



Employee Handbook & Policies: Time for an Update?

Presentation by

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Employee Handbook: Time for an Update?

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Why Have an Employee Handbook?

What is the purpose of
your Employee Handbook?



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Top Reasons to Have an Updated Handbook

- So employees know your policies and procedures
- So you can communicate your corporate culture, history, mission and values
- Make sure employees understand the company's expectations
- So your managers have guidance in implementing policies and maintaining consistency
- So you can use it to potentially defend a legal action
- So you can provide legally required notifications.



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Risks of a Poorly Drafted or Outdated Handbook

- Make sure your handbook is tailored to your workplace
- Make sure your written policies reflect the actual practices that are being followed
- Make sure your handbook policies are consistent with other company documents (for example, benefit documents)
- Having a weak handbook or one that is not followed can do more harm than good
- If not strictly followed, may give rise to breach of express or implied contract misrepresentation or promissory estoppel claims.
- Failure to apply policies uniformly lead to discrimination claims or retaliation.



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Employee Handbook

- Written in plain language/understandable
- Overview of key policies/benefits
- General expectations of company
- At-will /disclaimers/required notices

VS.

Policies/Procedures Manual

- Tool for managers and supervisors
- Comprehensive text detailing how various issues and circumstances should be handled
- Step by step by procedures
- References to state/federal laws



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Review the At-Will Employment Language:

Make sure your Employee Handbook clearly and unequivocally states that it does not constitute or create a contract of employment and that all employment is “at will” and can be terminated by employee or employer at anytime for any non-discriminatory reason.

- Employment is not for any definite period of time (be careful using terms “probationary” or “permanent” employees)
- No assurance of continued employment
- Employee or employer may terminate relationship at anytime for any reason, with or without notice or cause
- No contract of employment unless in writing and signed by designated official.



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Major Goal – Consistency

The most important reason to have a handbook is to be able to consistently enforce and apply policies and procedures.

**CONSISTENCY
IS THE
KEY
TO
COMPLIANCE
COMPLIANCE
COMPLIANCE**



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Handbook Policies or Language to Avoid:

1. “Open Door” policy
 - Is this really necessary?
 - Can be used against company
2. Policies regarding reimbursing company for loss of money, damage, missing uniforms/equipment particularly where deductions are taken automatically from wages
3. Probationary employee policy
 - Does it confer special status?
 - What does it mean?
4. Policies stating that salary/wages are confidential and/or should not be discussed by employees (illegal under National Labor Relations Act)
 - Employer does not have to share salary/wage information of other employees



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Handbook Policies or Language to Avoid (cont.):

5. Policies which state that workplace investigations or complaints are confidential and should not be discussed by employees.
6. Policies which prohibit:
 - Employees from making negative comments about other employees, managers or working conditions or pay;
 - Require employees to reframe from discussing complaints, gripes, problems or negative aspects of the job or working at the company
 - Distribution of literature
 - Even making false statements (must be false and malicious)
 - Negativity or require positive attitude about company and its working conditions

*All can be construed as Section 7 infringement



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Policies You Should Have in Your Employee Handbook

- At-will employment policy
- Equal employment opportunity policy
- List of Protected Classifications
 - **Federal:** race, color, gender, religion, national origin, age, disability and citizenship
 - **Connecticut:** race, color, religion, age, gender, marital status, national origin, ancestry, past or present history of mental disorder, learning disability, physical disability (including blindness), sex, genetic information, sexual orientation, **gender identity or gender expression, and pregnancy, childbirth and related medical conditions.**



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Policy Regarding Protected Class Harassment

- Definition of prohibited conduct
- Set forth examples
- Set forth a detailed complaint/reporting procedure with option including how to contact CHRO and make a claim
- State all complaints will be investigated
- Check to make sure your “anti-retaliation” language is strong
- Include new training requirements



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Key Policies

- Pregnancy Accommodation Policy
- Workplace Violence Policy
- Drug Free Workplace
 - Set forth drug testing policy, if applicable
- Paycheck Corrections



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Key Policies (cont.)

- Set out your leave of absence policies
- Medical leave (FMLA if applicable)
- Do not cap medical leave term (make it “discretionary”)



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Key Policies (cont.)

- Wage and hour (paydays, meal/rest, OT, travel, tips)
- Time off (vacation, sick, bereavement, holidays)
- Driving/company car policies



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Key Policies (cont.)

- Company's right to change, modify or deviate from handbook when necessary
- Acknowledgment of receipt



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Review Your Policy Regarding Company Property

- Does it define "confidential information" and "trade secrets"?
- Does it state that computers, email and electronic equipment are company property to be used for work purposes?
- Does it advise employees that employer retains right to monitor use and conduct searches/inspection?
- Passwords do not guarantee privacy
- Employees consent to search based on employment.



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Mandatory arbitration agreements with class action waivers are enforceable in employment relationship.
See Epic Systems Corp. v. Lewis, 138 S.Ct.1612 (May 21, 2018)

*However, make sure arbitration agreement is supported by consideration and not simply included as a policy in Employee Handbook (this is true for non-compete/non-solicitation policies also).



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Disciplinary Policy/Standards of Conduct

- Provide description and examples of conduct that will result in discipline, including potential termination.
- Employer has discretion to use any form of discipline
- Is progressive discipline really right for your organization?



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- Connecticut paid sick leave compliance
- Medical marijuana rules and compliance with Connecticut law
- New federal overtime threshold effective January 1, 2020 (\$684/week or \$35,568 per year) qualify for exempt executive, administrative or professional.



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Questions?



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About Your Presenter

Kevin J. Greene is Chair of the Labor and Employment Practice Group for Halloran Sage, a law firm with offices in Hartford, Danbury, Middletown, New Haven, New London, Westport, and Washington, D.C.

He has almost 25 years of experiences representing and counseling employers in all manner of employment issues, including wage/hour, discrimination, reasonable accommodation and ADA compliance, FMLA and leave of absence, discipline and implementing policies to comply with Connecticut and federal law.

He is often asked to analyze legal risks associated with hiring, discipline and termination of employees in order to counsel clients with these employment decisions. In addition to counseling employers, Kevin is a trained and experienced litigator who has tried many cases to verdict and protects his clients' interests when litigation becomes necessary.



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THANK YOU!



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