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IN THE BUSINESS OF YOUR SUCCESSSM

Top 10 Employee Handbook Mistakes

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Agenda

- **What is an employee handbook?**
- **Why is it important?**
- **Top 10 employee handbook mistakes and how to avoid them**
- **Best practice recommendations for creating and maintaining an employee handbook**

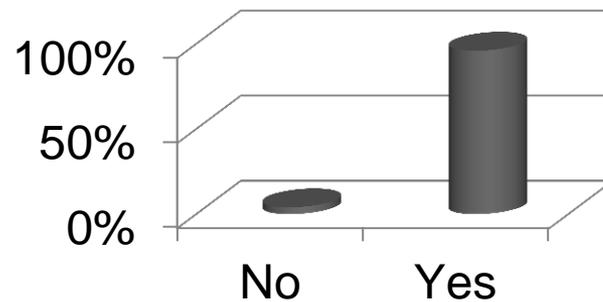
Poll the Audience

- **Have you made at least one of the following common mistakes when creating your handbook?**
 - Created the handbook just to “get it done”
 - Covered federal requirements but didn’t thoroughly check applicable state laws
 - Did not include an “at-will” disclaimer
 - Didn’t review it once after publishing it
 - Never had legal counsel review it

Poll the Audience

- **How many of you made at least one of the common mistakes when creating your handbook?**

Made a Mistake?



What is an employee handbook?

So, what exactly is an employee handbook?

- **It's a manual, but it's also much more than that**
- **Compilation of policies, procedures, working conditions and expectations**
- **Sets the tone for the employment relationship**
- **Provides basic information about the company**
- **Can help protect BOTH the employer and employees**

Mistake # 1:

Viewing the handbook as
“just another HR requirement”

The handbook is a compliance tool

- **Demonstrates compliance**
- **Can help protect company from certain employee claims**
- **Provides important information on topics such as:**
 - Non-discrimination & anti-harassment
 - Workplace rules & procedures
 - Health & safety
 - Benefits & payroll information

Mistake # 2:

Failing to check state-specific requirements

Take state/local laws into account

- **Outline federal requirements**
- **Include state requirements in all states of operation, including but not limited to:**
 - Various leave requirements (e.g., jury duty, voting leave, domestic violence leave, small necessities, state FML)
 - Overtime, meal and rest period requirements
- **Research local laws if necessary**
- **Consult legal counsel if you have questions about the laws, especially local jurisdictional requirements, that you need to consider when drafting your handbook**

Mistake # 3: Making promises



Use language that does not create implied contract

- **You cannot account for all circumstances**
- **Include statements that allow for flexibility**
- **Avoid statements that could be construed as promises**
- **Examples to avoid:**
 - Doing “everything possible to give notice or detail a change regarding...”
 - Promising “regular performance reviews” at a set interval
 - Providing a detailed “disciplinary action procedure”

Mistake # 4: Failing to include a disclaimer

Include a disclaimer upfront

- **Disclaimer should come first, in large, bold face font**
- **Explains the “at-will” relationship (if applicable)**
 - Employer or employee may terminate the relationship at any time
- **Exceptions:**
 - Statutory exceptions such as illegal discrimination or retaliation
 - Common law exceptions such as creation of an implied contract
 - Other exceptions under the law

Tips for drafting an at-will statement

- **Clearly define employment relationship**
- **State that the handbook does not create a contract of employment**
- **Explain who in the company can change the terms of the relationship**

Mistake # 5: Not including the “essentials”

Essential workplace policies

■ **Nondiscrimination**

- Equal Employment Opportunity (EEO)
- Sexual and other Unlawful Harassment
- Immigration Law Compliance

■ **Benefits & Leave**

- Vacation, holidays, and other paid time off
- Company-specific benefit programs (e.g., health insurance, retirement plan, employee discounts, etc.)
- Federal or state mandated leave (e.g., family and medical leave, military leave, voting leave, etc.)

