

# 6 Common Employee Handbook Mistakes to Avoid

Start the new year with a review of your employee handbook.

January 11, 2023

By Susan Potter Norton and Melanie Matamoros Cruz | January 11, 2023

As the new year begins, employers should take a step back to evaluate the state of their employee handbook. Employee handbooks are an essential tool in any business as they clearly lay out the company's policies and practices.

For most employees, other than the obligatory posters which are frequently ignored, the handbook is the only legal touchpoint they have regarding their rights and responsibilities. Businesses should take a hard look at these important legal road maps to ensure they are not committing these six common mistakes.

## Not Geared Towards Employees

Many handbooks are lengthy compendiums of complicated legalese most employees would find difficult to read. Employers fail to realize that this reference guide is meant to reach numerous types of employees – from those with less than a high school education to employees with a professional degree. Language in the handbook should be clear and sufficiently simple so that all employees can read and understand the company's policies.

When simplifying your policies, be concise – eliminate redundant and boilerplate language. Determine whether your handbook accurately reflects your company's actual policies and practices. Handbooks must also be thorough. As an employee's guide to their legal rights, handbooks must include applicable rights such as the company's EEO policy, FMLA leave, and any other federal and state law protections as well as rules and practices.

## Anti-Harassment Policies

Harassment lawsuits are some of the most common and costly suits employers confront. Employers can help avert them with robust and specific anti-harassment policies. The anti-harassment policy should clearly outline the reporting procedure for employees such as designating two specific persons for reports. Also, clearly designating two individuals (of opposite sex) can also make it easier for the employer to track and verify harassment complaints. Other reporting methods such as a 1-800 phone number are preferable in remote locations.

The harassment policy must also advise supervisors and managers of their responsibilities. One such example is that there is no such thing as telling a supervisor something "in confidence." Supervisors represent the company and are thus obligated to report any harassment allegations they hear and/or "almost heard," and therefore never agree to confidentiality.

## **Include Disclaimers**

Many lawsuits spring from misrepresentations made by a supervisor or manager to an employee about their job status. Handbooks should include a disclaimer clearly communicating that employees cannot rely on representations as to any term or condition of their employment. Florida and other states presume employment relationships to be at-will and the handbook should reinforce that by including a disclaimer disavowing the handbook as creating any kind of contractual relationship. This statement should be prominently placed with bold type to capture employees' attention.

## **'Off-the-Clock' Work Policies**

Work that is "off-the-clock" is uncompensated work performed outside of working hours. Uncompensated, off-the-clock work is illegal and can expose employers to FLSA litigation. The importance of concrete policies has grown even more with the prevalence of remote and hybrid workplaces where the lines between time at work and time outside of work have increasingly blurred.

Handbooks should strive to have clear, detailed policies explaining that off-the-clock work for hourly employees is prohibited. Handbooks should clearly lay out a mandatory reporting for any off-the-clock work so that employees can be compensated for off-the-clock hours worked.

## **Knowing When to be Flexible or Specific**

Companies must strive to create handbooks that balance the line between being overly specific and vague. It is impossible to create policies that account for every situation that may arise in the workplace. A handbook that attempts to do so only prevents an employer from addressing different situations. On the other hand, vague or broad policies provide no guidance to employees and create misunderstandings.

An important example is a company's disciplinary policy. While companies should list the types of prohibited behavior and the potential penalties employees can face, handbooks must allow leeway for employers to respond differently depending on the severity or context of the conduct. A measured approach tailors your handbook to fit the company's critical policies and values.

## **Training is Essential**

A well-written handbook is pointless if managers and supervisors are unaware of its policies. Properly train supervisors and managers to ensure consistent application. Conduct periodic training to refresh memories and if there have been updates to the company's policies.

*Susan Potter Norton and Melanie Matamoros Cruz are attorneys at Allen Norton & Blue, P.A. with offices in Miami, Tampa, Orlando, and Tallahassee. The firm focuses on labor and employment law, representing management interests for state, national, and international clients in the public and private sectors for more than 50 years. Contact Potter Norton at [SNorton@anblaw.com](mailto:SNorton@anblaw.com) and Matamoros Cruz at [MMatamoroscruz@anblaw.com](mailto:MMatamoroscruz@anblaw.com).*

---