

Focus

THE WORKPLACE

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Look Closer at your Employee Handbook

By Cheylynn Hayman

We've all heard the old adage: If it's not broke, don't fix it. That may be true in many circumstances, but how do you know if your employee manual needs fixing? Employee manuals are often overlooked, but as we approach the beginning of a new year, it is an ideal time to consider taking your employee manual off the shelf and having knowledgeable employment counsel review it to determine if changes in the law or new industry regulations warrant any updates or revisions to your existing policies.

Why Have an Employee Manual?

Employee manuals play an important role in any employer's business, whether large or small. For employees, an employee manual is a helpful resource that allows them to understand and comply with employer expectations, policies and practices. Employee manuals are an invaluable tool for employers as well, both from a management and a litigation perspective.

What Policies Should an Employee Manual Contain?

The answer is: It depends. (A typical lawyer answer, I know.) But employee manuals are not one-size-fits-all. This is true for legal and practical reasons. Employee handbooks will vary from company to company depending on the employer's size, location, industry and corporate philosophies, among other factors. Some multi-jurisdictional

employers may want to consider developing different employee manuals or separate policies for employees in states with unique or specific legal

requirements. Other employers may find it advantageous to prepare separate manuals for their management-level employees that are more detailed than the employee manual provided to the company's general workforce.

While employment laws vary from state to state and employee manuals will vary depending on the needs of the particular company, there are some policies that are generally advisable for all employers.

Disclaimers: In order to safeguard the at-will employment relationship and to avoid inadvertently creating an express or implied employment contract, an employer should make clear in its employee manual that employment is at-will, that nothing in the employee manual constitutes a contract of employment or creates any specific contractual right or obligation between the employer and any of its employees, and that the at-will employment relationship can be modified only in writing by specific individuals (e.g., the president or owner of the company). Because an employer must be able to respond flexibly to changing circumstances as they arise, an employer should also make clear that the guidelines contained in the employee manual and any other practice of policy of the employer, including compensation and benefits, are subject to changes and exceptions without prior notice, in the employer's sole discretion.

EEO / Sexual Harassment / Discrimination Policies: Equal Employment Opportunity (EEO) and other policies prohibiting sexual harassment and other forms of illegal harassment and discrimination are not only critical tools for preventing and ceasing illegal workplace harassment, they also can assist an employer in establishing affirmative defenses to employee claims. Employers should take care in crafting such policies, however, as overly-broad policies — such as those directing employees to report harassment or discrimination to "any supervisor" — can actually undermine an employer's ability to successfully defend against employee claims in certain circumstances.

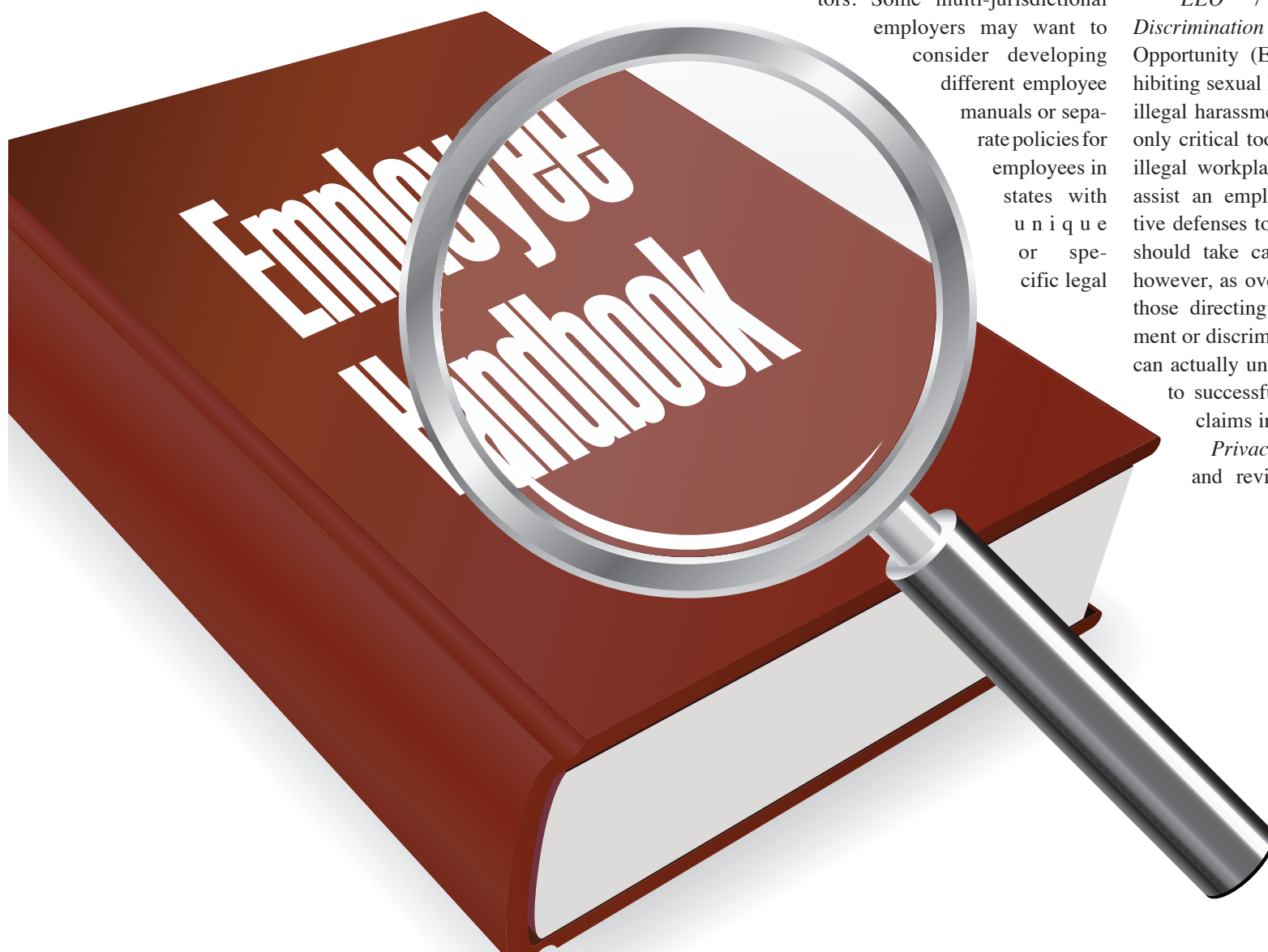
Privacy Policies: In order to access and review employee email without
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running afoul of potential privacy issues, employers should clearly state in their employee manuals that employees have no expectation of privacy to any information, whether of a personal or business nature, stored in any company computer, on any company network or in any of the company's other office equipment. Employers should also make clear that this policy applies to information stored in active, archived or deleted files.

