

CREATING AN EMPLOYEE HANDBOOK



By Don Phin, Esq.

Welcome

Employee handbooks are a basic part of the human resource toolbox at most companies. If you have even a few employees, there is good reason to have one!

But...not all handbooks are created equal. Many are old and out of date...something dangerous in an environment with constantly changing and challenging employment laws! Then there are those handbooks that while compliant, are boring at best. They are an example of why HR often gets a bad rap.

Welcome, my name is Don Phin, and I have been an employment lawyer here in CA for more than thirty years. Not only have I helped create hundreds of employee handbooks over that time, I have also created the online template for the amazing [50 State Employee Handbook](#) tool found on ThinkHR.

In this report, I will discuss many of the legal reasons why we have handbooks, the importance of defining policies and procedures, and last, the opportunity that exists for having the handbook identify and support the company vision, mission, values, goals and other cultural norms.

So, let's begin!



Why Have an Employee Handbook?

Interestingly, many people don't realize there is not a single law requiring a company to have an employee handbook! In fact, many smaller companies do not have one. While not a legal requirement, many companies understand the value of employee handbooks to create uniformity of practices, as well to avoid legal nightmares. They are often required in order to purchase what is known as Employment Practices Liability Insurance, as they are viewed as an essential risk management tool. They can also be used to reinforce cultural commitments and speed up the onboarding process.

Federal and state legal notice requirements can be found on those giant posters that are in your lunchroom or time clock area. But handbooks also include those "quasi" - legal requirements, such as how to record work time, how to request a leave of absence, what permissions are required to work overtime, or get reimbursement for a travel expense. You not only want to prevent employees from bugging HR about it, you want to create a uniformity of practices across your management team. Many companies offer multiple employee handbooks due to union contracts, location, government contracts, number of employees and other factors.

When you consider the fact that your employee handbook is most likely the largest document your employees will ever read about your company, it should cause to ask, "What else can we use the handbook for?" For many companies, the answer to that question is to define, inspire and reinforce our cultural commitments. For example, when I help create an employee handbook, I tell employers to add a provision on what it means to be a great employee. Because if we don't do that the only information the employee will get is how to be a bad employee... and what may happen to you when you are! As we'll learn throughout this report, there is a great opportunity in creating great employee handbooks!

At-Will Employment and Other Employee Handbook Disclaimers

If your employee handbook is like most employee handbooks, it usually begins with the very welcoming statement that employment is at-will and can be terminated with or without cause, and with or without reason. This at-will language is the law of the land, except for Montana, and yet employers and attorneys feel obligated to start the employee handbook off with it to guard against any implications to the contrary.

A manager, desperate to hire or retain an employee, may make promises to that employee the company does not want to be bound by. For example, if they promise an employee they'll have a job, as long as they do a good job, that is known as an implied promise only to be fired for a good cause, something which most companies do not want to be bound to.

Good cause termination may be found in union agreements, but it is typically not part of the employment relationship unless negotiated in some type of executive agreement.

Frankly I don't think there is a diminished legal effect by having an at-will disclaimer on page 3 of the handbook and leaving the first page to a robust President's Welcome... without all the legalities.

There will also be a disclaimer or legal language related to the document itself. Typically, will say something like this copy of the handbook is not a contract and supersedes all previous handbooks or related documents and that employees will be notified of any revisions.



Here's the deal: lawyers are afraid if anyone ever sues a company claiming they were fired without cause, or base their status on old policies, that a finger will be pointed at the lawyers, so these provisions tend to be found in the beginning of the handbook.

Maybe because most employees don't read the entire handbook!

An important note: because handbooks have these contract disclaimers in them, any contract you want to enforce, like an arbitration agreement or non-competition agreement must be set forth in a separate document.

Preventing Sexual Harassment, Discrimination and Similar Claims

From my experience, there are two main compliance concerns employers want to address in the employee handbook. First is the prevention of sexual harassment, discrimination, and similar claims, and second, the prevention of wage and hour claims. In this chapter, we'll talk about the former and wait until the next chapter to discuss the latter.

Approximately 90,000 discrimination related claims are filed with the [EEOC every year](#). The largest single category is that of retaliation that is attendant to an underlying discrimination claim. Sexual harassment, discrimination and retaliation claims are expensive matters. Just the cost of defending one is expensive. Whether the company wins or loses. If it ends up on the wrong side of a claim, the average verdict exceeds \$200,000 and average settlement \$75,000. That does not include the lawyers fees, costs, divisiveness it causes, or the significant amount of time wasted. In 2017, the EEOC received 6,696 sexual harassment charges and obtained \$46.3 million in monetary benefits for victims of sexual harassment.

