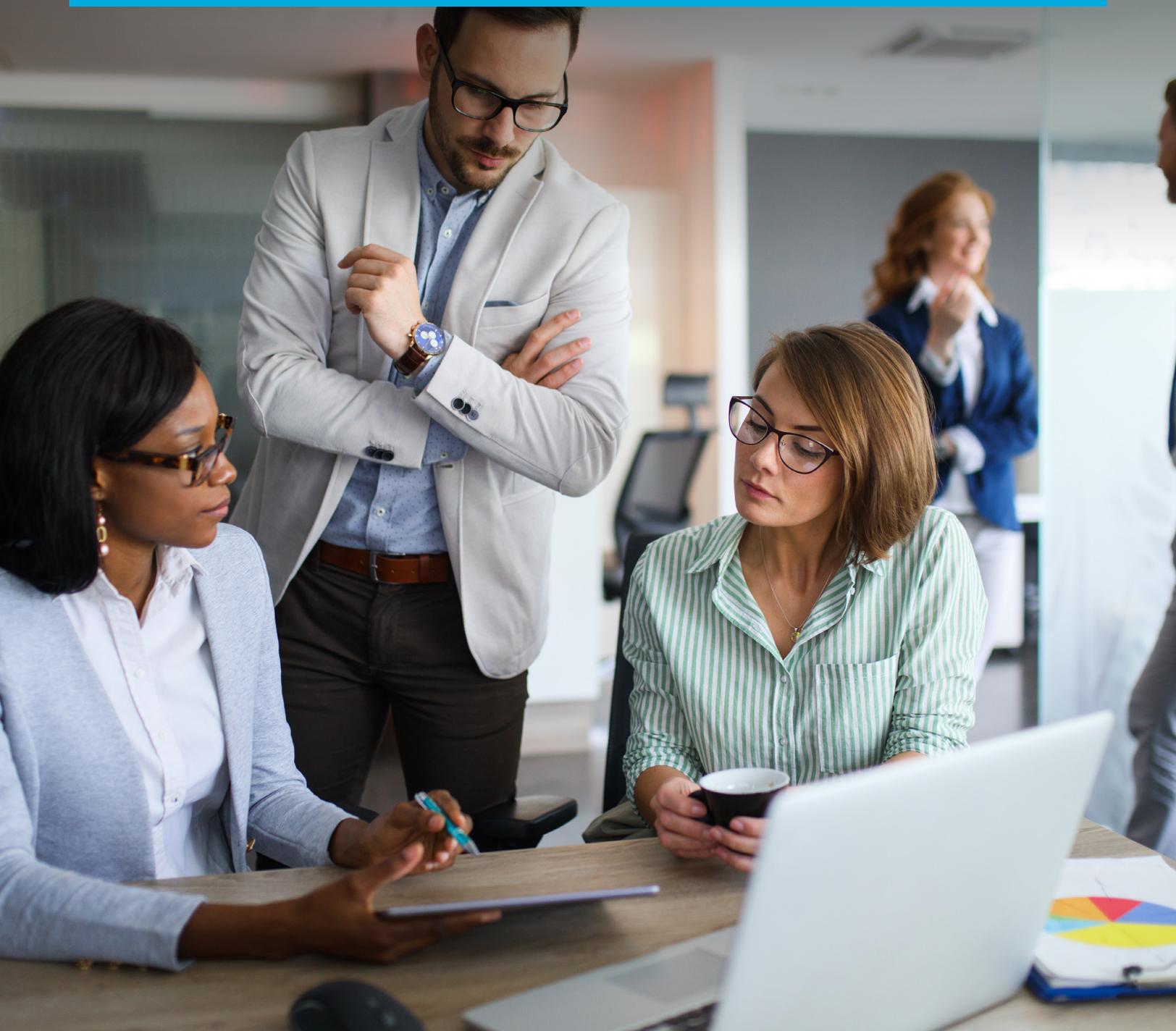


Employee Handbooks 101: Dos and Don'ts for Every Employer



INTRODUCTION

One of the most common workplace documents is an employee handbook. Sometimes referred to as an employee manual, staff handbook or personnel manual, an employee handbook is a common mechanism for promoting your workplace policies, procedures and rules and is an effective way to convey to employees what is expected of them as employees of your company in terms of their rights and obligations.

