

Employee Handbook Review Checklist

This checklist highlights the main points to consider when reviewing employee handbooks (also known as employee manuals). It also addresses major provisions of an employee handbook. In addition to setting employee expectations, a well-crafted handbook is essential to limiting an employer's exposure to lawsuits, as plaintiffs' attorneys are eager to use poorly-drafted handbooks to support their clients' claims. Use the following guidelines to ensure that the employer's employee handbook maximally shields it from liability and assures the smooth functioning of its business.

For all of Practical Guidance's resources on employee handbooks, see [Employee Handbook Resource Kit](#). For a non-jurisdictional employee handbook, see [Employee Handbook](#). For an employee handbook supplement for New York employers containing customized workplace policies based on New York state and local laws, see [Employee Handbook Supplement \(NY\)](#).

[>] **Video:** For a three-minute video on how to use Practical Guidance to revise and draft employee handbooks, see [Drafting and Revising Employee Handbooks on Practical Guidance L&E](#). For a transcript of the training video, see [Employee Handbook Drafting and Revising on Practical Guidance Labor & Employment: How-to Video](#).

Key Handbook Review Issues

- **Determine the threshold issue of employer coverage.** To help determine whether the employer is covered by a major labor and employment law, see [Employer Coverage under Major Labor and Employment Laws Chart \(Federal\)](#).
- **Check for updates in the law.** The handbook must reflect the latest developments in the law. Utilize resources such as the [Labor & Employment Key Legal Development Tracker](#), [Employment Law360](#), and law firm Labor & Employment law digests to find new cases, regulations, and statutes that apply to employers.
- **Incorporate state and local laws.** State or city laws may cover smaller employers, provide for more expansive anti-discrimination, leave, or disability protections, or have more generous minimum wage and overtime provisions than federal law. The employer's policies should reflect all legal protections afforded employees under these laws.
- **Ensure compliance with multiple jurisdictions.** If the employer has branches in multiple jurisdictions, make sure that all of its policies comply with the requirements in every jurisdiction. This can be accomplished by:
 - Making all policies compliant with the laws in every jurisdiction in which the employer operates
 - Drafting separate sections detailing the policies in each jurisdiction –or–
 - Composing a separate handbook or handbook supplement for each jurisdiction

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- **Ensure the presence of appropriate industry-specific policies.** Certain legal requirements apply only to specific industries. For instance, the Fair Labor Standards Act (FLSA) contains specific wage, overtime, and recordkeeping provisions for employees in agriculture and other seasonal industries, auto dealerships, call centers, computer-related occupations, the financial industry, and daycare centers, among others. When reviewing the employer's policies, ensure compliance with any laws or regulations affecting the employer's industry.
- **Consider employee classifications.** Ascertain whether the handbook specifies the categories of employees it addresses. Different policies may apply to full-time and part-time, temporary and permanent, salaried and hourly, or union and non-union employees. For instance, an employer might provide certain benefits, such as health insurance, pensions, or paid time off, only to full-time employees. An employer might also utilize seasonal employees, who may not be entitled to overtime pay or unemployment insurance. Thus, make sure the handbook states which policies apply to which employees, and consider providing a separate handbook or a handbook supplement for each distinct category to avoid confusion.
- **Address conflicts.** Ensure that the handbook policies do not conflict with anything stated in employment applications, employment contracts, job descriptions, stand-alone policies, or other sections of the handbook. Reconcile any such conflicts and confirm that the handbook states that it will govern in the event of any conflict between it and any other document. If part of the employer's workforce is unionized, however, the handbook should explain that the union employees' collective bargaining agreement (CBA) governs in the event of a conflict between the handbook and the CBA.
- **Remove abrogated policies and policies seldom or never enforced.** Ensure that all policies listed in the handbook are current. Remove any legacy policies that are no longer current or enforced, or that have been abrogated by new legal developments.
- **Monitor changes to the employer.** An employer's business may change in ways that trigger new legal obligations. For example, its business may stop being "seasonal" enough to allow certain overtime wage exemptions. Further, new hiring or layoffs may take the employer above or below the employee thresholds that trigger the applicability of federal statutes (e.g., 15 employees for Title VII of the Civil Rights Act of 1964 (Title VII); 20 employees for the Age Discrimination in Employment Act (ADEA); and 50 employees for the federal Family Medical Leave Act (FMLA)). For further information on employer coverage, see [*Employer Coverage under Major Labor and Employment Laws Chart \(Federal\)*](#).
- **Implement technical revisions.** Review policies for correct spelling and grammar, check for typos, and clarify unclear or ambiguous language. Review and update the table of contents, key dates, and holidays.

