

TIPS FOR DRAFTING EMPLOYEE HANDBOOKS – TIP #5: UPDATING HANDBOOKS TO ADDRESS CHANGES IN THE LEGAL LANDSCAPE

Nov 10, 2017

This article is part five in a six-part series. The purpose of this series is to provide tips and identify potential pitfalls associated with the drafting of an employee handbook.

While an employee handbook serves many functions, its primary purpose from a legal standpoint is to reduce potential liability with respect to claims brought by current and former employees. Unfortunately, many employers are unwilling to commit the time and bear the expense of implementing an employee handbook (or updating an existing handbook) until after they have been sued and the absence (or poor draftsmanship) of a particular written policy has crippled their defense to an employment claim. The purpose of this series is to provide tips and identify potential pitfalls associated with the drafting of an employee handbook. Tip #5 focuses on the importance of consistently updating employee handbooks.

Tip #5: Updating Handbooks to Address Changes in the Legal Landscape

An employee handbook can only reduce potential liability if the policies therein are legally compliant. Accordingly, it pays to review your handbook periodically to ensure that your policies are up to date.

For example, multi-state employers need to be vigilant about ever-changing state-specific (and even city-specific) obligations. Current hot topics include leave rights (e.g., paid sick leave), drug testing (e.g., protection for medical marijuana use), and pregnancy accommodation. Rarely will a “one size fits all” policy on any of these or similar subjects be compliant in all jurisdictions. Accordingly, employers should consider state-specific addenda and update them regularly.

At a federal level, policies should be reviewed to ensure that they are compliant with current regulations and government agency opinions. Family and Medical Leave Act (FMLA) policies, for example, must contain, at a minimum, all of the information contained in the FMLA workplace poster (a new version of which was issued in April 2016), even down to the phone number and email address of the Department of Labor. Other policies, such as wage and hour policies or trade

secrets policies, for example, can be strengthened by ensuring they include appropriate “safe harbor” language.

Employer-specific policies also should be reviewed on occasion to ensure they are consistent with your current practices and needs. Perhaps your dress code isn’t keeping up with the times. Or maybe your social media policy needs to be more specific about the “do’s” and “don’ts”. Perhaps an employee misconduct situation has revealed a weakness in your discipline policy. Take the time to ensure your handbook remains relevant to your workplace and therefore more useful should you need to rely on policy language to justify adverse employment action.

Regular handbook review and updating = better protection for your company.

Bryan Cave LLP has a team of knowledgeable lawyers and other professionals prepared to help employers draft and update their employee handbooks. If you or your organization would like more information on employee handbooks or employment laws, please contact an attorney in the Labor and Employment practice group.

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