

## 5 Common Employment Handbook Pitfalls

Your employee handbook is an important tool for managing the relationship between you, as the employer, and your employees. It helps your employees understand your expectations for them and answers important questions about benefits like vacation, sick time and insurance. You expect your handbook to be a benefit to you. If it is improperly drafted, however, your handbook could be a liability. While there are many factors to consider in preparing an employment handbook or manual, we invite you to consider whether your handbook contains any of these 5 common pitfalls. If you would like CBL to evaluate your handbooks for these and other issues or prepare a new handbook or policy manual for you, contact us.

**5. Failing to update your policies.** Many employers obtain competent legal advice in preparing their initial handbook or policy manual but never update it. The laws change frequently, and your actual practices may evolve over time so that they don't reflect the policies contained in your manual. This could lead to big problems. Review your handbooks and policy manuals annually and consult your attorney regarding any legal updates. Revise your handbooks and policy manuals to reflect your best practices and compliance with all laws and regulations. Contact CBL if you would like us to assist you in updating your handbook or policy manual.

**4. Failing to have a policy to prevent all forms of harassment.** Most employers know that they need a policy in place to prohibit sexual harassment and to tell their employees who to contact in the event of sexual harassment. Many employers, however, fail to address other forms of prohibited harassment such as harassment based on race, national origin or religion. If a situation arises where an employee claims harassment based on one of these other protected classifications, the employer's ability to defend the claims may be compromised by failing to address this in the handbook. Contact CBL, if you would like assistance in evaluating and revising your no-harassment policy.

**3. Failing to designate an unbiased person to receive reports of harassment.** As stated above, most employers know that they need to tell their employees to report perceived harassment (and to advise the employee that he/she won't face negative consequences for making a report). Many employers tell their employees to report harassment to their supervisor. This policy may work just fine if the alleged harasser is a co-worker, but what happens if the

supervisor is the alleged harasser or there is some other reason that the employee is uncomfortable making the report to his/her supervisor? Both the employer's ability to prevent the harassment and the ability to defend a harassment suit may be compromised. Don't get caught in this trap. Designate an HR professional or some other person to receive harassment complaints in the event the employee is uncomfortable making the complaint to his/her supervisor. If your organization is not large enough for an HR professional, you may want to look into third party providers who will host a "harassment hotline". Contact CBL if you would like assistance reviewing, revising, or preparing your harassment response program.

**2. Including a Probationary Period.** Many employers commonly refer to the first 90 days of employment as a probationary period. If your employees are "**employees at will**" and you want the right to terminate their employment at will, you should **avoid** any use of the term "**probationary period**". You don't want your employees to argue that the fact that they have completed the probationary period gives them some contractual right or expectation of continued employment. Through proper drafting, the goals most employers have for their probationary period can be accomplished without opening this door. For example, it is usually permissible to delay the eligibility for certain benefits such as paid-time-off for a period of time. Contact CBL, if you would like assistance in accomplishing your goals while avoiding challenges to employment-at-will status.

**1. Using Contract Language.** The number one mistake in employment manuals is the use of mandatory contract language when the employer did not mean to create a mandatory or contractual obligation. Words like "**shall**", "**must**", and "**will**" are often misused and should usually be avoided in employment handbooks. Employees may use the presence of these words in your handbook to argue the existence of a contractual obligation or to allege that the employer did not follow its policies. While you want to treat your employees consistently, you need flexibility to implement changes and to use your business judgment. For example, if your manual says you **will** use a progressive discipline policy, you may not have the flexibility to terminate an employee on the spot, even for an egregious violation. Conversely, the use of these contract words may eliminate your flexibility to provide a more lenient punishment to a long-term employee who made a one-time mistake or to make changes to your benefits programs to respond to market conditions. If you need assistance in evaluating the language in your employment manual, contact CBL.