



employee handbooks

"Must-Have" Policies, Policies to Avoid, and More



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“Must-Have” Policies for Your Employee Handbook

An employee handbook helps communicate company guidelines, expectations, procedures, and benefits. While employers are not required to have an employee handbook, some laws require employers to communicate certain information to employees in writing. There are also certain policies that are important for communicating company expectations and benefits. While the contents of your handbook will depend on a number of factors, including your company’s size, industry, and location, consider including the following policies:



At-Will Employment

The at-will statement reiterates that either you or the employee can terminate the employment relationship at any time, for any lawful reason. At-will policies should also contain language explaining who at the company has the authority to change the terms of the employment relationship. Absent an agreement or contract, at-will employment is recognized in every state but Montana.



Anti-Harassment and Nondiscrimination

These policies prohibit harassment and discrimination in the workplace. Clearly state that all complaints will be taken seriously and that retaliation is strictly prohibited. In addition, provide employees with multiple avenues for reporting violations as well as the consequences for violating these policies. Review federal, state, and local nondiscrimination laws when developing these policies.



Immigration Law Compliance

This policy informs employees that the company is committed to complying with all employment eligibility verification rules and will only hire individuals who are authorized to work in the United States.



Employment Classifications

Since an employee’s classification can dictate eligibility for benefits and overtime pay, clearly define full-time, part-time, exempt and non-exempt employee classifications.

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Leave of Absence and Time Off Benefits

These policies address the rules and procedures related to holidays, vacation, sick, and other types of company-provided or mandated leave. Communicate procedures for accrual, carryover and payout of unused vacation at the time of termination. Check all applicable federal, state, and local laws to ensure all leave requirements are included in your employee handbook.



Meal and Break Periods

A policy on meal and break periods informs employees of the frequency and duration of breaks as well as any rules or restrictions related to break periods. Rest periods, lactation breaks, and meal periods must be provided in accordance with the Fair Labor Standards Act (FLSA) and state and local laws.



Timekeeping and Pay

A timekeeping policy informs employees of the method for recording time and the importance of accurately recording all hours worked. A policy on paydays lets employees know the frequency of paydays, the methods available for receiving pay, and any special procedures for when a payday falls on a holiday or when an employee is absent from work. Check your state law for specific payday requirements.



Safety and Health

Safety policies describe safety and emergency procedures and require employees to report work-related injuries immediately. Additionally, some regulations under the Occupational Safety and Health Act require employers to have specific policies and programs in place if certain workplace hazards exist (such as a hazard communication program if certain chemicals are present in the workplace).

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Use of Company Equipment

Consider a policy on the use of company email, computers, phones, and other equipment to inform employees that these tools are the property of the company, are intended for business and limited non-business use, and that employees should have no expectation of privacy when using company equipment or technology.



Employee Conduct, Attendance, and Punctuality

Attendance policies make it clear that employees must be ready to work at their scheduled start time each day and provide procedures for informing the company of an unscheduled absence or late arrival. It is also a best practice to have policies on standards of conduct, drug and alcohol abuse, disciplinary action, confidentiality, conflicts of interest, and workplace violence.

This is only an overview of common workplace policies. Your size, location, and industry may dictate whether additional policies are necessary. When making this determination, consider your business practices as well as all applicable federal, state, and local laws.

10 Policies to Ban from Your Employee Handbook

Certain policies are critical for communicating rules and other important information to employees. However, if your handbook isn't drafted carefully, workplace policies may conflict with federal, state, or local law. Here are 10 policies to avoid:



#1: Withholding Final Pay Until Company Property Is Returned

Federal law requires employees to receive their final pay by the next scheduled payday. Many states have shorter timeframes, such as at the time of termination. Employers must meet final pay deadlines, regardless of whether the employee has yet to return company property.

Best Practice: Whenever possible, reclaim company equipment prior to the employee's last day. Depending on the state, employers may be permitted to make limited deductions from a non-exempt employee's final pay for unreturned equipment (these deductions are prohibited if the employee is classified as exempt), provided the deduction does not bring the employee's pay below the applicable minimum wage and does not reduce any overtime pay due. However, some states expressly prohibit deductions for unreturned equipment. Review your applicable laws and consider consulting legal counsel before deducting from final pay.



#2: Unauthorized Overtime/Early Punch-Ins Will Not Be Paid

Under the federal Fair Labor Standards Act (FLSA), non-exempt employees must receive one and a half times their regular rate of pay for all hours worked over 40 in a workweek (some states require overtime in additional circumstances and at a different rate). If a non-exempt employee has worked overtime, he or she must be paid an overtime premium, regardless of whether the overtime was pre-authorized. A policy that no overtime work is permitted unless authorized in advance doesn't relieve the employer of this requirement. Similarly, employers may not withhold pay for time worked if the employee punches in before his or her scheduled start time.

Best Practice: Employers may subject the employee to disciplinary measures for working unauthorized overtime, but in no case may the employer withhold overtime pay.

