

Optimizing Your Employee Handbook

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Fredrikson

The logo for Fredrikson, featuring the name in a bold, black, sans-serif font. A red horizontal bar is positioned below the 'F', extending to the right and ending under the 'n'.

Agenda

1. Big Picture – What is the Purpose of the Handbook?
2. Legally-Required Policies
3. Strongly Recommended Policies (and why!)
4. Recent Legislative Changes that May Affect Your Policies
5. Use of Handbooks in Litigation
6. Policies: What's Hot (and What's Not)

The Big Picture

Your Handbook Serves Many Purposes

- Reference for employees and managers
- Outlines workplace expectations
- Explains benefits and entitlements
- Identifies appropriate contact person(s) for issues
- Helps navigate difficult situations
- **Protects the company**



Company Protection

- Ensures legal compliance
 - Disclosing required policies
 - Handling issues
- Resource for Human Resources and Managers
- Outlines the company's expectations and penalties for violations
- Assists in the discipline process
- Ensures consistency across employees

Is Your Handbook Meeting Your Needs?

- Does it accurately reflect the law?
- Do you have confidence in its content?
- Do you know what policies are included and why?
- Does it reflect the company positively?
 - Consistency (“the employee” vs “you”), gender-neutral language, no typos
- Do you have signed acknowledgements?



Handbook Supplements

- Modify rights, benefits, and policies in the “main” handbook
- Provide guidance to narrower group of employees
- Typically convey city, county, and state-specific policies
- Some jurisdictions require certain written policies

New York Employee Handbook Supplement

March 1, 2022

ABOUT THIS SUPPLEMENT

This Supplement provides information on general guidelines, policies, and procedures that apply to the Company’s New York employees. It is intended to supplement the Handbook which is incorporated herein by reference. To the extent a provision of this Supplement is inconsistent with a provision of the Handbook, this Supplement shall control.

Equal Employment Opportunity

In New York, the Company’s Equal Employment Opportunity Policy also applies to the protected classes of predisposing genetic characteristics, actual or perceived heterosexuality, homosexuality, bisexuality and asexuality, status as a victim of domestic violence, arrest record, past conviction(s) (unless there is a direct relationship between a prior offense and the position sought or the employment would present an unreasonable risk to property or to the safety or welfare of others), engaging in certain conduct during non-working hours and while not on Company premises and not using Company equipment or property (including but not limited to political activities, legal use of consumable products, legal recreational activities, union membership), expressing breast milk at work, lawful source of income, and any other status protected under any applicable local law.

In New York City, the Company’s Equal Employment Opportunity Policy also applies to the protected classes of alienage, caregiver status, actual or perceived sex and the individual’s gender identity, self-image, appearance, behavior, or expression, sexual and reproductive health decisions, partnership status, association with someone who is or is perceived as having a protected characteristic, unemployment status and any other status protected under any applicable local law.

Sexual Harassment, Other Unlawful Harassment and Discrimination

In New York, the Company’s Other Unlawful Harassment and Discrimination policy also applies

Do You Need Supplements?

Always if required by state/county/city in which employee resides

If not required:

Pros

- Comply with legal obligations
- Lessen burden for HR and management
- Resource for employees
- More generous policies can be limited to required areas

Cons

- Additional work to create
- Require regular review and updates
- Need to be accurate if relied upon by HR/managers

Required Policies

Policies required under Minnesota law

If you have a handbook...