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- **Obtain new handbook acknowledgments.** Employees should acknowledge any changes or revisions to the handbook. Updates should not apply retroactively.
- **Review handbook for compliance with the Affordable Care Act (ACA) and track potential upcoming changes.** The offer of coverage must apply to any paid employee who works at least 30 hours per week, including paid interns and temporary employees. Do not include a detailed description of plan benefits, as those may change from year to year, but instead reference the plan documents for more information about specific details.
- **Review handbook for key provisions.** While no handbook provision (nor the handbook itself) is legally required, the employer should consider including the following sections in this checklist, which create guidelines for its employees and, in many cases, limit the employer's exposure. If any of the below sections in this checklist are missing from the handbook, consider drafting and submitting them to the employer for review.

Introductory Provisions

- **At-will employment.** This section should advise employees that their employment is at will rather than for a specific term, and that either party may terminate the relationship at the time of their choosing, with or without notice. For more information, see [Employee Handbooks: Drafting and Revising Tips — Drafting At-Will Employment Policies for Employee Handbooks](#). For a sample annotated at-will policy for non-union employees, see [At-Will Employment Policy \(Non-Union Employees, Employee Handbook Disclaimer\)](#). For an employee handbook at-will disclaimer for union employees, see [At-will Employment Disclaimer \(Union Employees, Standalone Policy\)](#). For a standalone at-will policy for union employees, see [At-Will Employment Policy \(Union Employees, Employee Handbook Disclaimer\)](#).
- **Implied contract.** The at-will doctrine does not apply where the employee handbook creates an implied contract for employment. Because it is generally unlawful to terminate an employee in violation of an implied contract, the handbook should state that it does not create an express or implied contract with any of the organization's employees. See [At-Will Employment Policy \(Non-Union Employees, Employee Handbook Disclaimer\)](#). For more information on avoiding implied contract claims, see [Implied Contract Claims, Employee Handbook Disclaimers, and Offer Letters](#).
- **Future modifications / additional policies.** This policy should explain that any new policies or changes to existing policies must be in writing, must be promulgated by specific authorized management personnel, and will be incorporated into the handbook. The policy should also reserve the employer's right to revise any policy, except the at-will provision, with or without notice.

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- **Introductory or probationary period.** If the employer has an introductory or probationary period policy, make sure that it states that the successful completion of the introductory or probationary period does not alter the employee's at-will status. During an introductory period, the employer treats employees differently concerning eligibility for leave time or benefits. A probationary period differs in that the employer carefully evaluates employees during the probationary period to see if they have the ability to perform the job. For more information, see [Introductory and Probationary Period Policies: Key Drafting Tips](#). For corresponding annotated forms, see [Introductory Period Policy](#); and [Probationary Period Policy](#).
- **Handbook acknowledgment.** This section should provide a space for the employee to sign and date an acknowledgment that the employee has read and understood, and agrees to comply with, all of the handbook's provisions. The acknowledgment should also reaffirm the at-will provision. Because union employees' employment terms are governed by the CBA and generally may not be altered by the employer without bargaining with the union, consider preparing a separate acknowledgment form for union employees. For more information, see [Employee Handbooks: Drafting and Revising Tips — Drafting Effective Employee Handbook Acknowledgments](#). For annotated handbook acknowledgments for union and non-union employees, see [Handbook Acknowledgment \(Non-union Employees\)](#) and [Handbook Acknowledgment \(Union Employees\)](#).

Equal Employment Opportunity Provisions

- **Equal employment opportunity (EEO).** This policy should prohibit discrimination based on race, color, religion, sex (including pregnancy), national origin, age, disability, genetic information, sexual orientation, gender identity or expression, or any other protected classification under federal, state, or local law. For more information, see [Equal Employment Opportunity / Non-discrimination Policies: Key Drafting Tips](#). See also [Discrimination, Harassment, and Retaliation State Practice Notes Chart](#). For a corresponding annotated form, see [Equal Employment Opportunity / Non-discrimination Policy](#).
- **Anti-harassment.** The handbook should prohibit harassment, provide guidance on what behaviors constitute harassment, list the most common forms of harassment, and give some examples of prohibited behavior. Make sure that the policy expressly prohibits not just sexual harassment as many older policies do, but also harassment based on any characteristics protected by applicable discrimination laws. The handbook should instruct anyone who learns of harassment to report it as outlined in the complaint procedure. For more information and a sample anti-harassment policy, see [Anti-harassment Policies: Key Drafting Tips](#). See also [Discrimination, Harassment, and Retaliation State Practice Notes Chart](#). For a corresponding annotated form, see [Anti-harassment Policy](#).

