

Employee Handbooks: A Workplace Essential

by James W. Ward, J.D.; Employment Law Subject Matter Expert/
Legal Writer and Editor, CalChamber

The benefits of creating and maintaining an employee handbook are many, for both employers and employees.

From the employer's perspective, a well-written handbook communicates to employees important information about the company and its practices. It establishes clear procedures and policies for a variety of situations; provides guidance on personnel matters, such as leaves of absence; and explains your benefits package.

For employees, a clear and comprehensive handbook sets performance expectations; communicates company procedures for disciplinary actions; and explains other important issues, such as the company's policies on harassment and discrimination in the workplace. This can help promote fairness and consistency in the way employees are treated, reducing the potential for not only discrimination, but also overall confusion about where the employer stands on covered topics (more on that later).

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On the flipside, poorly drafted handbooks can cause many problems for employers. For example, policies that are too rigid can limit an employer's discretion and flexibility in dealing with the wide variety of circumstances that occur in the workplace. And when policies are too broad or general, administering company policies consistently and fairly can be difficult. A well-written handbook can avoid these issues.

Additionally, policies drafted too broadly can arguably infringe on employees' rights under state and federal laws, including the National Labor Relations Act (NLRA), which protects the rights of employees to engage in protected concerted activity to improve the terms and conditions of their employment (such as discussing wages, unsafe conditions, unionization, etc.). Employer rules that infringe on those rights are unlawful under the NLRA, which applies to most employers — even those that don't have a unionized workforce.

Read on for the practical and legal advantages of establishing an employee handbook and some best practices for maintaining it.

Communication With Employees

Handbooks can serve as a comprehensive reference for employees — both new hires and those who've been on the job for years — helping them understand the company's policies, procedures and benefits.

For new employees, an overwhelming amount of information typically is presented during the orientation process — though not every detail is necessarily covered — and employees often have a hard time taking it all in. That's why it's good to have a handbook they can reference, ensuring the employee gains a clear understanding of the company's practices. As for employees who've been on the job for a while, some workplace issues don't come up until well into an employee's tenure, making the handbook a helpful resource.

Handbooks can clearly communicate to employees not only the company's safety and health protocols, but also company benefits, such as paid and unpaid leave policies, and how to request and use the available benefits. Employee handbooks also can explain in detail policies that relate to common legal compliance issues, such as the company's pay policies and practices, including topics like meal and rest breaks, overtime, reimbursements and many others.

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Handbooks are also a great place for employers to clearly communicate their expectations of employees; how performance issues are addressed; company policies against harassment, discrimination and retaliation; and, importantly, the specific ways employees can raise concerns with their employer about those and other issues. Not only does this promote consistent nondiscriminatory treatment of employees, but it also enhances employee morale and productivity by both eliminating confusion and increasing employee confidence in the integrity of their employer's policies and practices.

Employers must be cautious, however, when crafting policies related to employee conduct and communications. Overly broad policies may infringe on employees' rights under state and federal laws. For example, under the NLRA, which applies to most employers, even those without unionized workforces, a workplace rule or policy is presumptively unlawful if it has a "reasonable tendency to chill employees" from exercising their rights. In other words, if a reasonable employee reads the rule/policy and could interpret it to restrict their ability to talk about working conditions or wages or otherwise engage in any other protected activity, the rule is presumptively unlawful. Employers can try to rebut the presumption, but they must show that the rule promotes legitimate and substantial business interests that cannot be accomplished with a more narrowly tailored rule.

In short, employers must have specific and carefully crafted rules that promote legitimate and substantial business interests while allowing employees to engage in legally protected activities related to improving the terms and conditions of employment.

A handbook is also an excellent way to educate supervisors and managers on company policies, which is extremely important as it relates to the next point: consistent application of company policies.

Apply Policies in a Fair, Consistent Manner

A well-written handbook is a great way to promote the fair and consistent application of company policies, which is critical for legal and practical reasons.

Companies that don't have clear and well-written policies in place run the risk of handling similar workplace circumstances in different ways. Some employers think that's a good thing because they like having flexibility; in fact, a primary concern about adopting a formal handbook is that doing so limits an employer's discretion in dealing with workplace issues.

But putting some limitations on employer discretion isn't a bad thing.

