

## Founder Fundamentals

### Employee Handbooks – Why Do You Need Them and What Should They Include?

So you've developed a business concept, filed the necessary paperwork, and are in the process of hiring new employees. Your business is ready to go and you can start focusing on your product or service, right? Not so fast. One of the major pitfalls we see when advising early- and mid-stage startups is overlooking basic labor and employment issues. The patchwork of employment laws and regulations at the federal and state level, and depending on where your business is located, the local level, can be difficult and confusing to navigate. One of the ways you can protect your business—and provide transparency for your employees—is to prepare and distribute an employee handbook containing both required and recommended workplace policies.

Although there are no laws requiring private employers to provide handbooks to their employees, from a legal perspective, some states require written policies in order to comply with certain laws, such as policies regarding sexual harassment and various types of required leave. An employee handbook is the ideal place to include those policies. From a labor relations standpoint, there are plenty of reasons for employers to provide a handbook, including formally welcoming new employees and introducing them to the company, explaining employee expectations, and providing a document with relevant company policies in one place for employees can look to for answers to common questions. Additionally, obtaining signed acknowledgments from employees that they have received a handbook with required and recommended policies can assist in an employer's legal defense in the event you find yourself involved in litigation.

Now that you understand why you should prepare an employee handbook, let's take a look at what should be included. In addition to certain disclaimers, the policies that should be included in a handbook generally fall into three categories: (1) required policies; (2) recommended policies; and (3) custom policies applicable to your unique business.

#### Disclaimers

At the outset, you want to ensure that your handbook is not confused with an enforceable employment contract. Accordingly, your handbook should include an opening disclaimer noting that nothing in the handbook creates a contract of employment. Additionally, your handbook should also include disclaimers that the policies in the handbook are guidelines only, that the company has the right to modify or delete policies in the handbook without notice, that the employment relationship is at-will (and if some of your employees have an employment agreement, the disclaimer should include language that the employment agreement governs to the extent there is any conflict between policies in the handbook and the employment agreement) and that the policies are not intended to infringe on employees' Section 7 rights under the National Labor Relations Act.

#### Required Policies

To identify which policies are required, you must first determine in which states, counties, and cities your employees work, whether physically or remotely, so you can — with the help of counsel — identify the applicable federal, state and local laws. Once you identify which laws apply, your next step

is to establish which of those laws require a written policy (note that, even if you decide not to prepare an employee handbook, certain jurisdictions have laws requiring employers to provide some policies to employees in writing, thus necessitating standalone written policies). For example, both California and New York require written anti-sexual harassment policies and written policies addressing certain required leaves of absence (e.g., sick leave, paid family leave, etc.).

#### Recommended Policies

Next, you should add recommended policies to the handbook. These policies, while not required, will demonstrate compliance with applicable federal, state and local laws and communicate to your employees the company's commitment to compliance with these laws. Some examples include:

- An Equal Employment Opportunity/Anti-Discrimination Policy – Identify the types of legally protected characteristics, include a statement that the company will not discriminate against employees based on these characteristics in any aspect of employment, and lay out a complaint procedure for employees who feel they have been subjected to discrimination.

- An Anti-Sexual Harassment Policy – Define sexual harassment, outline the types of prohibited conduct that constitute sexual harassment (as well as other types of prohibited behavior, even if such behavior does not legally rise to the level of sexual harassment), and lay out a complaint procedure for employees who feel they have been subjected to harassment. (\*Note, some states have laws in place that require employers to implement a sexual harassment policy and outline specific details that must be included in that policy.)
- An Anti-Retaliation Policy – Identify the types of conduct that are deemed prohibited retaliation and a complaint procedure for employees who feel they have been subjected to retaliation.
- A Reasonable Accommodation Policy – Set forth the company’s commitment to complying with federal, state and local laws concerning accommodating employees with disabilities, religious concerns, pregnancy and other protections afforded under applicable law, as well as a process for employees to request a reasonable accommodation.
- Employee Leave Policies – Ensure that employees are informed of certain types of leave that are required under applicable federal, state and local laws.
- Wage and Hour Policies – Addressing legal requirements related to employee wages, as well as employee scheduling and attendance and list who to contact about same.
- Employee Conduct and Disciplinary Policies – Set forth the company’s expectations and processes for violations of those expectations.
- Employee Benefit Policies – Outline core benefits provided to employees, such as health insurance, PTO, holidays, etc.
- Workplace Safety Policies – Detailing how employees should handle workplace safety and when and how to report workplace safety concerns; and
- Termination of Employment Policies – Address the company’s normal practices and procedures for departing employees.

### Customized Policies

Finally, many employers choose to add additional policies to their employee handbooks addressing employee perks such as expense reimbursement, travel policies and other employee comps.

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The above information is only a broad overview of employee handbooks. As with any important company document, employee handbooks should be prepared (or at least reviewed) by counsel to ensure compliance with applicable laws and should be continuously updated to ensure continued compliance with the constantly changing legal landscape.

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