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- **Anti-retaliation.** An effective anti-retaliation policy guarantees non-retaliation for good-faith reporting of a violation of any protected right, even if an investigation ultimately concludes that no such violation occurred. Federal law protects some whistleblowing, but state laws are often more comprehensive, so employers should review relevant statutes and case law to ascertain what whistleblowing activities are protected against retaliation in the employer's jurisdiction. For more information and a sample anti-retaliation policy, see [Anti-retaliation Policies: Key Drafting Tips](#). See also [Discrimination, Harassment, and Retaliation State Practice Notes Chart](#). For an annotated anti-retaliation policy, see [Anti-retaliation Policy](#). For guidance on drafting whistleblower policies, see [Whistleblower Policies, Programs, and Investigations](#). For a sample whistleblowing policy, see [Code of Conduct and Whistle-Blowing Policy](#).
- **Disability and reasonable accommodation.** This policy should prohibit discrimination based on an actual or perceived disability and require compliance with the Americans with Disabilities Act (ADA) and any corresponding state or local laws. The policy should provide that the employer will engage in an interactive process with employees with known disabilities to provide accommodations they need to perform the essential functions of their jobs. For more information, see [Disability and Reasonable Accommodation Policies: Key Drafting Tips](#). See also [Discrimination, Harassment, and Retaliation State Practice Notes Chart](#). For a sample annotated disability and reasonable accommodation policy, see [Disability and Reasonable Accommodation Policy](#).
- **Religious accommodation.** This policy should prohibit discrimination based on an employee's religion, explain that the employer will reasonably accommodate a sincerely held religious belief that does not impose an undue burden on the employer, and outline the accommodation request process. For a sample annotated religious accommodation policy, see [Religious Accommodation Policy](#). See also [Discrimination, Harassment, and Retaliation State Practice Notes Chart](#).
- **Genetic information non-discrimination policy.** This policy should inform employees that the employer will not request or require, as a condition of employment, the employee's or his or her family's genetic information. For more information, see [Genetic Information \(GINA\) Policies: Key Drafting Tips](#). For a sample GINA non-discrimination policy, see [Genetic Information Non-discrimination \(GINA\) Policy](#).
- **Credit history.** The handbook should prohibit credit history checks as a condition of employment in states where such laws exist. If the relevant statute excludes certain positions from the credit history check prohibition, the policy should list which positions are exempt from the credit history check protection and periodically update the list to ensure its accuracy. For more information on using credit checks in hiring, see [Consumer Reports and Credit History Checks under the Fair Credit Reporting Act \(FCRA\); Fair Credit Reporting Act \(FCRA\) and State Mini-FCRAs: Step-](#)

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[by-Step Guidance for Compliance](#); [Pre-employment Screening and Obtaining/Using Consumer Reports Checklist](#); and [Screening and Hiring State Practice Notes Chart](#).

- **Public policy.** Most states prohibit employment terminations in violation of the state's public policy. Public policy definitions vary by state, but may include whistleblower protections and compliance with federal or state law or regulations. The handbook should list the types of activities protected by the state's public policy and prohibit termination for participation in such activities. For more information, see [Investigations, Discipline, and Terminations State Practice Notes Chart](#).

Complaints and Investigations

- **Complaint and investigation procedure.** This policy gives employees recourse against violations of their legal rights and provides a roadmap for restoration of those rights. The policy should explain the steps for reporting violations of employees' legal rights, detail the investigation process, and assure employees that investigations will be prompt, thorough, and fair, with confidentiality preserved to the extent possible. For more information, see [Complaint Procedures: Key Drafting Tips](#). For a sample annotated complaint procedure, see [Complaint Procedure](#).
- **Workplace injury.** This policy should define workplace injuries and establish the procedure for reporting such injuries and applying for workers' compensation. For more information, see [Workplace Safety Policies: Key Drafting Tips](#). For more detailed workplace safety and health policies, see [Workplace Health and Safety Policy \(with Acknowledgment\)](#), [Workplace Health and Safety Policy \(with Acknowledgment\) \(NY\)](#), and [Workplace Health and Safety Policy \(with Acknowledgment\) \(CA\)](#).