Handbook Acknowledgements: It is doubtful that most employees will sit down and read their employee manual with the same zeal as they would the latest *New York Times* bestseller. Some employees may never read the employee manual at all. Nevertheless, it is important, from a legal

perspective, for an employer to prepare and obtain a signed acknowledgment that the employee has received the employee manual and understands certain basic aspects about the manual. This includes that the employee's employment is at-will, modification of the at-will employment relationship is limited, the employee manual does not create any contractual obligations between the employer and employee, and the employee has reviewed the company's sexual harassment and discrimination policies and agrees to report any concerns regarding harassment, discrimination or retaliation as required by the policy. Such signed acknowledgments should be kept in the employee's personnel file.

Other topics commonly addressed in employee manuals include:

- Policy statements
- Employee attendance

- Employee leave
- Employee benefits
- Safety measures
- Disciplinary action
- Workplace violence
- Technology
- Social media

Why is Legal Review of an Employee Manual Important?

The law is always changing and evolving, particularly in the area of employment. And sometimes change can come from unexpected places.

Take, for example, the National Labor Relations Board's (NLRB) recent increased scrutiny of social media policies. As employee use of social media has increased in the workplace, employers have naturally begun drafting policies to address employee use of social media, as well as related confidentiality and privacy concerns. The

NLRB, in turn, has focused its attention on determining whether those policies reasonably could be construed to chill the exercise of an employee's protected rights under the National Labor Relations Act. Some of the seemingly common-sense policies deemed unlawful by the NLRB just might surprise you.

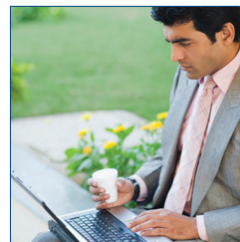
Legal counsel can help you stay abreast of these types of legal changes and update your policies to avoid potential legal pitfalls. This article provides just a few ideas of what should be included and considered, but because technology, the workplace and the legal landscape are always changing, employers should have their own knowledgeable employment legal counsel review their employee handbooks every one to two years for any necessary modifications or revisions. Proactive and timely housekeeping in this regard can spare an employer potential grief (and costly litigation fees) down the road.

Cheylynn Hayman is a shareholder and a member of the litigation group at Parr Brown Gee & Loveless, with an emphasis on employment law and employment defense. She routinely assists large and small employers in developing effective employment policies, procedures and handbooks, among other employment and litigation matters. Hayman also conducts in-house training programs for supervisors and employers on topics including hiring and firing, disability accommodations, sexual harassment and other forms of discrimination.

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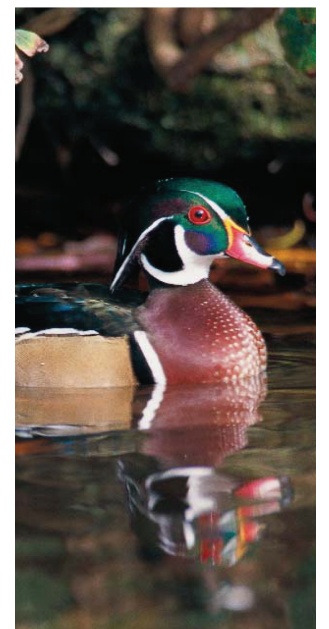
Your Partner IN TODAY'S EVER-CHANGING Workplace



Today's workplace is a dynamic environment where change is the only constant. Companies are continuously dealing with modifications in benefits, technology, work environment, compensation packages, employment policies and more. Each of these has legal implications, and staying connected with trusted legal advisors on all employee and workplace issues is among the best New Year's resolutions you can make for your company.

As strong advocates for having policies in place before legal issues arise, Parr Brown advises you to consult legal counsel to ensure your company avoids unnecessary risk.

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