

## Updating Your Employee Handbook for 2016



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### WITH EVER-EVOLVING LAWS AND REGULATIONS, IT IS IMPORTANT TO ENSURE THAT YOUR COMPANY'S HANDBOOK IS CURRENT.

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Employee handbooks are an important way for employers to communicate rules, expectations and benefits to employees. They also can serve as a way for the company to establish its brand and convey its history and corporate culture. If the company's employee handbook is out of date, however, it can become a liability, rather than an asset. With ever-evolving laws and regulations, it is important to ensure that your company's handbook is current.

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Employers should take heed of the following hot-button employment law topics in considering handbook revisions.

**LGBT Protections:** Laws continue to expand protections afforded to lesbian, gay, bisexual and transgender (LGBT) employees. Courts have held that transgender individuals are protected by Title VII's protection against discrimination "because of sex." The Equal Employment Opportunity Commission recently filed two cases against employers, alleging discrimination based on sexual orientation. Many states and municipalities also have enacted laws and regulations expanding employment protections to include LGBT individuals.

Given this trend, employers should ensure that their equal employment opportunity policies provide equal protection to employees without regard to sex, sexual orientation, gender identity/expression or marital status.

Moreover, in light of the U.S. Supreme Court's recent decision recognizing same-sex marriages, companies are required to provide same-sex married couples with the same benefits as heterosexual couples. Employers should revise their policies on employee benefits and leaves of absence to ensure that same-sex couples receive equal treatment.

**Pregnant Employees:** The Pregnancy Discrimination Act prohibits discrimination based on pregnancy in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training and benefits. The Act also requires employers to treat pregnancy disability the same as other disabilities for purposes of sick leave and temporary disability benefits. Likewise, employers must provide reasonable accommodations for pregnancy-related disabilities on the same basis as they provide accommodations for employees who are disabled for other reasons. Employers should make sure that their EEO policies include pregnancy in the list of protected categories and that their policies on accommodations include accommodations for expectant workers.

**Dress Codes and Religious Accommodation:** In June 2015, the U.S. Supreme Court held that an employer can be liable for failing to accommodate a religious practice, even if the employer lacks actual knowledge of a need for an accommodation. The case was brought against Abercrombie & Fitch, which had a "Look Policy" that prohibited "caps." A job applicant, who was a practicing Muslim, applied for a retail sales position and wore a headscarf to her interview. The district manager told the recruiter that the headscarf would violate the Look Policy and instructed her not to hire the applicant.

In light of this decision, employers should ensure that their dress code policies are not biased against particular religious groups. According to the Court, even seemingly neutral policies (like Abercrombie's Look Policy) are not discrimination-proof. Rather, Title VII gives religious practices "favored treatment" and "requires otherwise-neutral policies to give way to the need for an accommodation" in the absence of undue hardship to the employer.

**Smoke-Free Policies:** Employers should review their policies against smoking in the workplace to account for changes in state laws involving marijuana use (both medicinal and recreational) and the increased use of e-cigarettes. Policies should state expressly that employees are prohibited from using or being under the influence of marijuana in the workplace. Drug-testing policies also should be revised to deal with employees who test positive for marijuana and claim a medicinal need for the drug. Workplace smoking policies should expressly state that e-cigarettes are treated like other tobacco products.

**Protection for "Concerted Activity":** The National Labor Relations Board issued a report last year, reiterating that employee handbook policies are considered unlawfully overbroad if they leave employees with the impression they cannot discuss wages, hours and other terms and conditions of employment. To avoid a National Labor Relations Act violation, employers should define terms such as "confidential information" with specific examples and state expressly that policies are not intended to limit employees' ability to discuss employment conditions.

In addition to keeping abreast of new laws, employers with employees in multiple states and those who distribute handbooks electronically should take heed of other issues. Multistate employers must consider legal variations in all of the jurisdictions where they do business. Numerous states and municipalities, for example, have their own paid sick time rules. Some states have family and medical leave laws that go beyond what is required by the federal Family and Medical Leave Act. Employers should be careful to take state and local laws into account when drafting their policies and procedures. In addition, the handbook should include a disclaimer specifying that legal requirements will govern as the final word in the case of any inconsistencies between the handbook and the law of a particular jurisdiction.

Similarly, while there are many benefits to distributing handbooks electronically, including reducing printing costs and making it easier to distribute regular updates, employers that use the Web as the sole method of distribution should consider whether all employees have access. Employers also should take steps to ensure that employees acknowledge receipt of the handbook and are aware of their responsibility to read it.