Leave Policies

- **Medical leave; other leave policies.** These policies explain how, when, and under what circumstances employees may request leave. Below are guidelines for mandatory and optional leave types.
- **FMLA.** If an employer is covered by the FMLA, the policy must communicate clearly which employees are eligible for FMLA leave, the medical conditions, events, or familial employee-patient relationships that trigger employees' FMLA rights, and the procedure for requesting FMLA leave. The policy must state the type of leave year the employer has chosen for calculating FMLA leave.

The FMLA mandates that covered employers include a copy of a notice ([DOL Form WH 1420](#)) in their employee handbooks (or other written guidance to employees) or distribute a copy of the notice to each new employee upon hire. This notice explains the FMLA's provisions and provides information on the procedures for filing

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complaints of violations of the FMLA with the Department of Labor. The best practice is to include this notice as an exhibit to the employee handbook. Employers also must post this notice in a clear and conspicuous place.

For more information on the FMLA, see [FMLA Policies: Key Drafting Tips](#). See also [Attendance, Leaves, and Disabilities State Practice Notes Chart](#). For a sample annotated FMLA policy, see [Family and Medical Leave Act \(FMLA\) Policy](#).

- **Paid sick leave.** Because employee eligibility for paid sick leave varies by jurisdiction, be sure this policy complies with the relevant local statutes and ordinances. For more information, see [Sick Leave Policies: Key Drafting Tips](#). See also [Attendance, Leaves, and Disabilities State Practice Notes Chart](#). For a sample annotated sick leave policy, see [Sick Leave Policy](#). For a sample annotated Paid Time Off (PTO) policy, see [Paid Time Off \(PTO\) and Sick Days Policy](#).
- **Other leave types.** The handbook's leave of absence section may also establish discretionary policies for other leave types, such as vacation leave, personal days, discretionary sick leave, bereavement leave, jury duty, military leave, or others. For information on other types of leave, see the [Attendance, Leaves, and Disabilities – Military Leave practice note page](#) and the [Attendance, Leaves, and Disabilities – Other Types of Leave practice note page](#). See also [Attendance, Leaves, and Disabilities State Practice Notes Chart](#). For annotated leave forms, see the [Employment Policies – Terms of Employment forms page](#). See also [Time-Off and Leave of Absence Policies Drafting Checklist](#).

Employee Discipline

- **Standards of conduct and progressive discipline policies.** A standards of conduct policy contains a non-exclusive list of types of conduct that the employer prohibits. It also should state that if employees engage in prohibited conduct, they may be subject to disciplinary action up to and including termination of employment. For a sample annotated standards of conduct policy, see [Standards of Conduct Policy](#). Progressive discipline policies are not recommended, but if the employer utilizes a progressive discipline policy, it should state that the employer will apply the policy at its discretion. Behaviors like theft, violence, discrimination, harassment, bullying, confidentiality breach, and time card tampering, among others, may be cause for immediate termination. For more information on standards of conduct and progressive discipline policies, see [Disciplinary Policies: Key Drafting Tips](#).
- **Termination / employment separation.** This policy should state what steps the employer will take in terminating an employee and set forth the employer's expectations regarding employee resignations, such as notice duration, return of company property, and exit interviews. For more information termination/separation policies, see the [Employment](#)

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[Policies – Separation of Employment practice note page](#). For corresponding annotated forms, see the [Employment Policies – Separation of Employment forms page](#).

Confidentiality Policy

- **Non-disclosure.** A non-disclosure policy (also known as a confidentiality policy) should make clear which information and materials the employer considers confidential and prohibit disclosure of such information to company outsiders or unauthorized employees within the company. When reviewing this policy, make sure it excludes court-approved subpoenas from the employees' confidentiality obligations. The employer can, however, require employees to notify them of a subpoena so that the employer can prepare a defense. This policy is often combined with non-competition and non-solicitation restrictive covenants, which we discuss below. For more information, see [Non-disclosure Agreements: Key Negotiation, Drafting, and Legal Issues \(Pro-Employer\)](#). See also [Non-competes and Trade Secret Protection State Practice Notes Chart](#).

