



# employee handbooks

*"Must-Have" Policies and More*



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## Table of Contents

<b>“Must-Have” Policies for Your Employee Handbook.....</b>	<b>3</b>
Employee handbooks are an excellent resource for communicating company guidelines, expectations, procedures, and benefits. This article provides a list of “must-have” policies for your employee handbook.	
<b>7 Policies &amp; Procedures That Can Land You in Hot Water.....</b>	<b>5</b>
While it is a best practice to communicate certain workplace rules and information in writing, it is equally important to ensure policies and procedures do not conflict with federal, state, or local law. This article highlights policies to avoid and offers acceptable alternatives.	
<b>Social Media Policies and the NLRB.....</b>	<b>9</b>
Policies on social media use are being scrutinized by the National Labor Relations Board. Review best practices on how to avoid infringing on employees’ rights under the National Labor Relations Act.	
<b>How to Address Piercings &amp; Tattoos in a Policy.....</b>	<b>11</b>
Body art is becoming increasingly prevalent. However, some employers consider visible body art to be inappropriate in the workplace. This article provides guidelines for addressing body art in a personal appearance policy.	
<b>Smoking Policies: What You Need to Know.....</b>	<b>12</b>
Employees who smoke can drive up an employer’s health care costs and reduce productivity. Discover answers to frequently asked questions about anti-smoking policies.	



## “Must-Have” Policies for Your Employee Handbook

An employee handbook provides employees with certain 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. In the absence of a specific requirement, there are also certain policies that are important for communicating company expectations and benefits. While the makeup of your handbook will depend on a number of factors, including your company’s size, industry, and location, consider including these essential policies:



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



**Anti-harassment and non-discrimination.** 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 applicable federal, state, and non-discrimination laws when developing these policies.



**Immigration law compliance.** This policy informs employees that you are committed to only hiring individuals who are authorized to work in the United States and that your company complies with employment eligibility verification rules.



**Employment classifications.** Clearly define employment classifications, such as full-time, part-time, exempt or non-exempt since an employee’s classification can dictate eligibility for benefits and overtime pay.



**Leave of absence and time off benefits.** These policies address the company’s procedures regarding holidays, vacation, sick, and other types of company leave, or leave required by law. Employers can communicate procedures regarding accrual, carryover and payout of unused vacation at the time of termination. Check federal and applicable state and local law 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 such 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 or local laws.

## “Must-Have” Policies for Your Employee Handbook



**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 applicable 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 (e.g. a hazard communication program if certain chemicals are present in the workplace).



**Use of company equipment.** Consider a policy on the use of company email, computers, phones, and other equipment to inform employees that the equipment is the property of the company, is 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 an overview of some 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.

## 7 Policies & Procedures That Can Land You in Hot Water

It is a best practice for employers to communicate important rules, guidelines, and procedures to employees in writing. While a lack of policies and procedures can lead to a host of problems, ill-conceived policies can be problematic as well. Here are seven policies and procedures that may run contrary to federal, state, or local law:

### #1: Prohibiting Wage Discussions

*"Employees are prohibited from discussing their pay with co-workers."*

- **Reason:** 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 confidentiality rules violate Section 7.
- **Alternatives:** Never take actions or implement policies that could be construed to restrict Section 7 rights. Instead, take steps to better communicate information about your company's compensation program and how employees' salaries and wages

### #2: Blanket Policies Concerning Criminal History

*"Our company will not hire anyone with a criminal conviction."*

- **Reason:** Blanket policies regarding criminal convictions can have a disparate impact on protected classes and may violate federal, state and local laws. It is strongly recommended that employers follow the Equal Employment Opportunity Commission's (EEOC) guidance that employers cannot simply disregard an applicant because he or she has been convicted of a crime. Employers should also be aware of state and local "ban-the-box" laws that provide further guidance on inquiring about and relying on an applicant's criminal history.
- **Alternatives:** According to the EEOC's guidance, employers should evaluate how the specific criminal conduct relates to the duties of a particular position. This generally requires an individualized assessment in which the employer considers a variety of factors to determine whether exclusion based on a criminal record should be applied. Look at the facts and circumstances surrounding the offense, the number of offenses, rehabilitation efforts, and employment or character references. Check your state and local laws for additional guidance on relying on criminal history when making employment decisions.

## 7 Policies & Procedures That Can Land You in Hot Water

### #3: Withholding Pay until Company Property Is Returned

*“Employees’ final paychecks will be held until company equipment is returned.”*

- **Reason:** Federal law requires employees to receive their final pay by the next scheduled payday. Many states have established shorter timeframes, such as at the time of termination. Employers must comply with final pay laws even if the individual has yet to return company equipment.
- **Alternatives:** Whenever possible, reclaim company equipment prior to the employee’s departure. Depending on the state, employers may be permitted to make limited deductions from a non-exempt employee’s final pay for unreturned equipment, provided the deduction does not bring their pay below the applicable minimum wage and does not reduce any overtime pay due. **Note:** Some states expressly prohibit any deduction for unreturned equipment. If the employee is classified as exempt, the employer is prohibited from reducing the employee’s final pay for unreturned company equipment. Review applicable law and consider consulting legal counsel before applying any deduction.