- Right to Disclose Own Wages
 - “Notice of rights and remedies”
- Lactation Breaks and Pregnancy Accommodations
 - Notice of rights and remedies
- Earned Sick and Safe Time
 - “[M]ust include in the handbook notice of employee rights and remedies...”
 - Must have “a written policy containing reasonable procedures for employees to provide notice of the need to use earned sick and safe time”
 - If not, cannot refuse to allow employees use of SST based on notice

Recommended Policies

Policies strongly recommended for most employee populations

Strongly Recommended

- EEO
- Harassment, Discrimination and Retaliation
- FLSA safe harbor for deductions from exempt employee salary
- Conflict of interest
- Defining the workweek for overtime
- Employment references
- Right to Access/Review Personnel Record
 - Must “provide written notice to a job applicant upon hire of the rights and remedies”

Strongly Recommended

- Workplace searches
 - Physical and electronic
- Digital resources expectations and limitations
- AI
- Employee conduct (but not progressive discipline!)
- Reasonable accommodations
 - Disability
 - Pregnancy



Strongly Recommended

- Vehicle policy (if drivers)
- Reimbursement policy
- Time off
- Leaves of absence
 - FMLA
 - Optional (bereavement, etc.)
 - Personal leave



2023-2024 Legislative Changes that May Impact Your Handbook

Needs updating in 2023/2024

- EEO
- Sick and Safe
- Pregnancy and Parenting Leave
- School conferences
- Remote work
- Drug free workplace
- Hands-free driving laws
- Lactation breaks
- Pregnancy discrimination protections and accommodations



Litigation and Legal Risks

Know Your Handbook's Audience

- Employees
- Unsuccessful Applicants
- Agency Investigators
- Opposing Counsel
- Judges/Arbitrators
- Jury



Highly Scrutinized Policies



- Equal Employment Opportunity
- Discrimination/Harassment
- Retaliation
- Discipline
- Conflicts of Interest
- Confidentiality/Trade Secrets
- Workplace Searches
- Company-Owned Property
- Outside Employment
- Attendance

What Can Hurt You



- Creating a contract of employment
- Inaccurately stating the law
- Silence on important topics
- Unclear policies or procedures
- Not identifying your rights as an employer
- Failing to obtain signed acknowledgements
- Not following promises

Be Careful What You Promise

- “The company will thoroughly investigate every complaint and interview everyone named in the complaint”
- “We follow progressive discipline”
- “Violations will result in discipline”
- “We accommodate all physical and mental limitations”
- “If you have questions, contact _____”
- “Employees are entitled to _____”



High Risk Spotlight: Harassment

- Definitions should be fluid

“Examples of sexual harassment include...”

vs. “The following **may be considered** sexual harassment...”

- Emphasize importance of reporting and provide multiple methods
- Leave flexibility for how complaints will be addressed/investigated
- Reserve right to determine violations and consequences
- Outline expectation of cooperation during investigations
- Prohibit retaliation

Action Items

- Ensure at-will disclaimer, including in the signed handbook acknowledgement
- Note that policies may change at any time
- Be mindful of exhaustive lists
- Provide catch-alls to accommodate legal changes
- Understand what you've promised (and follow them)
- Review and train identified points of contact (HR, IT, managers)
- Take the time to draft a professional document



Hot Topics

2024 Hot Topics

- When to consider state supplements
- NLRA compliance and disclaimers
- Uniforms and Other Deductions
- Artificial Intelligence (AI)
- Social Media

State Supplements

State Supplements

- When do we need it?
- Does number of employees matter?
- Sick time and leave laws
- Drug testing
- What *isn't* included

2024 Hot Topics—NLRA Compliance

- Confidentiality
- Solicitation and Distribution
- Recordings
- Social Media
- Outside Employment
- Open/Captive Audience Meetings
- Disclaimers

2024 Hot Topics—Uniforms and Other Deductions

- Uniforms
 - Minn. Stat. § 177.24
 - Up to \$50
 - Must be reimbursed at separation
- Other Deductions
 - Voluntary
 - Written
 - After debt arises

2024 Hot Topics—AI

- Internal vs external AI tools
- Protecting company information
- Plagiarism, copyright
- Accuracy
- AI bias

2024 Hot Topics—Social Media

- New state laws/guidance
- Ongoing concerns about viewing employees' social media accounts
 - NLRA
 - Inaccuracy

Questions



Presenters



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