Employee Conduct

- **Code of conduct.** A code of conduct provision should list all of the employer's key ethical standards and expectations regarding employees' conduct and provide a reporting mechanism if the policy is not followed. For more information, see [Employee Codes of Conduct: Key Drafting Tips](#). For a sample employee code of conduct, see [Code of Conduct and Ethics \(Corporation\)](#).
- **Off-duty conduct.** If the employer operates in a state that protects employees' legal off-duty conduct, ensure that the employer's off-duty policy does not prohibit such conduct. For more information, see [Off-Duty Conduct Policies: Key Drafting Tips](#). For an annotated sample off-duty conduct policy, see [Off-Duty Conduct Policy](#).
- **Use of company equipment and communication tools.** This policy governs the employees' use of company property and communication tools such as email, social media, and the Internet. The employer may use this policy to prohibit employees from using these tools to engage in discrimination and harassment or disclose proprietary information. However, take care to ensure that this policy does not violate the relevant jurisdiction's off-duty lawful conduct statute or interfere with employees' rights under the National Labor Relations Act (NLRA) to organize and discuss the terms and conditions of their employment. For more information on communications tools policies, see [Communications System, E-mail, Network, and Internet Policies: Key Drafting Tips](#). For an annotated sample communication tools policy, see [Communications Systems, Email, Networks, and Internet Policy](#). For more information on social media policies, see [Social Media Policies: Key Drafting Tips](#). For an annotated social media policy, see [Social Media Policy](#).

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- **Drug / alcohol consumption and testing.** If the employer is subject to the Drug Free Workplace Act, make sure that the policy complies with all of its requirements. Additionally, certain states allow medical or recreational use of marijuana. Therefore, if the employer wishes to prohibit its use at the workplace, check local statutes regarding medical marijuana to ensure compliance with it. Finally, if the employer owns any motor vehicles, make sure the employer strictly prohibits employees from operating them while intoxicated or under the influence of drugs or alcohol. For more information, see [Substance Use and Abuse Policies: Key Drafting Tips](#); and [Drug- and Alcohol-Testing Policies: Key Drafting Tips](#). See also [Screening and Hiring State Practice Notes Chart](#). For corresponding annotated substance use and drug testing policies, see [Substance Use and Abuse Policy](#); and [Drug and Alcohol Testing Policy](#).
- **Workplace violence.** This policy should categorically prohibit workplace violence, establish a reporting procedure, and encourage employees to report any violence they witness or experience to their manager or Human Resources. Because many injuries resulting from co-worker violence may be covered by workers' compensation, a comprehensive violence prevention policy could limit the employer's workers' compensation liability. For more information, see [Workplace Violence Policies: Key Drafting Tips](#). For a sample workplace violence policy, see [Workplace Violence Policy](#).

Wage and Hour Provisions

- **Work hours and attendance.** This policy should set expectations for the employees' work hours and explain the attendance policy, as well as state the consequences for non-compliance. For more information, see [Attendance Policies: Drafting Tips](#). For a sample annotated attendance policy, see [Attendance Policy](#).
- **Timekeeping, off-the-clock work, and safe harbor.** This policy should explain timekeeping procedures for employees who are not exempt from federal or state wage-and-hour laws. Ensure that the policy includes a safe harbor provision, which can help preserve an employee's overtime-exempt status even if the employer makes an improper wage deduction from an exempt employee's wages. The policy should also prohibit hourly or non-exempt employees from performing any off-the-clock work. For more information see [Off-the-Clock Work and Timekeeping Policies: Key Drafting Tips](#); and [Safe Harbor Policies to Preserve Overtime and Minimum Wage Exemptions: Key Drafting Tips](#). For corresponding annotated forms, see [Timekeeping and Off-the-Clock Work Policy](#); and [Safe Harbor Policy for Exempt Employees](#).
- **Overtime.** The employer's overtime policies must be consistent with the FLSA and state and local overtime laws. While the employer may promulgate more generous overtime policies than those legally mandated, the employer may not reduce overtime benefits guaranteed by law. Moreover, if the handbook describes exempt and non-exempt employee

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categories, make sure those classifications are consistent with the FLSA and current state and local law. For more information, see [Overtime Pay Policies: Key Drafting Tips](#). See also [Wage and Hour State Practice Notes Chart](#). For an annotated overtime policy, see [Overtime Policy](#).

- **Lactation, meal, and rest breaks.** This policy should require compliance with federal, state, and local laws to provide qualified employees meal and rest breaks, and break time to express milk. The policy should forbid retaliation for taking such breaks. Since state laws vary on the scope of these protections, make sure that the employer's policy reflects the law in the employer's jurisdiction. (Note that employers may draft lactation, meal, and rest break policies as separate policies as well.) For more information, see [Rest Break and Meal Period Policies \(Including Break Time for Nursing Mothers\): Key Drafting Tips](#). See also [Wage and Hour State Practice Notes Chart](#). For a corresponding annotated policy, see [Meal, Rest, and Lactation Break Policy](#).

For additional handbook policies to consider, see [Employee Handbook Policies Checklist](#).