In 1998, in a series of United States Supreme Court cases, the Court established what is known as the "Faragher rule", which says that an employer can limit their damages to these claims if they have a) a mechanism for employees to complain and b) there are damages that could have been avoided by using that mechanism. Meaning, the employer does not have to pay those damages if using the company complaint system could have prevented them. The Court's goal of that rule is to encourage companies to both create complaint procedures and to have their employees follow them. Courts don't like companies and employees bringing their dirty laundry into the courtroom if they can be avoided!

Odds are your company has a sexual harassment and discrimination policy. It probably starts with the company declaring its commitment to EEOC laws. There will be the standard language about preventing and reporting problems. It should always allow for more than one avenue of filing a complaint. Make sure your employees know what your EEO policy is.

As headlines will continue to attest, many leaders, managers and employees don't understand or take these policies seriously. That is why report on them remains so valuable.



Wage and Hour

Wage and hour laws are governed by both federal and state laws. The federal law requires employees be paid a minimum wage, and overtime. Additional wage and hour laws are imposed by state law. Wage and hours provisions can include:

1. Rules around clocking in and clocking out. By law, companies must keep an accurate record of hours worked by non-exempt employees. This includes rest and meal periods in states like California.
2. Overtime provisions. Overtime is the most commonly litigated wage and hour violation. Having a clear policy, which identifies any permissions or authorization required to use overtime must be spelled out.
3. Rest and meal periods. Companies do not have to pay for lunch periods where employees are relieved of all duty. A typical rest period gets compensated.
4. Sick pay. While sick pay is not required by Federal law, it is being required in more states and municipalities every year.
5. Vacation pay and Paid Time Off. Vacation pay is not required by any law. It is up to what has been set forth in the employee handbook. Some companies collapse sick and vacation pay and provide Paid Time Off.
6. Travel pay and pay to attend events. Both employers and employees are often surprised by the legal requirements in this area. Best to have it spelled out clearly.
7. Last are policies about when and how employees get paid, including expense reimbursement.

One of the greatest benefits an employee handbook provides is clarity around these wage and hour legal exposures.

Leave Management

In my 30 years of employment law experience, leave management is one of the most complicated aspects of human resource management. In fact, it is so easy to get lost in it, we employment lawyers refer to it as the Bermuda Triangle. The bottom line is, somebody is not showing up to work today...and a bunch of policies and laws will be involved!

There are numerous laws related to employee leave and attendance problems including state mandated or municipality mandated sick pay laws, family or medical leave laws like the FMLA, military leave laws like USERRA, disability leave under the ADA, parental leave, vacation leave, work comp injury leave and more. It is not uncommon for a single leave event to involve numerous laws, all with different requirements.

Then there are company policies that affect leave including jury or witness duty leave, voting leave, bereavement leave, sabbaticals, and the list goes on.

Employee absenteeism is one of the most frequent problems faced by employers and is also the most frequent cause of discipline. As with leave requests, specific procedures for reporting absences should be included in the employee handbook, and penalties assigned for not following them.



Leave procedures are designed to make sure employees are treated fairly and to make sure the company does not unwittingly violate one of the many leave laws. A good reason to make sure an employment lawyer reviews the final draft of your handbook.

Your Handbook is a Culture Document

In 2009, [Netflix](#) publicly released a presentation entitled [Netflix Culture: Freedom & Responsibility](#) that described their movement away from a company culture based on command and control and towards one centered on freedom and responsibility. The presentation went viral and as of March 2018 had over 17 million views.

Because the presentation also discusses other common company policies, it is often referred to as Netflix's employee handbook. It has been very influential, with many companies copying their "unlimited" vacation policy and their simple "Act in Netflix's best interests" expenses policy.

Alongside the [Valve Handbook for New Employees](#) and the [Zappos Culture Book](#), the presentation has influenced many companies to create culture-first employee handbooks that highlight their company culture instead of or in addition to policies found in a traditional employee handbook. Even the policies are rewritten in a much different way than tradition would dictate. They include informal summaries or introductions in plain language. An employee can always go to a manager or HR to get a specific policy on a specific point.