Despite the fact that employee handbooks are so widespread, there is some measure of risk in releasing an employee handbook and having the employer commit to workplace policies in writing. If you choose to have an employee handbook, it is critical to follow through in implementing and enforcing it. You should also realize that what is not included in a handbook is almost as important as what is included. Additionally, the National Labor Relations Board (NLRB) has increasingly taken more of an activist role in the scrutiny of employee handbooks, and employers should take note of the NLRB's position on certain work rules that may affect an employee's right to engage in protected activity as well as an employer's role in managing its workforce. Despite all of this, it is still of utmost importance to have an employee handbook because when executed properly, the benefits far outweigh the risks.

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CONSIDERING WHETHER TO HAVE AN EMPLOYEE HANDBOOK

There are many good reasons why you may want to develop and implement an employee handbook. Aside from the fact that a handbook allows you to document, compile and retain all employment-related policies in a single document, it can also create uniformity and consistency and minimize the risk of a misunderstanding between supervisors and employees by providing clear guidance on company policies. You should keep the following in mind when determining whether or not to have an employee handbook:

DO

- Consider having a handbook to provide employees with notice of their rights and benefits.
- Use the handbook to ensure expectations of employees with respect to conduct, behavior, performance, attendance and discipline are communicated clearly and consistently.
- Have a handbook to convey the company's mission, history, purpose and goals.
- Use the handbook as a way to include policies that minimize the potential for liability by showing that the company complies with the law.

DON'T

- Have the same employee handbook for all employees if they are subject to different workplace rules and policies.
- Release a handbook unless it is legally compliant and includes all of the policies an employee handbook should provide.
- Try to have a handbook that covers all employment-related situations. Leave some room for flexibility when managing employees.

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ASSEMBLING AN EMPLOYEE HANDBOOK

Developing an employee handbook can be a challenging process as there are many issues that should be taken into account. The following are some helpful tips:

DO

- Review and determine whether prior work rules, practices, commitments and obligations should be incorporated into the handbook.
- Consider how current collective bargaining agreements and individual employment contracts will impact the handbook policies.
- Consult with key members of your company such as HR, benefits, payroll and supervisors who may have input on employment policies.
- Research legal requirements and trends, particularly on new and emerging areas. Consult with experts where needed, including legal counsel.

DON'T

- Use another company's handbook without tailoring it to your company's specific needs. No two employers are exactly alike.
- Have a one-size-fits-all handbook if different groups of employees or departments require different work rules.
- Forget to consult with IT and technology experts with regard to social media and Bring Your Own Device (BYOD) policies.

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DETERMINING WHAT TOPICS TO INCLUDE IN AN EMPLOYEE HANDBOOK

Determining what topics you should cover in an employee handbook is a complex task. The topics you choose to remain silent about are almost as important as the topics you choose to address and incorporate into workplace policies. In determining which policies to include, you should take the following into account:

DO

- Include a disclaimer that is clear and conspicuous and states that the handbook is not a contract, does not alter employment at-will status and is subject to change.
- Retain the right to change employee wages, hours and working conditions without consultation and agreement.
- Begin with a brief overview of your business or organization and the main products or services it offers, as well as its goals and values.
- Make sure the discrimination and harassment sections of the employee handbook cover all categories protected by all applicable federal, state and local law. It may be best practice to be over-inclusive as this will demonstrate that you foster a tolerant and diverse workforce, but be sure to implement the policy consistently.

DON'T

- Be too specific when discussing employee benefits, as these may change from year to year.
- Forget to include any policies you are legally obligated to provide, such as a Family and Medical Leave Act (FMLA) policy if your organization has 50 or more employees.
- Overlook differences in federal, state and local law.
- Neglect to include information on leaving the company and how resignations, terminations and retirements will be handled.
- Forget to be specific when describing the confidential information and trade secrets you seek to protect. Consider using additional confidentiality agreements and noncompete agreements to further memorialize employee obligations.

