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# Six Top Tips for your Employee Handbook

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# Six Top Tips for your Employee Handbook

Every week, RUN Powered by ADP® clients receive our HR Tip of the Week. With practical, “how-to” information, these articles help them to navigate day-to-day HR and employee challenges. We compiled the top tips on Employee Handbooks to help you get the most value out of this important employee management and compliance tool.

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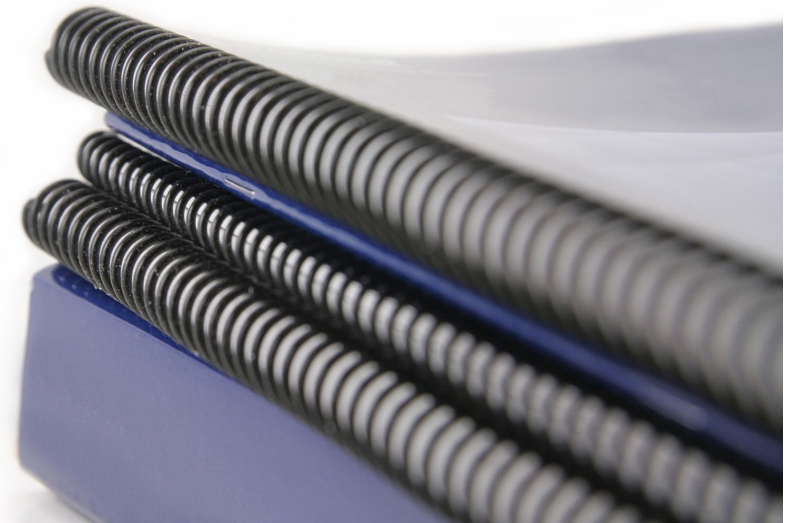
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# “Must-Have” Policies for your Employee Handbook

An employee handbook is a central source of information on guidelines, expectations, procedures, and benefits. While employers are not required to have an employee handbook, some laws do require employers to communicate certain information to employees in writing. In the absence of a specific requirement, there are also certain policies considered essential for communicating company expectations and benefits. These include but are not limited to:

- **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. Non-discrimination laws are governed by federal, state and local provisions, so it is important to review applicable laws when developing these policies. In addition to expressly prohibiting harassment and discrimination, these policies should clearly state that all complaints will be taken seriously and that retaliation is prohibited. Employees should be provided with multiple avenues for reporting violations as well as the consequences for violating 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.** It is a best practice to 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. Generally, these policies outline how employees are to submit requests for time off, whether accrued but unused time off is carried over from year to year, and whether unused vacation will be paid out at the time of termination. Note: Some states require the payout of unused vacation and other paid time off at the time of termination, so be sure your policy is drafted in accordance with applicable laws.
- **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.



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- **Timekeeping.** The purpose of this policy is to inform employees of the method in which they are to record time worked as well as their responsibility to accurately record all hours worked.
- **Paydays.** This policy can be used to inform employees of 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. Employers may also want to address how pay will be handled upon termination in accordance with federal and state law.
- **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.** You may want to consider a policy on the use of company email, computers, phones, and other equipment to inform employees that such equipment is the property of the company, is intended for business use, and that employees should have no expectation of privacy when using company equipment or technology.
- **Attendance and punctuality.** This policy is intended to inform employees that they must be ready to work at their scheduled start time each day. It is also a best practice to include procedures for informing the company of an unscheduled absence or late arrival (e.g., employees must speak with their supervisor directly).
- **Emergency closings.** This policy should inform employees of the company’s procedures for closing due to inclement weather or other emergencies as well as how employees will be notified of a closing. It may also address pay issues related to company closures.
- **Employee conduct.** It is a best practice to also have policies on standards of conduct, drug and alcohol abuse, disciplinary action, confidentiality, conflicts of interest, and workplace violence.

