



# Rules of Engagement

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## Handbook Housekeeping for HR Professionals

While employers are often encouraged to adopt Employee Handbooks, some employers may be better off with no handbook than having one that is outdated or improperly managed. To be an effective management tool (rather than a litigation tool for disgruntled employees), handbooks should be reviewed on an annual basis, preferably in conjunction with employee and upper-level management training.

The following are some practical tips that will help ensure that your employee handbook is up to date and well managed.

***Tip 1: A handbook should reflect changes in the way a company conducts business or updates to the company's technology.***

Businesses today routinely update business practices and technology to remain competitive. It is important that your handbook reflect these changes as well. For example, an employer needs a comprehensive policy if it distributes "smart phones" or PDA devices to its employees. Among other disclosures, the policy should advise employees of whether they should have an expectation of privacy for personal use, especially with regard to text messaging. (For example, see *City of Ontario v. Quon*, 130 S. Ct. 2619 (U.S. 2010)).

***Tip 2: Handbooks should reflect changes in the law.***

Federal and state laws pertaining to employees change on a regular basis. It is important that your handbook reflect the most current changes to law. For instance, the federal Patient Protection and Affordable Care Act amended the Fair Labor Standards Act, effective March 23, 2010, to provide certain protections for nursing mothers. If an employer has over 50 employees, it must provide nursing mothers with a private room and time off to express breast milk for one year following the birth of her child. If an employer has fewer than 50 employees, it is exempt if compliance would "pose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business." Employers are not required to compensate nursing mothers for the time spent on break, unless compensated breaks are already provided. Employers of all sizes should consider including a policy to address the new law. (For more information, see <http://www.dol.gov/whd/nursingmothers/>).

***Tip 3: Review how your company disseminates handbooks, ensures that employees acknowledge reading the handbook, and manages past versions of the handbook.***

Not only do handbooks need to be reviewed for changes, but procedures for implementing handbook policies may also need to be revised. Many times a policy is created with no guidance on how it should be carried out. Moreover, an annual review of procedures may reveal that policies do not reflect current practices. For example, does the company have a procedure for ensuring a Legal Hold is carried out? In many states, a client's failure to preserve documents falls back on its attorneys, who have a duty to ensure that documents are preserved.

***Tip 4: Review HR forms to ensure they are current also.***

After reviewing handbooks and the procedures for implementing policies contained in the handbooks, HR professionals should review forms to ensure they reflect current changes in the law. For example, with the advent of the federal Genetic Information Nondiscrimination Act ("GINA"), an employer should limit information requested on certain forms, such as for leave of absence,

to prevent the employee from self-disclosing genetic medical information. Examples of genetic medical information include: breast cancer, multiple sclerosis, AIDS, and some mental disorders. (For more information, see <http://www.eeoc.gov/laws/types/genetic.cfm>).

**Tip 5: Train everyone.**

Many employers have annual training for employees. Fewer employers, however, have specialized training targeted at upper-level employees and management. Many employee complaints involve supervisors – either in the form of a complaint about the supervisor or a complaint to the supervisor for further handling. A recent case Supreme Court decision recognized third-party retaliation claims without proof of the traditional discrimination against a protected class. In *Thompson v. North American Stainless, LP*, 131 S. Ct. 863, 178 L. Ed. 2d 694 (2011), a female employee, Ms. Regalado, and her fiancé, Mr. Thompson, both worked for defendant North American Stainless. Regalado filed an EEOC complaint alleging her supervisors had discriminated against her based on gender. Defendant fired Thompson three weeks later contending the termination was performance based. Thompson alleged his termination was in retaliation for his fiancé’s EEOC complaint. The Supreme Court held that Title VII created a claim for retaliation against a third-party based on the protected activity of another person if the aggrieved person falls within the “zone of interest.”

In summary, Human Resource professionals should review the company handbook to ensure it reflects the updated policies of the employer and changes to the substantive law governing employment, as well as the procedures for implementing the policies. Thereafter, the employer should conduct annual training of employees and supervisors. Employees should be required to sign an acknowledgment that they attended the training and have reviewed any new or updated policies.

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