From a practical standpoint, having employees who are confused about unstated or unclear policies can erode employee trust and result in morale and employee retention issues. From a legal standpoint, inconsistent application of policies can result in lawsuits against the employer. A lot of employment lawsuits are based on the premise that the employer singled out and treated an employee differently from other employees. By committing to dealing with workplace issues according to a specific policy, employers can reduce the risk of an unlawful discrimination claim. A good handbook can also help ensure compliance with other laws, such as California's extensive wage and hour requirements (meal and rest break, overtime, etc.).

Keep in mind, however, that a well-drafted handbook will preserve within its provisions some employer discretion and flexibility by reserving the employer's right to revise, rescind and supplement their provisions when necessary. And the policies themselves should anticipate contingencies and reserve the right to deviate from the policy in appropriate situations. For example, a policy that details how the company handles performance and disciplinary issues should allow the employer flexibility to determine the appropriate form of disciplinary action and/or the ability to deviate from any disciplinary steps described in the policy, depending on the circumstances.

Employers should review handbooks at least once a year, and possibly more frequently if new laws become effective midyear.

Handbook Serves as Legal Protection

Employers should follow their employee handbooks to the letter. Why? Because a handbook is a legal document that protects employers, who can shield themselves from liability in some instances by following their handbook.

For example, if an employee brought a lawsuit claiming they were terminated in violation of an implied contract to employ them for a specific period of time, the employer could defend the suit by pointing to the handbook provision stating that employment is at-will and may be terminated at any time.

In other instances, a well-written handbook can help an employer demonstrate compliance with California's complex employment laws. For example, handbooks with appropriately detailed policies addressing wage and hour practices, such as meal and rest breaks and overtime requirements, can help an employer defend a related lawsuit and show that the employer takes the appropriate steps to comply with those provisions of the Labor Code.

Simply having a handbook is not enough, however — employers must do their best to follow and implement company policies. If an employer acts in ways that contradict the at-will statement — by telling the employee that, “As long as you do a good job, you’ll have a job here,” for example, or having an employee sign an employment contract guaranteeing employment for a set length of time — those actions may override the at-will status outlined in your handbook. Essentially, an employer’s words and actions to the contrary could undermine the at-will clause in your handbook.

Moreover, if your company ignored a policy for years or failed to apply it consistently, a court may find it meaningless, and the employer won’t be able to rely on it as a defense. So, it’s important that employers consistently follow the policies in their handbook, because if they decide to take adverse action against an employee for violating one of their policies but the company has a history and practice of not enforcing that policy, then they may have a tough time justifying the adverse action.

One reason employers fail to follow company policies is because they believe the policy is outdated, either because they think the law changed or the employer’s business has changed. This highlights the need for employers to regularly review and revise their handbooks as laws change and/or their business practices change.

Revising and Updating Employee Handbooks

Once an employer creates and implements a handbook, it’s important to review and update it regularly. Revisions to the handbook are sometimes necessary when provisions haven’t worked well, business practices change, or to stay in compliance with the ever-changing employment laws at the state, local and federal levels.

Recent Legal Developments Impacting Employee Handbooks

In 2023, the National Labor Relations Board (NLRB) issued a significant decision impacting numerous policies commonly maintained by employers. Though the decision stems from federal law, it impacted California employers because employees can challenge employer rules or disciplinary actions based on decisions made by the NLRA, which applies to most employers, unionized or not.

Under the NLRB’s 2023 decision, a facially neutral employer rule will be found presumptively unlawful if it has “a reasonable tendency to chill employees” from exercising their rights under the NLRA. The employer’s intent in maintaining a rule is immaterial. Rather, if an employee could



Create, Revise Handbooks With Ease

Whether your company’s handbook needs a refresh or you’ve got to create a handbook from scratch, CalChamber’s [Employee Handbook Creator \(EHC\)](#) makes it easy for California employers to create and revise their handbooks with California-specific policies, including local county and city policy information.

EHC uses a “wizard” to guide employers through the process of creating their handbook, asking employers a series of questions to identify and explain the various policies relevant to them. With more than 100 fully customizable policies, chances are that EHC will cover most of your policy needs. But if you have policies unique to your company, EHC can easily import them into your handbook.