An employee handbook is one of the most effective tools for communicating with employees. Whether creating an employee handbook for the first time or updating an existing one, it is important to draft your policies carefully and have legal counsel review your handbook before distribution.



# Seven Policies & Procedures that Can Land You in Hot Water

It is a best practice for employers to communicate important rules, guidelines and information to employees through written policies. It is equally important for employers to develop procedures to consistently address workplace issues. While a lack of policies and procedures can lead to a host of problems, ill-conceived policies can be problematic as well.

The following are seven policies and procedures that may run contrary to federal, state, or local law, along with acceptable alternatives where applicable.

## Problematic Policy #1: Prohibiting wage discussions

*(e.g., "Employees are prohibited from discussing their pay with co-workers.")*

- **Reason:** Under Section 7 of the 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, which enforces the NLRA, and many courts have found that pay secrecy or confidentiality rules violate Section 7.
- **Alternatives:** Employers should never take actions or implement policies that could be construed to restrict Section 7 rights under the NLRA. Instead, employers may want to take steps to better communicate information about their company's compensation program and how employees' salaries and wages are determined.

## Problematic Policy #2: Blanket policies concerning criminal history

*(e.g., "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 from April 25, 2012. In the guidance, the EEOC reiterates its position that an employer cannot simply disregard any applicant who has been convicted of a crime.
- **Alternatives:** According to the EEOC 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 an individual's criminal record should be applied (such as the facts and circumstances surrounding the offense, the number of offenses for which the individual was convicted, rehabilitation efforts, and employment or character references).

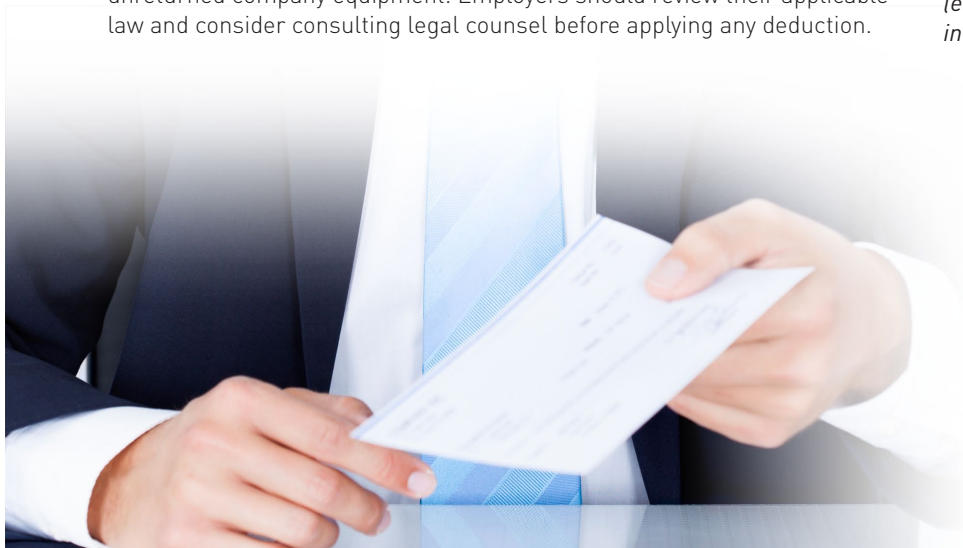




### Problematic Policy #3: Withholding pay until company property is returned

(e.g., "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 enacted laws establishing shorter timeframes for providing final pay, 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, employers should reclaim company equipment prior to the individual's departure. Depending on the state, employers may be permitted to make limited deductions from the final pay of non-exempt employees for unreturned equipment, provided they do not bring the employee's pay below the applicable minimum wage and do not reduce any overtime pay due. 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. Employers should review their applicable law and consider consulting legal counsel before applying any deduction.



### Problematic Policy #4: English-only policies

(e.g., "Employees must speak English at all times while on company property.")

- **Reason:** The EEOC 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 for business operations.
- **Alternatives:** 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, employers should apply the rule in limited circumstances and only when it is needed for the employer to operate its business safely and efficiently.