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#3: Requiring a Doctor's Note for Every Sick Day

Most leave laws allow employers to ask employees for reasonable documentation of the need for leave. However, certain laws do have restrictions. For example, some state and local paid sick leave laws prohibit employers from requesting documentation unless the employee has taken sick leave for more than three consecutive days.

Best Practice: Even in the absence of a restriction, consider what, if any, documentation would be reasonable to require from employees, and apply your policy consistently. Also keep in mind that certain laws limit the type of medical information an employer can request, and any medical documentation or health information received must be kept confidential and separate from the employee's personnel file.



#4: Prohibiting Lawful Off-Duty Conduct

Several states prohibit employers from taking adverse action against employees and applicants who use tobacco. Additionally, a few states expressly prohibit employers from taking adverse action against individuals on the basis of any legal off-duty conduct.

Best Practice: Even if your state doesn't expressly protect employees from legal off-duty conduct, it is not considered a best practice to have such a policy.



#5: Safety Bonuses Based on Days without an Injury

Safety incentive programs that offer rewards to employees for consecutive days without a workplace injury may violate the Occupational Safety and Health Act. These programs could discourage workers from reporting workplace injuries out of fear they'd jeopardize the bonus for themselves and/or co-workers.

Best Practice: Consider incentives that promote worker participation in safety-related activities, such as incentives for identifying hazards, making suggestions for safety improvements, participating in safety committees, or assisting in investigations of injuries, incidents, or "near misses."

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#6: Pay Secrecy

Under Section 7 of the National Labor Relations Act (NLRA), employees have, among other things, the right to act together to improve wages and working conditions and to discuss wages, benefits, and other terms and conditions of employment, with or without a union. The National Labor Relations Board (NLRB), which enforces the NLRA, and many courts have found that pay secrecy or pay confidentiality rules violate Section 7 rights. Additionally, some states and local jurisdictions prohibit pay secrecy policies.

Best Practice: Never take action or implement policies that could be construed to restrict employees' rights under the NLRA. Instead, consider taking steps to better communicate information about your company's compensation program and how employees' salaries and wages are determined.



#7: Overly Broad Social Media Restrictions

The NLRB has taken the position that an employee's use of social media to protest unfair working conditions (such as unequal pay or harassment) may be protected under Section 7 of the NLRA. Policies prohibiting employees from tarnishing the company's reputation or maintaining confidentiality through social media postings may violate the NLRA if they:

- Explicitly restrict Section 7 protected activities.
- Prevent employees from engaging in protected activity out of fear that they may be disciplined.
- Contain catch-all language that the policy isn't intended to restrict Section 7 rights, without context to show that the policy is in fact compliant.

Best Practice: Draft social media policies carefully and provide sufficient details and contexts to make it clear that the rules do not infringe on protected activity. For example, any confidentiality provisions should clearly indicate that employees' wages and other working conditions aren't considered confidential information.

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#8: Probationary/Introductory Periods

Probationary or introductory periods are sometimes used to assess a new hire's performance, but can lead to confusion regarding "at-will" status. At-will generally means that either the employee or the employer may terminate the employment relationship at any time, for any lawful reason. When employers use probationary periods, employees sometimes think that once they successfully complete a probationary period, they are no longer at risk for termination based upon their performance. This misunderstanding can lead to increased risk of wrongful termination claims. Additionally, the term "probationary period" may have a negative connotation. New hires may misinterpret "probationary" to mean that they are immediately placed on a disciplinary action plan at the start of their employment.

Best Practice: Whether it's an "introductory period," "training period," or "orientation period," they all generally run the risk of confusing employees about their employment status. Instead, create a development plan, set clear performance goals, and hold regular check-ins with all new hires to ensure they're meeting performance expectations.



#9: Discipline Policies that Lack Flexibility

Disciplinary action provisions should give the company flexibility to take action based on the facts and circumstances of each case. If drafted incorrectly, discipline policies may lock you into taking one course of action, such as policies that indicate a verbal warning will be given for all first offenses, a written warning for all second offenses, and so on (commonly known as progressive discipline).

Best Practice: Avoid policies that restrict your ability to decide what type of discipline is appropriate given the severity of the offense and the employee's history of misconduct. State that violations may result in disciplinary action, up to and including termination, and that the company reserves the right to decide what disciplinary action to take in any given situation. Keep in mind, however, that treating employees fairly is key and similar situations and past practices should guide and impact the disciplinary action taken.

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#10: English-Only Policies

The Equal Employment Opportunity Commission has taken the position that rules requiring employees to speak only English in the workplace violate federal law unless they are reasonably necessary to the operation of the business. Policies that require employees to speak only English in the workplace at all times, *including during breaks and meal periods*, will not likely be considered reasonably necessary.

Best Practice: Employers that believe an English-only rule is reasonably necessary to the operation of their business should consult legal counsel to determine whether it is permitted. If permitted, apply the rule in limited circumstances and only when it is needed to operate safely and efficiently.