Essential workplace policies (cont'd)

■ **Conduct**

- Standards of Conduct
- Disciplinary Action
- Personal Appearance
- Attendance & Punctuality

■ **Timekeeping & Payroll**

- Meal and break periods
- Timekeeping
- Paydays
- Payroll Deductions

Mistake # 6:

Failing to consider company norms, culture

Customize handbook to meet your needs

- **Company-specific policies**
- **Consider history, practices and culture**
- **Account for specific rules or procedures**
- **Think about issues your business may be faced with:**
 - Use of company equipment
 - Workplace privacy
 - Cell phone use
 - Social Media
 - Workplace relationships

Mistake # 7: Failing to obtain acknowledgements

What is an acknowledgement?

- Indicates receipt and that the employee has read and understands the contents
- Reiterates the at-will relationship (if appropriate)
- States that the handbook does not create a contract of employment

Obtaining acknowledgement

- **When handbook is first issued**
- **At the time of hire**
- **Whenever there are updates made to handbook**
- **Store signed acknowledgements in personnel files**

Mistake # 8: Failing to review the handbook regularly

Review the handbook at least annually

- **Why?**

- Laws change
- Business needs change
- Your company may grow in size, triggering new issues or legal requirements

Mistake # 9: Skipping legal review

Test Your Knowledge

- **How much does it cost to have legal counsel review your handbook versus fighting a legal claim?**
 - A. Legal review is more than actually fighting a legal claim
 - B. Fighting a legal claim will cost you much more than simply having the handbook reviewed

Test Your Knowledge

Q: How much, on average, does it cost to have legal counsel review your handbook?

A. Legal review is more than actually fighting a legal claim

B. Fighting a legal claim will cost you **much** more than simply having the handbook reviewed

✓ **You can't afford to NOT have a compliant handbook**

Review the handbook with legal counsel

- **Seek legal review upon initial publication *and* when updates are made**
- **Review with legal counsel to help ensure:**
 - Your company is compliant with current laws and changes
 - Changes in size and operating location(s) are accounted for
 - Appropriate language is used

Mistake # 10: Not applying policies consistently

Be consistent and train management to do so

- **Apply policies consistently, while reserving right to be flexible based on circumstances**
- **Don't assume management understands the policies**
- **Train managers on:**
 - The contents of each policy and rule
 - How to apply the policies
 - Next steps

Frequently Asked Questions

1. My company only has 5 employees. Do we really need a handbook?

- ✓ Yes! It is best practice to have an employee handbook regardless of size.

2. Does having a handbook create a “contract of employment?”

- ✓ No, your handbook should contain clauses and cautionary language expressly stating the handbook does NOT create an employment contract and that verbal statements made to the employee are not intended to alter the at-will relationship.

3. Will the handbook limit my ability to manage my employees?

- ✓ No. The language in your handbook should provide guidelines for effectively navigating a variety of employee relations issues and can help set appropriate expectations with employees.

Q & A (cont'd)

- 4. How do I apply the policies consistently *without* including language that is too specific?**
 - ✓ The language in the handbook should serve as guidance to the steps that may be taken in a given situation. Include caveats such as, “at management’s discretion” or “each circumstance is unique.”

- 5. We distributed our handbook last year but never obtained acknowledgements. Now what?**
 - ✓ Act now! Consider a review, including legal, of your handbook since it was initially created last year. This is a great time to update any policies. Upon distributing the updated handbook, request an acknowledgement from all of your employees.

Key Takeaways

- **The handbook can be a comprehensive compliance tool to help set the tone of the employment relationship**
- **Check federal, state and local laws to help ensure compliance**
- **Use flexible language and do not make promises**
- **Include a disclaimer that outlines the at-will relationship and states that the handbook does not create a contract**
- **Obtain signed acknowledgements from all employees**
- **Consider reviewing the handbook with legal counsel before distributing to employees**

Thank you for attending

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