### Problematic Policy #5: Unauthorized overtime will not be paid

(e.g., "The company will not pay employees for overtime that was not authorized in advance.")

- **Reason:** Under the federal 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. The fact that an employer has a policy that no overtime work is permitted unless authorized in advance doesn't relieve the 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.

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### Problematic Policy #6: Prohibiting lawful off-duty conduct

*(e.g., "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. Additionally, a few states expressly prohibit employers from taking adverse action against individuals on the basis of any legal off-duty conduct. In states that don't have such laws, it is not considered a best practice to have such a policy.
- **Alternatives:** Employers may prohibit smoking and the consumption of alcohol while on company property and while conducting company business. Employers generally may also offer resources and incentives to help smokers quit using tobacco.

### Problematic Policy #7: Certain safety incentive programs

*(e.g., "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'd jeopardize the bonus for themselves and/or co-workers.
- **Alternatives:** Employers are permitted to 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. When drafting policies, employers should take into consideration all applicable laws. Since these laws change often, employers should review policies and procedures on a regular basis to ensure compliance.



# Who Cares About a Facebook Post, Anyway? Social Media Policies and the NLRB

The National Labor Relations Board (NLRB) is the federal agency that enforces the National Labor Relations Act (NLRA), a law that applies to virtually all employers. 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 "concerted protected 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.) is considered concerted protected 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.

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).
- Simply 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.

Employers should consider consulting legal counsel for guidance when developing and implementing policies that relate to restricting or monitoring the use of social media in the workplace.







# Smoking Policies: What Employers Need to Know

Having employees who smoke can drive up an employer's health care costs and reduce productivity. To address these issues, employers may want to implement anti-smoking policies. However, employers should understand what their obligations are, and what smokers' rights are, under the law.

The following are answers to frequently asked questions about anti-smoking policies:

**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, it is important to remember 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 punished.

Employers should inform employees of this policy in writing and require written acknowledgment. In addition, employers should apply this policy equally, including smokers and all other employees who are late returning from a break.

**Q: An employee came to me saying that our workplace smoking ban shouldn't apply to e-cigarettes. What are e-cigarettes and can my company ban them?**

**A:** Electronic cigarettes, or e-cigarettes, deliver a mixture of water and nicotine (or flavoring) in vapor form. Employers have the right to ban e-cigarettes. In fact, some states have expressly included e-cigarettes in their indoor smoking bans. Due to the growing popularity of e-cigarettes, employers may want to update their 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, employers are not permitted to take adverse employment actions against individuals for smoking or using tobacco while off-duty, and employers cannot enforce a policy that prohibits off-duty smoking. Check your state law for more information.



# Piercings & Tattoos: Addressing Body Art in a Personal Appearance Policy

Until recently, tattoos were popular among just a few select groups and piercings were typically limited to the ears. But, times have changed. Now, tattoos and piercings, also known as body art, are being worn all over the body and by all demographics.

The increased prevalence of body art can create a conflict of interest in the workplace since many employers consider visible body art to be inappropriate. A well-crafted personal appearance policy can be an effective means for dealing with the issue.

The following are 7 guidelines for addressing body art in a personal appearance policy:

- **Evaluate possible restrictions.** In general, employers have a lot of latitude in imposing restrictions on body art. When developing a personal appearance policy, it's important to consider company culture and the image that you want to project to clients, the public, as well as current and potential employees. Decide what you deem to be appropriate and inappropriate for your workplace. Will you permit visible body art, or will you require employees to cover tattoos and piercings? You might also decide that you want to place different restrictions on employees who have contact with the public versus for 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. Additionally, employers must avoid policies that are significantly more burdensome on a protected class of employees.
- **Provide examples of inappropriate body art.** However stringent you decide your policy will be, it's important to provide examples of acceptable and unacceptable forms of body art. For instance, 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.
- **Provide guidelines for covering body art.** If you wish to restrict visible tattoos and/or piercings, consider requiring that employees conceal them. Most body art can be covered with some type of clothing. For example, an employee with a tattoo that runs the length of her arm can conceal the tattoo by wearing a long-sleeve shirt while at work.
- **Promote safety.** Identify jobs in which body art may pose a safety risk and establish safety guidelines as appropriate. For instance, employees who work with equipment should be required to remove jewelry, including piercings, prior to beginning their shift.
- **Explain the reasons.** Employees who have body art most likely see it as a form of self-expression and may initially object to any sort of restrictions. Explaining your business reasons for adopting the policy may help when implementing it. In doing so, it is important to communicate that the policy is part of your efforts to maintain a professional and safe working environment.
- **Be consistent.** Establish procedures for enforcing your policy and train supervisors. 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 on their visibility within the workplace. Unless otherwise prohibited by law, several options are available for addressing body art, including banning inappropriate body art, prohibiting employees with regular customer contact from having visible piercings and tattoos, or requiring all employees to conceal their body art.




# "Can You Hear Me Now?" Seven Considerations for Cell Phone Use Policies

In the business setting, cell phones allow employees to remain connected to work both in and out of the office. However, use of such devices for work-related activity can create pay issues if non-exempt employees are attending to work-related matters outside of their regular work hours. Cell phones within the workplace also raise privacy and security concerns and they can create the potential for increased distractions. For these reasons, many employers adopt rules governing the use of cell phones during and, in some limited cases, after work hours.

The following are seven points to consider when developing cell phone use policies:

- **Use of personal phones at work.** Determine whether or not you will permit the personal use of cell phones while at work. Because cell phones can pose a distraction, both to the user and to co-workers, many employers choose to restrict them entirely. Others limit the use of cell phones to emergency situations or to certain areas of the workplace, such as private offices or break rooms. When developing your policy consider the potential effects on productivity as well as employee morale.
- **Personal use of company-provided phones.** If you permit personal use of company-provided cell phones, consider policies that limit your exposure of incurring additional costs. For example, where permitted by state or local law, employers may want to consider requiring employees that exceed their allotted minutes and/or data due to personal use to pay their portion of the phone bill.
- **Counting work time.** The Fair Labor Standards Act requires that non-exempt employees must be paid for all hours worked. If, for example, a non-exempt employee checks work email from home using a company cell phone, the time must be counted as hours worked. If you provide cell phones to your employees, it's important to have mechanisms in place that account for all hours worked.
- **Privacy expectations.** If you provide cell phones to employees, it's a good practice to indicate within your policy that the cell phones are the property of the company and, where permitted by state or local law, that employees should have no expectation of privacy when using company-issued cell phones.
- **Use while driving.** Several states prohibit drivers from using handheld mobile phones while operating a motor vehicle. Even if your state has no such ban, prohibiting employees from using company cell phones while driving may be a good safety precaution. Remind employees that business calls can wait until they reach their destination, or if a call must be made or received, encourage employees to safely pull over to the side of the road before using their phone.



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- **Protecting workplace privacy and security.** Most cell phones come equipped with cameras and a large amount of memory, which could pose a risk to workplace privacy and security. Therefore, it's important to determine what restrictions you want to establish in order to protect the company's privacy as well as the privacy of your employees. Some restrictions that can help to limit security and privacy breaches include banning the use of cell phones in restrooms and prohibiting employees from connecting their personal cell phones to USB ports on their computers.
- **Lost or damaged cell phones.** You may choose to include information on whether (and when) employees are responsible for lost or damaged company-provided phones. Before doing so, make sure that you are familiar with applicable federal and state laws governing pay deductions, since federal law restricts, and many state laws prohibit, an employer from making pay deductions for lost or damaged equipment.

Cell phones are valuable tools for helping employees to remain connected, but employers should take necessary steps to ensure that they are used appropriately.

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