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Avoid Costly Mistakes By Regularly Updating Your Employee Handbook

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As the year winds down, many companies are preparing budgets for 2021. Employers should remember that budgeting for an employee handbook, or a handbook update, is likely to mitigate costly litigation for the organization down the road by ensuring compliance with the latest rules and laws.

For example, the National Labor Relations Board (“NLRB”) recently upheld a company policy prohibiting employees from engaging in outside employment. Initially, the administrative law judge held that the policy violated the National Labor Relations Act’s guarantee of the right to organize, because it could be interpreted to stop employees from working on behalf of a union. However, the NLRB reversed this decision, noting a reasonable employee would interpret the policy to prohibit business conflict of interest, not volunteer efforts. This decision shows that the NLRB is reluctant to apply Section 7 claims to general employer policies, giving employers greater freedom in creating their handbooks.

Bostock v. Clayton County, decided in June 2020, also demonstrates the need for frequent policy updates. In that case, the United States Supreme Court held that Title VII of the Civil Rights Act of 1964 prohibits discrimination against employees based on their sexual orientation or gender identity. Company handbook policies regarding discrimination, record keeping, and use of facilities should be clarified to include sexual orientation and gender identity as protected characteristics under current federal law.

Creation of an up-to-date handbook, or review and updates to existing employee handbooks, are made even more critical in light of the ever-growing trend of remote work due to the Covid-19 pandemic. Effectively managing employees remotely requires detailed remote working procedures and agreements; criteria regarding employee eligibility to work from home; policies regarding employer-provided equipment; and procedures relating to security and safety concerns.

Likewise, recent federal laws extending employee leave rights for paid sick leave or unpaid leave under the Family Medical Leave Act (FMLA) due to the Covid-19 pandemic likely require updates to employer policies. In addition, some states have adopted or extended their own leave requirements similar to the change in federal law. It is critical to have in place handbooks and policies to reference these new laws for employers who, as a result of Covid-19, now have remote workers.

In addition to the risk of unwritten company procedures, or an outdated 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) can also cause confusion among your employees and disconnect within your organization. Aside from key reasons discussed above, other noteworthy reasons a company should have a well-maintained handbook, regularly updated by an experienced employment law attorney, include:

- 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 a quote for the creation of handbook to fit your workplace, a quote for review of your existing handbook, or if you would simply like more information to determine if your employee handbook should be reviewed or updated, please contact your Kutak Rock attorney or any of the attorneys in the [Employment Law Group](#). You may also visit us at www.KutakRock.com.

