the handbook also provides a sense of belonging and company identity, thereby helping to increase productivity and decrease costs. Because a well-drafted handbook provides a clear road map to the company’s expectations, it allows employers and employees alike to concentrate on what they should be doing — pursuing goals without fear of costly and time-consuming litigation.

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