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Let's Turn the [Handbook] Page to 2025!

At the beginning of every year, the world is buzzing with New Year's resolutions. One of the best resolutions an employer can make is to update its employee handbook. An up-to-date handbook is a powerful way to mitigate and, in some cases, prevent costly litigation. Outdated handbooks, on the other hand, may run the risk of not complying with various rules and laws. Handbooks can even be marked as "Exhibit A" and used as evidence against employers in court proceedings!

For example, in *Chapman v. Oakland*,¹ the Fourth Circuit reversed the lower court's grant of summary judgment to the employer-defendant. In analyzing the plaintiff-employee's hostile work environment claim, the court noted the employer had failed to include an anti-harassment policy and complaint procedure in its employee handbook or circulate a copy of the handbook to all employees. It held this failure could lead a reasonable jury to find the employer should have known that the alleged harassment could be occurring, in light of the apparent lack of prohibition against such conduct. This case shows that problematic employee handbooks can pose serious difficulties for employers in defending against employment claims.

Conversely, sound handbook policies can bolster an employer's defenses. The Seventh Circuit recently affirmed the district court's decision dismissing a hostile work environment claim under Title VII² in *Trahanas v. Northwestern University*.³ In analyzing whether the employer had successfully raised the Faragher-Ellerth defense,⁴ the court looked primarily to the anti-harassment policy in the employee handbook. Based on the handbook policies, the court held the employer had exercised reasonable care to prevent harassment, and the plaintiff-employee had unreasonably failed to take advantage of the corrective opportunities or otherwise avoid harm by failing to follow the handbook's complaint procedures.

Likewise, in *Cooper v. CLP Corporation*,⁵ the Eleventh Circuit affirmed the dismissal of a disability discrimination action brought under the Americans with Disabilities Act. In so holding, the court relied in part on the employer's anti-harassment policy in its employee handbook, which "strictly prohibited discrimination or harassment based on disability and retaliation against an employee that reported harassment." Well drafted handbook policies that prohibit harassment and set forth a protocol for addressing such issues can be valuable evidence for employers in defending discrimination actions.

¹ *Chapman v. Oakland Living Ctr., Inc.*, 48 Fed. 4th 222, 232 (4th Cir. 2022).

² Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., prohibits employers from discriminating against employees because of race, color, religion, sex, or national origin.

³ *Trahanas v. Northwestern Univ.*, 64 Fed. 4th 842, 854-55 (7th Cir. 2023).

⁴ Employers may avoid vicarious liability for supervisors' harassment by raising the Faragher/Ellerth affirmative defense. To be entitled to this defense, the employer must show (1) the employer exercised reasonable care to prevent and correct promptly any harassing behavior; and (2) the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise. See *Faragher v. City of Boca Raton*, 524 U.S. 775, 808 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998).

⁵ *Cooper v. CLP Corp.*, 679 F. App'x 851 (11th Cir. 2017).

Employers also should update their handbooks to comply with new legal precedent. For instance, in the wake of COVID-19 and the surge of remote employees, many states have enacted new laws requiring employers to reimburse remote employees for work-related expenses. These reimbursement laws vary widely by state, and the applicable rule should be clearly explained in a handbook policy. Similarly, new paid sick leave laws have been recently enacted in several jurisdictions. Employers must be apprised of the state law applicable to their teleworking employees and create appropriate policies and procedures.

These are just a few examples demonstrating the importance of regular review and revision of your employee handbook by an experienced employment attorney. In addition to running afoul of recently developed law (which in turn can result in expensive litigation and create legal exposure for your organization), an outdated handbook can cause confusion among your employees.

Other noteworthy reasons to have a regularly updated handbook include:

- Preventing misunderstandings by introducing employees to the company's background, culture and expectations.
- Demonstrating the employer's knowledge of and compliance with applicable local, state and federal laws.
- Generating employee goodwill by showing the employer's commitment to treating everyone fairly and equitably.
- Providing a reference guide to supervisors and managers and ensuring that policies are applied consistently.
- Mitigating against certain claims, such as breach of employment agreement or invasion of privacy.
- Supporting affirmative defenses and shielding against certain claims, including harassment or improper wage deductions.
- Creating additional safeguards via safety-related policies and procedures.
- Reducing the risk of information theft and unfair competition.
- Educating the decisionmakers on rapidly changing areas of the law, such as NLRB decisions, EEOC and DOL guidance, artificial intelligence (AI) in the workplace, state legalization of cannabis, paid sick leave laws, and many more.

If you would like a quote for the creation or update of your employee handbook, or if you would like more information to determine whether your current employee handbook needs to be revised, please contact your Kutak Rock attorney or any of the attorneys in the firm's [National Employment Law Group](#), and we would be happy to discuss this with you.