Those ugly black and white, legalese chocked, handbooks tell of a very formalistic, no fun, low culture workplace. Given today's dismal engagement scores, companies are well advised to shake up their traditional thinking!

Soon we will talk about how you can bring these handbooks to life with graphics, fonts, videos and more.

<https://www.zapposinsights.com/culture-book>

Codes of Conduct

Employee handbooks will typically identify performance standards, personal conduct required in the workplace, use of company facilities and equipment and any other conduct that could result in discipline. These conditions of employment include arriving to work on time, not drinking during working hours, and not using illegal narcotics. Employers will vary on whether they want to have a specific three-step policy before termination or have specific disciplinary actions per violation. While it helps keep the discipline to a uniform process, most employers don't like to handcuff themselves where they do not have to do so.

Over the last few years, the National Labor Relations Board (NLRB) has challenged many employer handbook policies alleging that certain policies may violate an employee's rights under § 7 and 8 of the National Labor Relations Act (NLRA). These rights allow workers to collectively complain about their work conditions, including their hours of work and how they get paid. The types of rules that are frequently at issue before the NLRB relate to confidentiality, professionalism, insubordination, social media postings, photography/recording rules, and media contact rules.

The NLRB Board under the Trump Administration has pulled back on draconian ruling surrounding conduct rules requirements. On June 6, 2018, Peter Robb, the new General Counsel for the National Labor Relations Board,



issued a lengthy [memorandum](#) (Memo) that reversed the previous GC's approach. According to the Memo, most standard employer policies will now be presumed lawful under the National Labor Relations Act. The NLRB majority said it would take a three-pronged approach to reviewing work policies:

Category 1 will include rules that the Board designates as lawful to maintain, either because (i) the rule, when reasonably interpreted, does not prohibit or interfere with exercising NLRA rights; or (ii) the potential adverse impact on protected rights is outweighed by justifications associated with the rule. Examples of Category 1 rules are the no-camera requirement, the "harmonious interactions and relationships" rule at issue in William Beaumont Hospital, and other rules requiring employees to abide by basic standards of civility.

Category 2 will include rules that warrant individualized scrutiny in each case as to whether the rule would prohibit or interfere with NLRA rights, and if so, whether any adverse impact on NLRA-protected conduct is outweighed by legitimate justifications.

Category 3 will include rules that the Board will designate as unlawful to maintain because they would prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule. An example of a Category 3 rule would be a rule that prohibits employees from discussing wages or benefits with one another.

Today's employee handbooks also have policies governing the use of technologies and systems, whether that is the company intranet, internet or mobile devices. Employers will also identify any monitoring that is done to make sure employees are acting ethically, legally and in conformity with these policies.

The codes of conduct you can have are endless...and in the end often become overwhelming, never read, and seldom enforced with consistency. At the other end of the spectrum I am impressed by [Nordstrom's one page Employee Handbook](#) which states:

Welcome to Nordstrom

We're glad to have you with our Company.

Our number one goal is to provide outstanding customer service.

Set both your personal and professional goals high.

We have great confidence in your ability to achieve them.

Nordstrom Rules:

Rule #1: Use your good judgment in all situations.

There will be no additional rules.

Please feel free to ask your department manager, store manager, or division general manager any question at any time.

On that note, one final suggestion: have a policy like Nordstrom's that defines what it means to be a great employee! You won't find that in any handbook template. One time an attorney told me that doesn't belong in a handbook. When I asked why not, he could give me a logical or legal reason! In the files is an example of such a policy you can include in your handbook. Remember this when drafting employee handbooks: you get what you focus on!



Bringing it to Life

I will never forget working years ago with a company in the advertising business that asked me to help with updating their employee handbook. When the President handed it to me across the desk, I had to laugh. It was ugly black and white and had been copied so many times that the lines of text were wavy in it! I asked him if he could show me some of the firm's marketing material. Of course, it was glossy, four-color and beautiful. I put the handbook and the ad pieces side by side and said nothing. After a moment's reflection, the owner said: "And I've got design people right outside my door."

My client woke up to the fact that while we treat our customers and clients in color, we treat our employees in black and white! I believe it's time to put that story to rest!

The reality is, most employee handbooks are boring to read. And... they look boring too! Given today's ability to add graphics at almost no cost, there is no excuse for having boring handbooks anymore. As mentioned earlier, these are culture documents as well.

You can create a great cover, add pictures of people, the office, workers in the field, testimonials, quotes, you name it! Why not create an employee committee to not only make recommendations to the content but graphics as well.

