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The Employee Handbook:
Do's and Don'ts

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jackson lewis
PERSONNEL STRATEGIES AND
RISK MANAGEMENT FOR THE WORKPLACE

The Employee Handbook:
Do's and Don'ts

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An Overview Of Our Firm

- Jackson Lewis is one of the largest law firms in the country dedicated exclusively to representing management on workplace issues. The firm has successfully handled cases in every state and is admitted to practice in all Circuit Courts of Appeal and in the United States Supreme Court. With 46 offices and over 650 attorneys, the firm has a national perspective and sensitivity to the nuances of regional business environments.
- For over 50 years we have represented a wide range of public and private businesses and non-profit institutions in a vast array of industries. When issues arise, we devise optimal solutions that minimize costs and maximize results. Whether we are counseling on legal compliance or litigating a complex case, we assist our clients in achieving their business goals.

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An Overview Of Our Firm

- In addition, we help employers create policies and procedures promoting positive employee relations. We have built our practice and earned our national reputation over the years by helping companies reduce workplace-related litigation by educating management on legal trends, judicial developments, and statutory and regulatory compliance in the rapidly evolving area of workplace law. Our state-of-the-art preventive law programs utilize the firm's expertise and unmatched experience to evaluate employment trends and related litigation, minimizing the risk of exposure in future lawsuits.
- Jackson Lewis attorneys are experienced in all aspects of workplace law.

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The Employee Handbook



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Purpose of Employee Handbooks


- Maintains uniformity in the application of policies and procedures
- Legal compliance and protections
- Communicate company policies
- Useful resource and guideline for managers and supervisors responsible for resolving employee complaints
- Enhances the credibility of decisions based on policies

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Potential Downsides

- Evidence demonstrating your failure to comply with your own internal policies
- Can reduce flexibility needed to handle issues as they arise if the policies are not well-drafted
- Poorly prepared handbooks results in liability



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“Essential” Handbook Policies

- Introduction Provisions/Disclaimer
- EEO Statement
- Sexual Harassment Policy
- Non-Harassment Policy
- Problem Solving Procedure
- Safe harbor Policy

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Components – Disclaimer

- At-will statement
 - Employer or employee may terminate the employment relationship at any time, without notice and for any reason *(except an illegal reason)*
- “No Contract” language
- CBA carve-out
- Consider printing disclaimer language in **bold typeface** or CAPITAL LETTERS

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Components – EEO Statement

- Non-discrimination provisions
- Summary of protected categories
- Reasonable accommodation language
 - Disabled employees
 - Employees with religious observance needs
- Invite employees to engage in the interactive process

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Components – Anti-Harassment Policy

- Commitment
- Identification
 - Provide examples of prohibited conduct
- Complaint Procedure
 - Formal channels and procedures for reporting harassment (designate a mixture of officials)
- Investigation Procedure
- Anti-retaliation
- Helps employer avoid liability where employee fails to utilize these channels

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Components – Problem Solving Procedure

- Importance
 - Employees are asset
 - Open Communications
 - Day in court without litigation
- Define “Problem”
 - Anti-harassment procedures
 - Grievance and Arbitration
- Procedure
 - Time frames
 - Redress for failing to respond

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Components – Safe Harbor Policy

- Classifications of Employees
- Addressing Paycheck Mistakes
- Exempt Status Protection
 - Full-day absences for sick, personal, disciplinary reasons
- Reporting Procedure

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General Employment Policies

Introductory Period

- Never “probationary
- Unambiguous time frames
- Preserve right to extend
- Benefits?
- CBA Issues
 - Arbitration eligible
 - Dues deduction

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General Employment Policies (continued)

- Hours of Work
 - Work week
 - Attendance and Punctuality
 - No call/no show
 - Recording time
 - Falsification issues
 - Overtime
 - Excluding PTO

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General Employment Policies (continued)

- Wages & Salary
 - Pay procedures
 - Deductions
 - Evaluations & Promotions
 - General is better
 - No guarantees
 - Overtime

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Benefits Policies

- Insurance/Group Plans
 - Preservation of control
 - Administrators reserve right to modify and interpret
 - Eligibility
 - List of types of plans and benefits
 - Exclude details
 - Refer to SPDs for terms

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Benefits Policies (continued)

- Holidays
 - Recognized days
 - Terms of pay
 - Full-time status
 - Premium pay for work
 - Exceptions to pay
 - Must work day before/after
 - Overtime applicability
 - Falls during vacation

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Benefits Policies (continued)

- Vacation/Personal/Sick
 - Accrual or dump
 - Unambiguous schedule
 - First year
 - Subsequent years
 - Carry over/Cap
 - Payment upon cessation
 - Procedures for requesting
 - Overtime applicability
 - Examples are helpful!!!

