

Updating The Company Employee Handbook Should Move to the Top of Every Company's Year-End To Do List

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As year-end approaches, companies, both large and small, are busy closing out 2023 and putting plans in place for 2024. A key priority that should *not* be neglected as you make preparations to close out an old year and start a new one is updating your employee handbook. An updated employee handbook can be an effective tool to prevent legal liability, set the policies that reflect the realities of your business and communicate expectations to your employees. However, an employee handbook that is out-of-date or out-of-touch can both expose your company to legal liability and garble any message of expectations that you try to convey to your employees. So, here are three reasons why every company should move updating the employee handbook to the top of their year-end to do list.

Reason 1: Employee Handbooks Should Be Updated To Prevent Legal Liabilities.

An out-of-date handbook that is not in compliance with new federal and state laws and regulations presents a risk of legal exposure. One of the first items requested by most government agencies when they are conducting employment audits, and one of the first pieces of evidence sought in most employment lawsuits is the employee handbook. Simply put, if your employee handbook is not up-to-date and in compliance with applicable federal and state laws, you are risking penalties, damages and exposure to claims and lawsuits.

And federal and state laws have rapidly changed over the past few years, so if your employee handbook has not been recently updated, it is likely out of compliance. For example, the past few years have seen an influx of new state obligations to provide sick and family and medical leaves. More than 15 states and the District of Columbia have enacted paid sick leave laws and numerous states have paid and unpaid family and medical leave requirements that employers need to provide in addition to the federal Family and Medical Leave Act. If your employee handbook does not comply with recent changes to sick and family and medical leave requirements, it is time for an update.

In addition to additional sick and family leave requirements, nearly half of the states have made changes to their harassment and discrimination laws impacting everything from the standard for proving harassment and discrimination, to the introduction of new protected classes, to new training requirements, and more. In late June 2023, the federal Pregnancy Workers Fairness Act was enacted requiring employers to provide certain accommodations to employees with limitations due to pregnancy, childbirth or related medical conditions. More than 20 states have adopted CROWN Acts prohibiting discrimination based upon an employee's hair texture or protected hairstyles impacting not only discrimination policies, but also dress code policies. If your handbook has not been updated to comply with new harassment and discrimination laws, it is time for an update.

Along with new sick, family and medical leave and discrimination and harassment laws, states are constantly implementing new wage and hour requirements impacting pay transparency, minimum wage and overtime, pay frequency and final paycheck requirements. If your employee handbook does not reflect policies complying with new wage and hour requirements, it is time for an update.

Reason 2: Employee Handbooks Should Be Updated To Reflect A New Post-Pandemic Reality.

Along with operating under new laws, businesses are also operating in a new post-pandemic reality. Long gone are the days when all employees are reporting to the same physical work location. Even employers who have returned employees to the office have some employees working remotely or in a hybrid setting. If your handbook does not contain updated remote or hybrid work policies or reflect the remote or hybrid reality you find yourself operating in, it is time for an update.

Remote and hybrid work has caused employees to spread throughout the country, greatly expanding the universe of state laws employers need to abide by and the state law policies that need to be addressed in your company's employee handbook. While prior to the pandemic many companies had employees working in just one or a small handful of states, most employer are now operating in multiple states. If your company's handbook does not contain policies complying with *all* of the states in which you have employees, it is time for an update.

New technologies have also emerged helping businesses to evolve. How those new technologies impact your business, and your employees also has to be spelled out in your employee handbook. If your employee handbook makes no mention of social media, virtual meeting platforms like Zoom and Teams, instant messaging, or employee portals, it is time for an update.

Reason 3: Out-Of-Date and Out-of-Touch Employee Handbooks Blunt Your Company's Ability to Effectively Communicate the Rules of the Game to Employees.

Along with avoiding legal risks and communicating new policies that are dictated by a new reality, your company's handbook should be updated because it is one of the first and most effective tools for messaging the rules of your employment relationship with your employees. Like any good instruction booklet, an effective employee handbook will tell employees how the game is played. An effective employee handbook is your opportunity to tell your employees what your company is all about, what it provides to them and what it expects from them.

But, if your employee handbook is out-of-date or out-of-touch with the reality in which you operate, then that effectiveness is blunted. If the handbook says one thing, but your employees know another thing to be true, your messaging tool turns into a garbled mess. In other words, if the handbook doesn't reflect that rules of the game that you expect your employees to play, then employees won't be able to properly play the game.

In sum, as year-end approaches, every company should consider updating their employee handbook to comply with new laws, new realities and to make sure they are effectively communicating their expectations to employees.

White and Williams attorneys are ready to assist employers develop Employee Handbooks and other employment policies and procedures in a cost-effective manner. For more information, please contact Laura Corvo (201.368.7226; corvol@whiteandwilliams.com) or a member of our Labor and Employment practice group.

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