### #4: English-only Policies

*“Employees must speak English at all times while on company property.”*

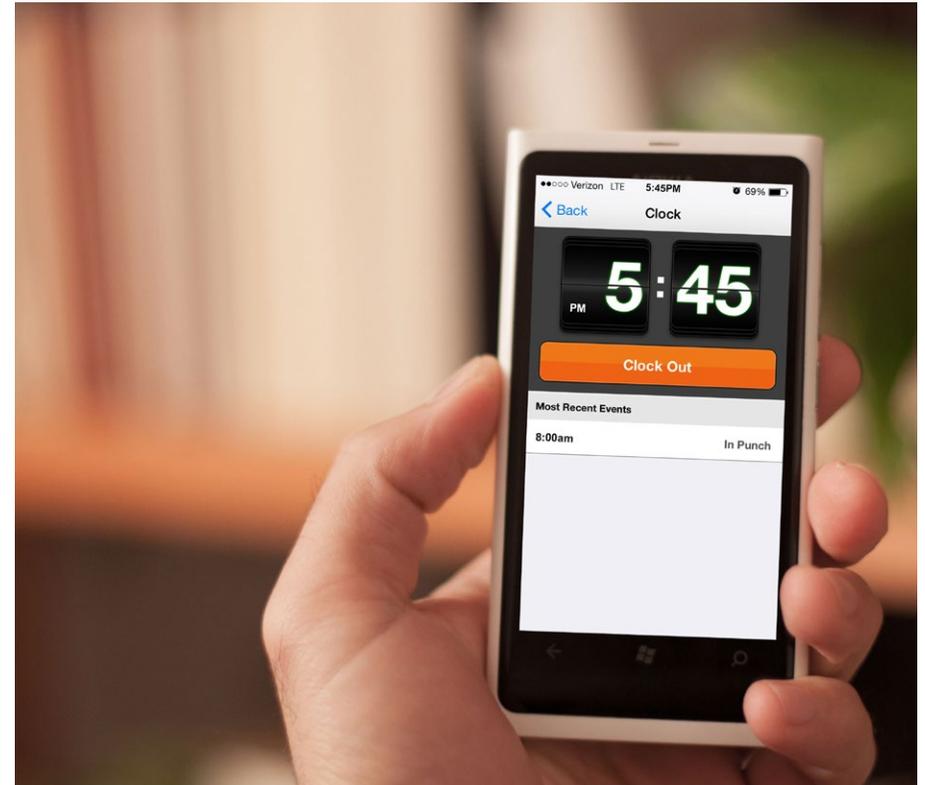
- **Reason:** According to the EEOC, rules requiring employees to speak only English in the workplace violate federal law unless they are reasonably necessary to business operations. Policies that require employees to speak only English in the workplace at all times, including during breaks and meal periods, will not likely be considered reasonably necessary.
- **Alternatives:** Employers that believe an English-only rule is reasonably necessary should consult legal counsel. If permitted, apply the rule in limited circumstances and only when it is needed for the employer to operate its business safely and efficiently.

## 7 Policies & Procedures That Can Land You in Hot Water

### #5: Unauthorized Overtime Will Not Be Paid

*"The company will not pay employees for overtime that was not authorized in advance."*

- **Reason:** Under the Fair Labor Standards Act (FLSA), non-exempt employees are entitled to overtime pay at a rate of one and a half times their regular rate of pay for all hours worked over 40 in a workweek. Some states have additional overtime requirements. 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. Having a policy that no overtime work is permitted, unless authorized in advance, doesn't relieve an employer of this requirement.
- **Alternatives:** Employers may subject the employee to disciplinary measures for working unauthorized overtime, but in no case may the employer withhold overtime pay.



## 7 Policies & Procedures That Can Land You in Hot Water

### #6: Prohibiting Lawful Off-duty Conduct

*"Employees will be terminated if caught drinking alcohol or smoking while off duty."*

- **Reason:** Several states prohibit employers from taking adverse action against employees and applicants who use tobacco or engage in legal off-duty conduct. In states that don't have these types of laws, it is not considered a best practice to have an off-duty conduct policy.
- **Alternatives:** Employers may prohibit smoking and the consumption of alcohol while on company property and while conducting company business. Generally, employers may also offer resources and incentives to help smokers quit using tobacco.

### #7: Certain Safety Incentive Programs

*"All employees will receive a \$500 bonus after 180 consecutive days of no injuries."*

- **Reason:** These types of incentive programs may violate the Occupational Safety and Health Act, which gives employees the right to report a workplace injury. Safety incentive programs could discourage workers from reporting workplace injuries out of fear they would jeopardize the bonus for themselves and/or co-workers.
- **Alternatives:** Offer 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."