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DO

- Include a multi-channel complaint procedure that will enable employees to bring complaints to HR and other accountable employees.
- Let employees know how they will be paid, what schedules they will be expected to work and whether or not they will be entitled to time off and leaves of absence as well as meal and rest breaks. Employees should also know how overtime is handled and how they will be reimbursed for any business expenses.
- Include information on employee conduct and work rules, such as attendance, and disciplinary policies and procedures.
- Notify employees how their work performance will be evaluated and reviewed.
- Aim to protect your company and the workplace by including policies on workplace safety and security as well as workplace violence.
- Include information about the benefits generally available to employees.

DON'T

- Be too detailed when discussing what conduct may be grounds for discipline. Make the list of unlawful conduct nonexhaustive and leave room for discretion.
- Commit to a zero-tolerance policy. Be sure to retain the ability to discipline employees, up to and including termination, when warranted.

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DRAFTING THE PROVISIONS OF AN EMPLOYEE HANDBOOK

When it comes time to draft and prepare the policies to be incorporated into an employee handbook, there are many issues you should take into account such as the format, organization and tone it will be written in. The style of the handbook should be tailored to the nature of your business and your employees. For some employers, an employee handbook in a standard format may be most suitable. For others, a handbook written as frequently asked questions may be more appropriate. Here are some issues you should consider:

DO

- Make the handbook user-friendly, and write it in a casual, readable tone that is easy to understand.
- Consider involving supervisors and possibly employees in the process of drafting the employee handbook.
- Place the policies in the handbook in an orderly manner, grouping similar policies together or listing them alphabetically, to make them easy to find. A table of contents and index can make the handbook easier to navigate.
- Write the policies in clear and unambiguous language for the intended audience.
- Proofread the handbook policies before it is finalized. Get multiple parties involved in the review process.
- Avoid using language that may lead employees to believe their employment is not at-will and they may only be disciplined or terminated for cause.
- Realize that the handbook may serve as evidence in either supporting or defending against an employment-related legal claim. Be prepared to stand behind the policies in the employee handbook.
- Review all policies to see if the policy could be construed as infringing upon the employee right to engage in protected concerted activity under the National Labor Relations Act.

DON'T

- Get caught up in legal and HR jargon. Use everyday language.
- Assume all employees will be able to understand the handbook due to language barriers. If you have a significant number of employees who do not read or understand English, consider translating the handbook into another language so it can be understood by all.
- Have policies that conflict with or contradict each other as this may be confusing for employees and may lead to misinterpretation and possible litigation.
- Use language that makes too many promises or guarantees on the employer's part. For example instead of stating that you "will" or "shall", state that you "may" or "will make an effort to" or "will attempt to."

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FINALIZING AND DISTRIBUTING AN EMPLOYEE HANDBOOK

Once all policy provisions have been drafted and reviewed, it is time to finalize the handbook and distribute it. In doing so, it is essential for you to obtain acknowledgement from each employee indicating that the policies contained in the employee handbook have been received, reviewed and consented to. Further, you should conduct training on the handbook and all relevant policies so that employees and supervisors are familiar with it and understand it. The following are some issues to take into consideration when finalizing an employee handbook and distributing it:

DO

- Determine the best method of distribution based on your particular workplace. For example, a traditional print copy method may be best for some workplaces while an electronic version may better serve an organization with multiple locations.
- Make sure that all employees know how to access the employee handbook at all times so they know what is expected of them.
- Obtain a written acknowledgment from each employee indicating that they have received the handbook, have read it and understand its terms and provisions.
- Consider having employees specifically acknowledge certain policies (e.g., discrimination, harassment, confidentiality). You may need to use these later to prove a policy violation or demonstrate that you followed workplace policy.
- Train supervisors, managers and employees on the policies included in the handbook and how the handbook will be used by your company.
- Be sure to consistently abide by your obligations in the employee handbook. Avoid promises that cannot be kept.

DON'T

- Forget to have the employee handbook reviewed by an attorney to make sure it is legally compliant with applicable federal, state, and local laws.
- Make the handbook so long and complex that employees cannot understand it.
- Bury the handbook on your intranet so that it is impossible to find. Make sure it is readily accessible to all employees.
- Make policies so comprehensive that they will cover every situation. Leave room for flexibility and discretion.
- Forget to make sure the employee handbook reads as one cohesive document, written in the same tone with policies that are consistent and do not conflict with each other.