And because CalChamber legal experts are ever-vigilant about changes in California employment law, maintaining your policies is simple. If a legal change affects a policy in EHC, the affected policy is updated and published, and you receive an email notification that your handbook may need to be updated. You can also see updated policies in a list within the EHC app itself.

reasonably interpret the rule to have a coercive meaning, the rule is presumptively unlawful, even if a contrary, noncoercive interpretation of the rule is also reasonable. The employer may rebut that presumption by proving that the rule advances a “legitimate and substantial business interest,” but only if it can show it is unable to advance that interest with a more “narrowly tailored” rule.

The Board’s requirement for employers to have more narrowly tailored rules meant revisions to employer policies governing employee conduct, such as privacy, confidentiality, prohibited conduct, social media, electronic communications and other policies, so that a reasonable employee reading the policy will understand the employer’s justification for the rule (e.g., legal obligations and business interests) to make it clear that the rule doesn’t infringe on their NLRA rights.

Also of note is that at the state level, effective January 1, 2024, California expanded its mandatory paid sick leave law, requiring employers to provide employees with up to 40 hours or five days per year, up from 24 hours or three days, which requires employers to update their paid sick leave/paid time off policies.

Two new laws and a National Labor Relations Board decision will affect policies in employee handbooks beginning in 2024.

Additionally, effective January 1, 2024, California employers are required to provide up to five days of leave for certain reproductive loss events, such as a miscarriage, failed adoption, or unsuccessful assisted reproduction. Employers may wish to create a policy for this new mandatory leave of absence.

Right to Revise

Employers should include a “right-to-revise” policy in their handbook, which states the company has the right to change the policies and procedures in its employee handbook. This gives the employer the flexibility necessary for coping with unforeseen and changing circumstances and allows the employer to revise the handbook or alter policies at its discretion. The “right-to-revise” policy also works if an employer chooses to revert to the written policy (i.e., resurrect a policy) after an alternative practice has taken precedent.

When revising or resurrecting policies, employers should ensure the following:

- The old policy was in place for a reasonable period of time.
- The employer gives reasonable notice of the change.
- The change doesn’t interfere with any vested employee benefits.

It’s unclear what constitutes “reasonable” notice, as what is reasonable for one policy change may not be reasonable for another. Employers should consider consulting with legal counsel on how best to notify employees of significant updates and revisions to their handbooks to reduce long-term risk of liability for disregarded and outdated policies.

Employers should review handbooks at least once a year, and possibly even more frequently if new laws become effective midyear. Involve managers and supervisors in the handbook review process; they can best report on whether policies have become moot, are ignored or are simply no longer relevant to business needs.

Employers with unionized workforces are likely subject to a different set of requirements before changing the terms and conditions of employment.

Need a Handbook? Here's Where to Start

If you don't have an employee handbook, now is a great time to create one. Here are some quick handbook tips that can help.

- Though it requires an up-front investment, it's worth taking the time and energy to ensure the handbook is well-organized, well-written and contains all legally required policies.
- Write the handbook using general, easily understood terms. Consider tailoring handbooks to particular job classifications. Then employees won't have to wade through pages of irrelevant material to find information related to their jobs.
- Submit the draft handbook to an experienced employment law attorney for review.
- Meet with all supervisors/managers (either at the time of hiring or if written policies change) to review policies — to both ensure the policies are understood and reinforce the importance of consistent treatment of employees.
- Meet with employees to discuss new policies and updates, and to answer questions. If this isn't feasible, prepare a cover letter explaining the changes to the handbook and why they were implemented.
- Document the distribution of your handbook by asking employees to sign a Confirmation of Receipt. For employees who refuse to sign, inform them in writing that the policies will still apply to apply to them and retain a copy of that notice.

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Did you find this helpful? Sign up for a **free 7-day trial of HRCalifornia**, which includes the website's HR Library, compliance tools, and forms and checklists that help California employers with HR compliance. Limited access with free trial.

CalChamber's **Employee Handbook Creator** takes the guesswork out of creating an employee handbook. Access the convenient online tool from your PC or Mac, desktop or tablet.

Its smart, comprehensive wizard streamlines the handbook process by helping you determine which of the more than 100 policies you need or want to include.

Learn more by calling our Customer Service Representatives at (800) 331-8877, Monday through Thursday from 8 a.m. to 5 p.m. and Friday from 8 a.m. to 4 p.m. PT.