Ill-conceived policies and procedures can be problematic, especially when they conflict with federal, state, or local law. Take into consideration all applicable laws and agency guidance when drafting policies and procedures and review them on a regular basis to ensure compliance.

## Social Media Policies and the NLRB

The National Labor Relations Board (NLRB) is the federal agency that enforces the National Labor Relations Act (NLRA). Under Section 7 of the NLRA, employees have the right to act together to improve wages and working conditions and to discuss wages, benefits, and other terms and conditions of employment. These protections are known as “protected concerted activity” and apply to both non-unionized and unionized employees.

The NLRB has taken the position that an employee’s use of social media to protest unfair working conditions (e.g. unequal pay, harassment, etc.) may be considered protected concerted activity. Therefore, disciplinary action taken against an employee who engages in such activity would likely be considered an unfair labor practice in violation of the NLRA.



### What to Avoid:

Employers who have policies, or are considering developing a policy, prohibiting employees from tarnishing the company’s reputation through social media postings should keep in mind that such policies may violate the NLRA if they:

- Explicitly restrict Section 7 protected activities (e.g. expressly bar the discussion of wages and working conditions with co-workers and third parties).
- Would reasonably tend to “chill” employees in the exercise of their Section 7 rights (e.g. employees would be suppressed from engaging in protected activity out of fear that they may be penalized).
- Contain catch-all language that states that the policy isn’t intended to restrict Section 7 rights, without context to show that the policy is in fact compliant.

## Social Media Policies and the NLRB

### Best Practice Guidelines:

Given the NLRB's current position and recent state legislation, consider these best practice guidelines when drafting and enforcing social media policies:

- **Craft policies carefully.** Provide sufficient details and context to make it clear that the rules do not infringe on protected activity.
- **Evaluate situations on a case-by-case basis.** When deciding whether to terminate, discipline, or take any other employment action against an employee for social media postings, carefully consider whether the employee's activity is protected under the NLRA. Ask yourself:
  - Does the content of the posting involve terms and conditions of employment (such as wages, hours, benefits, or working conditions)?
  - Does the posting involve co-workers, perhaps soliciting their comments and/or support?
- **Don't access employees' accounts.** Currently, there are a number of states that expressly prohibit employers from requiring employees, and applicants, to provide login information to their personal social media accounts. While these state laws don't prohibit employers from *requesting* login information, it's not considered a best practice to request this information or to require employees or applicants to log in to their accounts in your presence.



Guidance on social media in the workplace is evolving, so continue to monitor the NLRB's position and state legislation. Additionally, consider consulting legal counsel when developing and implementing social media policies.

## How to Address Piercings and Tattoos in a Policy

Tattoos, piercings, and other body art have become increasingly popular. This can be a concern for employers that 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 your business needs.** A dress code policy should be based 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. An explanation of the business reasons for adopting the policy can help alleviate some of those concerns. 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. Then, consider what you see appropriate or inappropriate in the workplace. 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 anti-discrimination 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 in a manner that does not impose a burden on a protected class of employees and include procedures on how they may request accommodations. 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.
- **Provide examples of inappropriate body art.** Provide examples of acceptable and unacceptable forms of body art (e.g. 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.

While body art has grown in popularity, employers may have legitimate business reasons for establishing restrictions in the workplace. Unless otherwise prohibited by law, several options are available for addressing body art.

## Smoking Policies: What You Need to Know

Having employees who smoke can drive up an employer's health care costs and reduce productivity. For these reasons, some employers choose to implement anti-smoking policies. These frequently asked questions address your 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, an employer is free to institute a smoking ban in their workplace. This includes prohibiting employees from smoking on company property during rest breaks. Smoking bans should be clearly communicated to employees in writing and notices should be displayed in conspicuous locations on company property for employees as well as visitors.

**Note:** If your company permits employees to smoke outdoors while on company property, keep in mind that many state laws prohibit smoking within a certain distance of entrances and ventilation systems. Check your state law for specific compliance requirements.

**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 are paid for rest periods lasting 20 minutes or less. The Fair Labor Standards Act (FLSA), however, provides that employers may exclude unauthorized extensions of rest periods from hours worked as long as the employer expressly and unambiguously advises employees that:

- Breaks may only last for a specified duration (e.g., 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.

## Smoking Policies: What You Need to Know

**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.

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

**A:** A number of states protect employees who engage in lawful off-duty conduct, such as smoking. Some states 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, and enforce a policy that prohibits off-duty smoking. Check your state law for more information.

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

**A:** This topic may be of particular concern to employers in the health care industry, who cite the effects of the smell of smoke on patients 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, such as smoking (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

Before you implement 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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