



FPHRA E-News

October 2014, Issue 4

**Ogletree
Deakins**
Employers & Lawyers. Working Together

A Solid Investment -

Strengthen Your Employee Handbook

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

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How long has it been since your organization resolved to strengthen its employee handbook? As human resources professionals know all too well, employment and labor laws are continually evolving. Make it a priority to conduct a review prior to the year's end and consider the following five areas when focusing your analysis.

1. Superfluous Language

Most employers have learned that including an at-will policy in the handbook reinforces the principle that employment may be terminated at any time for any lawful reason. Likewise, at-will policies should clarify that the handbook is not a contract, and employers may revise policies without prior notice. Equally, employers should beware potential promises made by superfluous language. Unnecessary purpose statements, rigid progressive discipline steps, and unrealistic commitments to provide training or a mutually enjoyable work environment should be avoided. To prevent estoppel arguments, avoid labeling personal or extended leave as FMLA when it is not.

2. Harassment and Bullying

In addition to Equal Employment Opportunity, harassment, discrimination, and retaliation should be addressed. Many employers imprudently limit their policies to sexual harassment only. However, harassment policies should include prohibitions based on any protected category. A clear complaint procedure should be included in the policy that allows for multiple reporting avenues, available during all shifts.

Similarly, employers should consider adding a separate policy to address bullying. Twenty-five states have passed anti-bullying in the workplace legislation. Expect Florida to follow suit soon.

3. The NLRB (Beyond Social Media)

Much ado has been made regarding the National Labor Relations Board's recent policing of social media policies. Yet, the area of inquiry extends to other policies. Many code of ethics, computer usage, and disciplinary policies may run afoul of the same principles scrutinized in social media policies. In recent decisions, the Board has taken issue with dress code policies that prevent employees from wearing insignia or messages on clothing and at-will policies that state the employment relationship may never be changed. The Board has further made clear that employers cannot have a blanket requirement for employees to keep internal investigations confidential. A disclaimer may not save an otherwise defective policy.

4. Timekeeping and Technology

Due to unrelenting litigation under the Fair Labor Standards Act, time-keeping and overtime policies should specifically prohibit employees from working off-the-clock. Policies should explain it is the employee's responsibility to report pay errors and how to do so. A related consideration is a policy that addresses employees' use of their own electronic devices (laptops, smartphones, and tablets) for work purposes. Policies should be crafted to address concerns regarding privacy, protection of confidential information, and working off-the-clock.

5. Employee Acknowledgments

Employee acknowledgements evidence that employees have received the handbook, and should be obtained each time the handbook is updated. The acknowledgement can be utilized to reiterate the at-will policy and to shift responsibility to employees to raise any complaints or questions about the handbook or your policies. Also note that violations of any policy, even one not identified in the handbook, can lead to discipline.

Dedicating the time and resources to reviewing policies on an annual basis is well worth the investment. Handbooks that require a complete overhaul may be best handled by legal counsel.

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FPHRA State-Wide Online Workshop

Thursday, November 6, 2014

2:00 to 3:30 PM

Where There's Smoke, Employees Will Fire It Up: Medical Marijuana and Other Drug Testing Issues

Guest Speakers:

Bill Grob, Attorney at Law and Dee Anna Harris, Attorney at Law

Ogletree, Deakins, Nash, Smoak & Stewart, P.C. Tampa, FL

Bill Grob focuses his practice exclusively on labor and employment law representing management. He has served as lead trial counsel in cases in federal and state courts, and has extensive experience as lead counsel in a variety of labor and employment matters, including numerous collective actions, involving wage/hour and overtime litigation, race discrimination, disability discrimination, leave issues and harassment.

Dee Anna Harris began her career in the labor and employment law field and continues to focus her practice on representing management in all aspects of labor and employment law compliance. Dee Anna has defended management in both federal and state courts, before numerous government agencies -- including the DOL, EEOC, OSHA, FCHR, and OFCCP -- and has represented employers in audits performed by the Department of Labor Wage and Hour Division, OFCCP, and OSHA.

Please complete the form below and e-mail by **Friday, October 31, 2104**.

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Remember to check your membership profile page for accuracy of information including your email address, name spelling, title, and attendance dates.

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various topics. All participants will get credit towards their certification/recertification hours for participating in the webinar session.

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