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Avoid Costly Mistakes by Regularly Updating Your Employee Handbook

As the year begins to wind down, many companies are preparing and planning company budgets for next year. In planning these budgets, please keep in mind that an updated employee handbook can mitigate costly litigation for your organization down the road, because an outdated handbook poses a significant risk of not being compliant with various rules and laws.

As a quick and simple example, the National Labor Relations Board (“NLRB”) recently issued an advice memorandum informing employers (including employers with non-union workers) that having a policy making the content of an employee handbook confidential violates the National Labor Relations Act. The NLRB’s rationale for this position is that a confidential handbook prevents “employees from discussing handbook policies regarding employee pay, benefits, and working conditions.” Before this guidance, it was not uncommon for employee handbooks to contain provisions making their content confidential.

Another example of the importance of keeping your handbook up to date is demonstrated in the case of *Tilley v. Kalamazoo County Road Commission*. In that case, an employee relied on the company’s handbook to assert he was entitled to FMLA leave even though he did not meet all the eligibility requirements under the FMLA. The employee’s claim was based on the fact that the handbook did not contain a key requirement for being qualified for FMLA leave. Specifically, it did not state that a requirement for taking FMLA leave was having 50 employees within 75 miles of the employee’s worksite. This missing language allowed the employee to proceed on his claim that the employer improperly denied him leave, even though he did not meet all the eligibility requirements of the FMLA.

One other reason to review or update an employee handbook is the trend of cities and states adopting employment laws, such as sick leave and/or paid leave laws. Most of these new laws require employers provide written notice or adopt policies to inform employees of their rights. With more employees working remotely, there may be a need to update an employee handbook to include reference to these new laws, even if the employer does not maintain a physical office in the city or state where the law has been adopted.

These are just a few examples of the importance of having your employee handbook regularly reviewed and, if needed, revised by an experienced employment attorney. In addition to your employee handbook contradicting and running afoul of recently developed laws/rules/guidance (which in turn can result in expensive litigation and create legal exposure for your organization), an outdated handbook can also cause confusion among your employees and disconnect within your organization. Aside from the key reasons discussed above, here are some other noteworthy reasons a company should have a well-maintained and regularly updated handbook:

- It introduces the employer’s background, culture and current expectations of employees, preventing later misunderstandings.
- It demonstrates the employer’s knowledge of and compliance with local, state and federal laws.
- It allows the employer to generate employee goodwill by showing the employer’s commitment to treating everyone fairly and equitably.

- It serves as a reference guide to supervisors and managers, ensuring that policies are applied in the same manner by all those responsible.
- It may preclude employees from succeeding on certain claims, such as breach of employment agreement or invasion of privacy.
- It may support affirmative defenses and shield companies against certain claims, including harassment or improper wage deductions.
- Safety-related policies and procedures can provide additional safeguards for employees.
- Monitoring procedures may preclude or reduce theft of information and unfair competition.
- Updating a handbook regularly ensures the employer is aware of rapidly changing areas of the law such as NLRB decisions, EEOC and DOL guidance, state legalization of cannabis, sick leave laws, and many more.

If you would like to examine whether your employee handbook should be reviewed or updated, or if you would like a quote for a handbook review, please reach out to your Kutak Rock relationship attorney or any of the attorneys in the [Employment Law Group](#), and we would be happy to discuss this with you. You may also visit us at www.KutakRock.com.

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