For example:

Zingerman's Community of Businesses threw in some cut-out finger puppets of its two founding partners.

Education First filled their handbook with illustrations that evoke children's books.

Facebook's handbook is replete with quotes and other motivating blurbs.

With a little bit of research, you can find graphics templates available for creating attractive employee handbooks. If you would rather outsource it, I would suggest finding a graphics expert on Upwork or a similar report.

Here are examples of graphics templates you can use to build an employee handbook

<https://www.pinterest.com/pin/354095589438217232/>

<https://www.pinterest.com/pin/398639004504515290/>

Sharing it Online

Since the beginning of employee handbook time, the handbook document has been printed, and either an individual copy is provided every employee, or one is simply maintained at the Human Resource office for review. Today we can make these handbooks available online, and there are numerous advantages to doing so, including these seven:

1. You kill fewer trees this way.
2. There are no printing costs.
3. You can add graphics to your heart's delight. Even video too!



4. You can supply it to remote or telecommuting employees.
5. It can be easily revised.
6. It can be accessed via a smartphone.
7. It can be accessed at any time.

According to ThinkHR, more than ½ of all employers now do this. Handbooks are most often placed into what is known as a Human Resource Information System or HRIS for short. You can also use technologies like SharePoint, DocuSign or DropBox as well. And, you can always have a paper copy available in HR or department offices.

Some companies go all the way like The Motley Fool, and made their handbook into an interactive website. <http://thefoolrules.com>

Presenting it “Live.”

Given the length of most employee handbooks, and the fact most are written in legalese, it's my experience that most employees don't read them all the way through! What's the point of having a handbook if the employee doesn't read it? Unfortunately, it seems most HR executives are often content simply knowing the employee signed the handbook acknowledgment. Not good!

Employers must give employees the time needed to read through the handbook. Depending on their reading level that could take an hour...or much more. I can tell you 30 minutes won't cut it. One thing I've encouraged clients to do is to allow a place for employees to initial the bottom of each page declaring they have read and understood that information. You can do the same thing with an online report like DocuSign.

However, given the reality of and the importance of these handbooks, I also suggest my clients present the handbook “live.” This can be in an all-hands meeting or by way of a video recording. If more than ten percent of your workforce speaks a foreign language as their primary language, then I would also have the presentation translated or done separately.

While you will not read provisions word for word, you can go through the handbook and highlight some of the most important information. Like the at-will disclaimer, sexual harassment policy, leave policies, and absenteeism policies, internet use, and privacy rights. Then have a Q&A session that follows.

This is yet another way you can bring your handbook to life and reinforce your compliance and cultural commitments.



Conclusion and Next Steps

This report was designed to give you an overview of how to build a great employee handbook. In the appendix is a summary of the policies that can be in an employee handbook. We did not intend to discuss every possibility when it comes to policies you can use. If you have never built an employee handbook, this report will be a great start. Same thing if you are looking to revise and update your handbook...which you should do every year.

Last, it is my recommendation to have a final draft of your handbook reviewed by a team of managers and employees to make sure what is set forth in your handbook is in fact how you run your company. They can also let you know if there is anything they don't understand and to see how they would improve the handbook. Then have it reviewed by your employment law attorney.

I encourage you to hook up with me on [LinkedIn](#) and I'll send you even more employee handbook tools.



Here's to building an employee handbook you can be proud of, Don

About Don Phin, Esq.

Don has been a California employment practices attorney since 1983. He litigated employment and business cases for 17 years and quit once he figured out that nobody wins a lawsuit.

Since leaving litigation, he has written numerous books and presented more than 500 times to executives nation-wide.

Don was the founder and President of HR That Works, used by 3,500 companies and acquired by ThinkHR in January of 2014. He worked there for two years as a V.P.

Now in his "wisdom sharing years," Don loves coaching executives and continues to inspire with his speaking and training.

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California Employee Handbook Policies

California employers have more legal obligations than anyone else in the country. While it is not required that you have an employee handbook, most companies do, and they include both legal mandates and company policies. This list of policies is derived from the ThinkHR employee handbook builder, which I helped to create. If you would like to obtain access to ThinkHR for your company please let me know.

While it is not part of their program, I also encourage you to add provisions that educate about your company vision, mission, values, goals and culture. The add some pictures and graphics and you'll have a great handbook!