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CREATING AN EMPLOYEE HANDBOOK AS A MULTISTATE EMPLOYER

A multistate employer often faces unique challenges in creating an employee handbook. If you are a multistate employer operating in different states, you will not only need to cover federal law, but the law of each state and municipality that applies to different employees. If you are a multistate employer, you should consider the following:

DO

- Adopt the approach that is best for the business as a whole: (1) implement uniform policies across all states with the most generous and lenient employee rights and benefits, (2) provide a general national handbook and state-specific supplements or addendums to capture state and local differences, (3) prepare a very general handbook indicating that the employer will follow all applicable federal, state and local laws or (4) prepare a specific handbook for each jurisdiction.
- Be sure to address multistate aspects of topics such as equal employment opportunity discrimination and harassment, leaves, meal and rest breaks, access to personnel files, workplace accommodations, weapons in the workplace, smoking and texting while driving.
- Take into account that states and municipalities often change their laws at a much more rapid pace than the federal government. Therefore, policies affected by state and local law may need to be frequently revisited and amended. Aim to keep them more general if possible.

DON'T

- Forget to include state-required or municipal-required notifications in the employee handbook if you are obligated to provide them under state or local law.
- Neglect to address state or municipal differences in some way even if there is only one employee who works in a particular state or city. The threshold for complying with many laws is just one employee.

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UPDATING AN EMPLOYEE HANDBOOK

Updating and amending an employee handbook to comply with the current law and to reflect the most up-to-date protections can be an arduous task. Best practice is to review a handbook on an annual or semi-annual basis to see if any changes need to be made or any policies need to be added based on changes within your company or legal developments. When updating and amending an employee handbook, you should keep the following in mind:

DO

- Think of the handbook as a living document and one that will evolve as law, society and your business changes and develops.
- Review the current handbook to identify inaccuracies and inconsistencies based on the law or your business practices.
- Conduct research to identify changes in the law as well as current trends that may affect workplace policies. Decide if it is best to issue an entirely new handbook or exchange outdated policies for new ones.

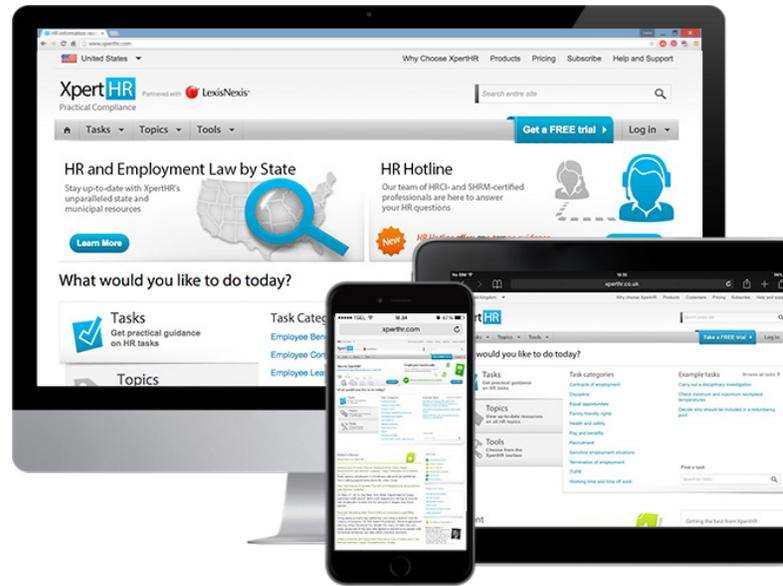
DON'T

- Neglect to obtain updated acknowledgement forms indicating that employees received, reviewed and agree to abide by the updated handbook policies.
- Make policies overly complicated, confusing and detailed in attempting to revise old policies with new information. Start fresh if needed.
- Forget to conduct training on the updated and amended policies for both employees and supervisors. Make sure to focus on any changes in the handbook that will affect workplace practices.

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What's your biggest employee handbook challenge today?

- ✓ Ensuring your handbook is compliant with federal, state, and municipal law?
- ✓ Creating core resources for your handbook?
- ✓ Updating your handbook regularly to remain compliant?



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Sara Thompson, VP HR, Five Guys