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Leave Policies

- Family and Medical Leave Act (FMLA)
- Disability Leave
 - Necessary?
- Personal Leave
- Military Leave
- Jury Duty Leave
- Bereavement Leave
- Lactation/Blood Donation

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Employee Responsibility Policies

- Electronic Communications Policy
 - Definition of coverage (phone, internet, email)
 - Restriction on usage (business purposes only)
 - Consent to monitor, record or access
 - Explanation of why communications will be monitored
 - Maintaining system
 - Investigating system abuse
 - Enforcement of copyright laws
 - Address expectation of privacy
 - Guidelines for use of internet
 - Restriction on downloading
 - Prohibited uses

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Employee Responsibility Policies (continued)

- Blogging Policy
 - Restrictions on blogging during work time
 - Restriction on blogging using company equipment
 - All rules regarding confidential business information apply
 - Blogger must note all opinions expressed are personal and not that of the Company
 - Requests that blogging not have adverse effect on morale of employees

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Employee Responsibility Policies (continued)

- Confidentiality Policy
 - Define "confidential information"
 - Overbroad = NLRA violation
 - Restrictions
 - Term
 - Consider stand-alone policy

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Employee Responsibility Policies (continued)

- Dress Code
 - State business reason
 - Define what is appropriate
 - Define what is not appropriate
 - Interpretation is within discretion of employer
 - Tattoo/piercings/buttons

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Employee Responsibility Policies (continued)

- Code of Conduct
 - Rationale for code
 - Non-exclusive list
 - Progressive discipline
 - Reserve right to "jump"
 - At-will status

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Employee Responsibility Policies (continued)

- Solicitation/Distribution
 - Employees
 - Third parties
- Bulletin Boards
 - Posting rules
- Workplace Violence
- Drug-Free Workplace
- Smoking

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Facilities Policies

- Parking
- Lockers
- Uniforms
- Lunch/Rest Areas
- Inspections

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Cessation Policies

- Resignation
- PTO Issues

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Handbook Receipt

- Right to modify without notice
- Acknowledgement of receipt and obligation to read, understand and adhere to policies and procedures
- At-will status/employment contract disclaimer
- CBA?

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Distributing Handbooks

- Provide employees with a verbal summary of major policies and/or changes upon distribution
- Provide opportunity for employees to ask questions and voice concerns freely
- Always require receipt of handbook be signed and turned in promptly to manager or HR department

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Distributing Handbooks (continued)

- Timing
 - Distribute handbooks to all new employees at time of hire
 - Distribute to current employees when any modifications are made to an existing handbook
- Online Handbooks
 - All employees must have access to an internet copy of the handbook
 - Hard copy must be available on work premises

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Manager Training

Training managers, HR staff, and if necessary, department heads, is essential to maximize the utility of an employee handbook

- Expected Consequences
 - Managers/HR staff is put on notice of their obligations and responsibilities under the handbook
 - Managers instructed to refer all leave and benefit issues to HR
 - Improved consistency when applying policies and procedures
 - Managers/HR staff develops better understanding of company policies and procedures

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Manager Training (continued)

- Unintended Consequences
 - Managers/HR staff often provide excellent insight for handbook modifications
 - Managers/HR staff can anticipate interpretation issues and advise company of other potential issues with current version of employee handbook

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What to Say & How to Say It

- Be consistent with company culture
- Write clearly and concisely
- Avoid making promises
- Avoid "shall" or "will"
- Maximize flexibility using "may" and "usually"
- Eliminate reference to management procedures
- Comply with applicable local, state and federal law

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Revising Your Handbook


1. Compare current practices to the written policies. **Are we doing what we say we'll do?**
2. **What changes are needed** to bring policies into compliance, up to date, or to make them reflect actual or desired practice?
3. **Present draft** handbook to board (or a committee of board) for approval
4. **Communicate changes** to employees; explain *rationale for changes*
5. **Obtain signed acknowledgements**
6. **Implement changes**, and
7. **Evaluate effectiveness** of new policies

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Employee Handbook Tips

- Employee handbooks don't have to contain all operating procedures, such as emergency building evacuation procedures, or all details of benefits that may change from time to time.
- The personnel policies should refer to the summary plan descriptions of benefit plans, and communicate how/where an employee can obtain more information.




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Employee Handbook Tips

- It's never appropriate to copy and use another organization's policy manual wholesale—every organization has its own culture and values and a template set of policies probably won't have been reviewed by legal counsel who is familiar with the laws specific to your nonprofit.



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Next Month's Third Thursdays Webinar

- Supervision and Performance Management
- Thursday, March 17, 2011 – 2 pm Eastern



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