When drafting and reviewing your employee handbook, carefully consider what policies to include and what policies to avoid, while taking into account all applicable federal, state, and local laws.

How to Address Piercings and Tattoos in a Policy

Some employers consider visible body art to be inappropriate in the workplace. A well-crafted personal appearance policy can be an effective way to address the issue. Here are some guidelines for addressing body art in a personal appearance policy:



Base the Policy on Legitimate Business Needs

Employees who have body art or piercings most likely see it as a form of self-expression and may initially object to any sort of restrictions. To help alleviate some of those concerns, explain the business reasons for adopting the policy. For instance, for safety reasons, employees who work with equipment may be asked to remove jewelry, including piercings, prior to beginning their shift.



Evaluate Possible Restrictions

When developing a personal appearance policy, consider company culture and the image that you want to project to clients, the public, and current and potential employees. If you want to place restrictions on visible tattoos and/or piercings, consider requiring employees to conceal them. You might also consider placing different restrictions on employees who have contact with the public versus those who don't.



Consider State and Federal Nondiscrimination Laws

Employers are required to provide a reasonable accommodation for an individual's sincerely held religious beliefs or practices, absent undue hardship. Since some religious practices involve tattoos and/or piercings, employers may be required to provide a reasonable accommodation for an employee's body art. Draft policies that don't impose a burden on a protected class of employees and include procedures on how employees can request accommodations when applicable. Train supervisors on how to handle situations where they think a violation in dress code may be a result of an employee's religious beliefs or due to other protected reasons.

How to Address Piercings and Tattoos in a Policy



Provide Examples of Inappropriate Body Art

Provide examples of acceptable and unacceptable forms of body art (for example, graphic, violent, or otherwise offensive tattoos should never be visible). Encourage employees to ask questions if they have any doubts with regard to what is and is not appropriate.



Be Consistent

Establish procedures for enforcing your policy. Remind supervisors that they have a duty to enforce all policies consistently, regardless of their views on body art.

Unless otherwise prohibited by law, employers may have legitimate business reasons for establishing restrictions on body art in the workplace.

Smoking Policies: What You Need to Know

Some employers choose to implement non-smoking policies, since having employees who smoke can drive up employer health care costs and reduce productivity. Here are some frequently asked questions that address employers' rights and obligations under the law:

Q: We have a smoking ban that applies to company buildings, but I would like to expand the ban to cover all company property. Is this permitted?

A: Many states ban smoking inside the workplace, in certain public areas, and within a certain distance from building entrances. Even in states that do not expressly prohibit smoking in the workplace, employers are free to institute a smoking ban in their workplace, including prohibiting smoking on company property during rest breaks. Clearly communicate smoking bans to employees in writing and display notices in the workplace for employees and visitors.

Q: We provide 15-minute rest breaks. Some smokers are consistently late returning from their breaks. Do I have to pay them for these unauthorized extensions of their rest break?

A: Generally, employees must be paid for rest periods lasting 20 minutes or less. The FLSA, however, provides that employers may exclude unauthorized extensions of rest periods as long as the employer clearly advises employees that:

- Breaks may only last for a specified duration (such as 10 minutes);
- Unauthorized extensions of breaks are prohibited; and
- Violations of the policy will be subject to discipline.

Inform employees of this policy in writing and require written acknowledgment. Apply the policy consistently for anyone returning late from a break, including smokers and non-smokers.

Q: An employee came to me saying that our workplace smoking ban shouldn't apply to e-cigarettes. Can I ban e-cigarettes in the workplace?

A: Employers can ban the use of e-cigarettes in the workplace. In fact, some states have expressly included e-cigarettes in their indoor smoking bans. Due to the growing popularity of e-cigarettes, it is a best practice to update smoking policies to address e-cigarettes.



Smoking Policies: What You Need to Know

Q: Can I prohibit employees from smoking while off-duty?

A: A number of states protect employees who engage in lawful off-duty conduct and some specifically protect smokers and tobacco users. In these states, it is not permitted to take adverse employment actions against individuals for smoking or using tobacco while off-duty or to enforce a policy that prohibits off-duty smoking. Absent specific protections, it is not a best practice to restrict employees from engaging in legal off-duty conduct.

Q: Can I refuse to hire an applicant who smokes?

A: This topic may be of particular concern to employers who cite the effects of the smell of smoke on clients or colleagues who may have allergies or sensitivity to smoke. Other businesses also cite a desire to increase worker productivity, reduce health care costs, and promote healthy behavior as reasons for such a policy.

Remember, many states have passed laws that protect workers from engaging in legal activities outside the workplace, although some laws exempt nonprofits and health care organizations. Employers also need to consider the potential discriminatory impact the policy may have on applicants (if the policy disproportionately prevents certain groups from applying for open positions).

Before implementing a policy of not hiring smokers, check your state law and review job requirements to determine if the reason is job-related. Consider hiring the most qualified individual for the job and supporting the employee's efforts to quit smoking, if applicable.



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