

Crucial Employee Handbook Updates for 2009

Employers face numerous employment law changes as a result of new laws, new regulations and recent court decisions. Employers must also prepare for new legislation that will likely follow later this year.

The employee handbook updates for this year are more numerous and more crucial than in recent years.

Readability

In 2007, we completely overhauled our employee handbook provisions so they read at an 8th grade level. Most handbooks read at above a 12th grade level. The easier a handbook is to read, the more likely its provisions will be enforced by a court, arbitrator or administrative agency.

This year we continued to improve readability with dozens and dozens of changes.

Ledbetter Fair Pay Act

The first piece of legislation signed by the new administration was the Ledbetter Fair Pay Act. This new law will increase the number of pay discrimination claims, revive claims that have previously been extinguished and place new burdens on employers. New provisions have been added to the 2009 employee handbook to require employees to report any discrimination they experience or observe, including pay discrimination.

This may not prevent pay discrimination claims but may allow you to question why claims brought after the fact were not reported sooner.

New Supreme Court Harassment Decision

The United States Supreme Court held on January 26, 2009 that an employee's statements made during a sexual harassment investigation are protected against retaliation. Our prior handbook policies addressed this very situation and should be adequate. Nevertheless, we enhanced the policies. The update states employees have an obligation to cooperate with investigations and are protected from retaliation for doing so.

Religious Accommodations

More and more employees are requesting religious accommodations. Some requests may be required, others are not. The 2009 handbook makes clear that only sincerely held, generally recognized religious beliefs that do not interfere with safety, efficiency, discipline or other business concerns will be considered.

Genetic Information Discrimination

The Federal Genetic Information Nondiscrimination Act (GINA) went into effect on November 1, 2008. The handbook's equal employment opportunity provisions have been updated to comply with this new law.

Fights

In 2008, more of our clients had problems with employee fights than ever before. Although it should go without saying, we added a specific policy prohibiting fighting or provoking a fight. Our unique Guide to Getting Along remains.

Starting Competing Business

Why should you give employees vacation time to set up a competing business or work for a competitor. Appropriate changes to the vacation policy have been made.

Active Duty Family Leave

The National Defense Authorization Act (NDAA) was signed into law in January 2008. That act amended the Family Medical Leave Act (FMLA) to allow employees to take leave in certain circumstances when a family member is called to active duty. Our 2008 employee handbook update was one of the very first to address this new entitlement.

Regulations interpreting this act were published at the end of 2008. Our 2009 handbook update implements these new regulations.

Injured Service Member Leave

The NDAA also created a special FMLA leave allowing employees to care for injured service members. This too was addressed in our 2008 update. This 2009 employee handbook update implements the new regulations covering injured service member leave.

New FMLA Regulations

The new FMLA regulations are extensive. They are not limited to just active duty family leave and injured service member leave. The 2009 employee handbook update requires employees to follow new obligations now allowed by the regulations.

Light Duty

If you provide light duty work for injured employees, you need flexibility to assign them wherever an appropriate task may be available. This is now made clear.

Attendance

Attendance issues are always a huge problem for employers. Now some employees are claiming they should not have been terminated because their failure to show up for work is itself a disability. Changes have been made to protect you.

Inappropriate T-Shirts

You would think that adults would know better than to wear t-shirts or other clothing with obnoxious, offensive or sexually explicit messages to work. You would be wrong. Not only can this annoy others and disrupt your workplace but it can lead to racial, religious, disability or sexual harassment claims. This problem is now addressed in the updated Appearance policy.

Drugs & Alcohol

As issues in this area continue to evolve, your drug and alcohol policy should be continually updated. This year is no exception. The 2009 updates make clear that:

- Refusing a test violates your drug policy.
- Altering or tampering with a sample violates your policy.
- Test results may be released to the employment division.

- The employment division may deny unemployment benefits if an employee violates your drug policy.
- You may use test results in any administrative (BOLI), mediation, arbitration or judicial proceeding.

Union Organization Defense

New laws are expected that will make it easier for unions to organize almost any workplace. Our longstanding provisions preventing use of your facilities for union organizing efforts have been reviewed and enhanced. A grievance procedure is recognized as another method of defending against union drives. The complaint procedure previously used for harassment and other complaints has been expanded.

Confidentiality Savings Clause

The National Labor Relations Board (NLRB) argued in federal court that non-union employers' confidentiality provisions violate the National Labor Relations Act (NLRA). The argument was that confidentiality provisions can make it more difficult to organize a union. The NLRB won, the non-union employer lost.

A "savings" clause has been added with the 2009 updates that retains important confidentiality provisions but makes clear the policy does not violate the NLRA.

Confidentiality. Speaking of confidentially, the scope of the confidentiality protections have been expanded.

Americans with Disabilities Act

Employers have had to comply with the Americans with Disabilities Act (ADA) since 1990. In January of this year, the ADA Amendments Act of 2008 (ADAAA - I do not make these acronyms up) went into effect. Essentially the ADAAA changes the focus from asking whether an employee is disabled to whether the employer has satisfied its legal obligations to the employee. As a result, we updated the disability provisions in the handbook.

Removal of Documents

Employees who want to sue you may take (steal) your documents and use them against you. It has become a recurring trend. The handbook updates now make it easier for you to prevent use of stolen documents in a court or other proceeding.

The same policy also protects the private information of employees from theft by other employees.

Smoking

Oregon has a new, tough nonsmoking law that now covers all employers. The 2009 handbook has been updated accordingly.

Recordings

There is a well publicized case where an employee secretly recorded workplace conversations to use against his employer. This looks like it may become another new trend. By prohibiting employee recordings (without limiting your ability to do so), you may be able to prevent an unauthorized recording from being used against you.

Resignation & Retirement Notices

Our handbooks have long allowed employers to pay departing employees after they give notice if the employer wants them out of the workplace. The 2009 updates now set out reasons why pay may be denied based on the employee's conduct.