Introductory Language and Policies

- Welcome
- At-Will Employment
- About the Company
- Ethics Code
- Mission Statement
- Revisions to Handbook
- Company Organization
- Company Facilities

Hiring and Orientation Policies

- EEO Statement and Non-Harassment Policy
- Affirmative Action Policy for Government Contractors
- Disability Accommodation
- Religious Accommodation
- Posting of Openings
- Conflicts of Interest
- Employment of Relatives and Friends
- Job Descriptions
- New Employees and Introductory Periods
- Training Program
- Employment Authorization Verification

Wage and Hour Policies

- Introduction

- Pay Period
- Paycheck Deductions
- Direct Deposit
- Posting of Work Schedules
- Recording Time
- Travel Time Pay
- Overtime Authorization for Nonexempt Employees
- Attendance Policy
- Job Abandonment
- Travel Expenses
- Business Expenses
- Use of Company Credit Cards
- Rest and Meal Periods
- Accommodations for Nursing Mothers
- Pay Transparency Policy for Federal Contractors

Performance, Discipline, Layoff, and Termination

- Performance Improvement
- Promotions
- Pay Raises
- Workforce Reductions (Layoffs)
- Transfer
- Standards of Conduct
- Criminal Activity/Arrests
- Disciplinary Process
- Outside Employment

- Problem-Solving Procedure
- Termination
- Exit Interview
- Post-Employment Reference Policy

General Policies

- Driving Record
- Telecommuting Policy
- Use of Company Vehicles
- Authorization for Use of Personal Vehicle
- Notice of GPS Monitoring Policy of Company Vehicles
- Personnel and Medical Records
- Employee Privacy and Right to Inspect
- Voicemail, Email, and Internet Policy
- Social Media Policy
- Employee Suggestions/ Open Door Policy
- Company Bulletin Boards
- Inclement Weather/ Office Closing
- Nonsolicitation/ Nondistribution Policy
- Personal Appearance
- Company Social Events



- Payroll Advances and Loans
- Telephone Use
- Company-Provided Cell Phone/Mobile Device Policy
- Personal Cell Phone/Mobile Device Use
- Mail Use
- Off-Duty Use of Company Property or Premises
- Security
- Computer Security and Copying of Software
- Third Party Disclosures
- Employee Incentive Programs
- Personal Data Changes
- Whistleblower Policy

Benefits and Leaves

- Regular Full-Time Employees
- Regular Part-Time Employees
- Temporary Employees
- Exempt Employees
- Health Insurance
- Disability Insurance
- Life Insurance
- Employee Assistance Program
- Dental Insurance
- Vision Care Insurance
- Pension and Profit-Sharing Plan
- 401(k) Plan
- Stock Option Plan

- Continuing Education Policy and Tuition Assistance
- Holiday Pay
- Paid Time Off (PTO)
- Vacation Policy
- Paid Sick Leave (Accrual Method)
- Paid Sick Leave (Lump Sum Method)
- Volunteer Firefighters, Reserve Police Officers and Emergency Responders Leave
- Leaves of Absence (Non-FMLA Covered Employers)
- Leaves of Absence (FMLA Covered Employers 50+)
- Family and Medical Leave of Absence Policy, Including Military Leaves
- New Parent Leave (California 20+)
- Pregnancy Disability Leave of Absence Policy (California 5-49)
- Federal Contractor Paid Sick Leave (Accrual Method)
- Federal Contractor Paid Sick Leave (Lump Sum Method)
- Military Leave (USERRA)
- Jury and Court Duty
- Witness Duty
- Voting Leave
- Time Off for Victims of Domestic Violence

- Crime Victim Leave
- Leave to Attend Court Proceedings for Serious Crimes
- School and Child Care Activities Leave
- Organ and Bone Marrow Donor Leave
- Bereavement Leave
- Workers' Compensation Insurance
- Unemployment Compensation Insurance
- COBRA
- Severance Pay

Safety and Loss Prevention

- General Safety Policy
- Drug and Alcohol Policy
- Drug Free Workplace
- Nonsmoking Policy
- Policy Against Violence

Trade Secrets and Inventions

- Employee Inventions
- Confidentiality and Nondisclosure of Trade Secrets

Customer Relations

- Products and Services Knowledge
- Customer, Client, and Visitor Relations

Closing Statement

Acknowledgment of Receipt and Review



If any questions about employee handbooks, don't hesitate to contact me.

Don Phin, Esq.

