



Information Every Business Needs to Know

HR & Benefits Advisor

November 2009

Brought to you by: **Law Offices of Travis Bowen, PC**

In This Issue

[Employee Handbook](#)

[Harassment Basics](#)

[Selection Process](#)

[OSHA Recordkeeping](#)

[Revised EEOC Posters](#)

[Changing Pension Laws](#)

Revised Equal Employment Opportunity Poster Available



The Equal Employment Opportunity Commission (EEOC) has revised its "Equal Employment Opportunity is the Law" poster. This new version includes current federal employment discrimination law (including the Americans with Disabilities Act Amendments Act of 2008). The poster was

Creating Your Company's Employee Handbook

We highly recommend that employers use a well-crafted employee handbook to provide clear communication to employees regarding the company policies and practices, rules and regulations, and employee benefits. It is a guide to life at your workplace. Of course, every company has its own unique culture. In addition, you must consider both state and local laws and regulations that affect your business. Therefore, it is best to have an experienced employment attorney work with you in crafting your handbook. If you have sufficient HR resources, you may wish to create the first draft yourself and then have employment counsel review the handbook before you publish and distribute it.



The following are helpful guidelines for developing your employee handbook.

Welcome and Introduction to Your Company

The handbook serves multiple purposes. First, it gives you an opportunity to warmly welcome new employees and to set the tone for their employment experience. A sincere note from your President or CEO should be the first thing the employee reads. The welcome letter may be followed by a mission statement that sets out the company's view of itself and its place in the world. These two sections of the handbook should provide the employee with a reasonably good understanding of the company's culture and a feel for what it is like to work there. Of course, it is important that the welcome and the mission truly reflect the reality of the company. Providing a warm, glowing welcome and a lofty mission statement for an employee, then having the employee discover that reality is quite the contrary will breed discontent.

revised to add information about the Genetic Information Non-discrimination Act of 2008, which is effective November 21, 2009 as it relates to employment. The revised poster also includes updates from the Department of Labor.

There are several ways for employers to comply with the law:

Print the supplement below and post it alongside EEOC's September 2002 "EEO is the Law" poster or OFCCP's August 2008 "EEO is the Law" poster.

["EEO is the Law" poster supplement](#)

Print and post the EEOC's November 2009 version of the "EEO is the Law" poster.

["EEO is the Law" poster](#)

Order a new poster through the EEOC Clearinghouse at the address provided below. Please note that the EEOC poster may be on backorder and will be shipped when the poster becomes available in the near future. The new poster will also be available in Spanish, Chinese and Arabic before the GINA statute becomes effective on November 21, 2009.

If you need more than ten copies of the poster, please contact:
U.S. Equal Employment Opportunity Commission
Clearinghouse
P.O. Box 541
Annapolis Junction, MD
20701

We strongly recommend that you have multiple loose-leaf handbooks if you have both exempt and non-exempt employees and/or unionized employees. Following these introductory pieces, the handbook should contain the following:

Getting Started: This section features essentials. It should cover work hours, dress codes, information on any probationary period, and similar information that an employee should know the first day on the job.

Policies and Practices: Next, the employee should be informed of the "rules of the road." This section will address guidelines on use of company computers, fax machines, and photocopy machines; smoking policies; drug free workplace provisions; and similar rules that govern the employer's workplace. Creating your handbook will also provide you an excellent opportunity to consider other company policies such as privacy and rehire policies. All such policies should go into the handbook so employees are informed about them.

Benefits: In the benefits section, you can briefly describe employee benefits such as health insurance, 401(k) plans, and the like. We recommend that the details of the plans be set out in an appendix to the handbook and/or a separate booklet.

Employee Leave: Here you can discuss vacation policies, sick leave, and other paid and unpaid leave. You should also address the FMLA leave (and any local variations), military leave, jury duty policies, and all other practices related to leave.

Equal Employment Opportunity: In this section you must set out your sexual harassment policy, any affirmative action policies, and a statement of your compliance with all employment discrimination and related legal requirements. If you are subject to state or federal prohibitions on employment discrimination, this section is essential to help protect you in the event of sexual or other harassment in your workplace by fellow employees and persons not employed by the company.

Discipline and Discharge: Here you may describe a progressive disciplinary policy and other standards related to discipline and discharge.

Essential Provisions: Your handbook should contain two essential administrative components. First, is a written acknowledgement by the employee that he or she has received the handbook and read it. This form must be signed, submitted to you, and placed in the employee's personnel file.

Second, if your employees are to be employees at-will, you must clearly state that fact. In addition, you should include a disclaimer in the front of the book that specifically states that the handbook is not an employment contract and should not be construed as a contract. This statement should be in bold type or some other format that makes it stand out.

Coming Soon in our Next Newsletter:

Fax: (301) 206-9789
or call: 1-800-669-3362
(voice)
1-800-800-3302 (TTY)

To order the poster, please
[complete this form](#).

New IRS Tool Helps Employers Comply With Changing Pension Laws



The Internal Revenue Service has created a new Web-based tool to help small business owners determine which tax-favored pension plan best suits their needs and how to keep their plans in compliance.

The [IRS Retirement Plan Navigator](#) is intended to provide employers with an easy-to-use guide that focuses on three areas: choosing a plan, maintaining a plan and correcting a plan.

By using the navigator, employers may find that choosing and maintaining a pension plan is not as daunting as they thought. Some plan types are less costly and easier to establish than others.

The navigator does not suggest which plan may be best for a specific employer but it does lay out the options to allow them to choose one that best fits their situations. The navigator includes a side-by-side comparison of

- Recommendations for Employer Dispute Resolution
- Confidentiality and Non-Compete Agreements

To download the sample employee handbook from HR & Benefits Essentials, please log into our site (www.benefitsessentials.com) and click on the "Forms" tab and click on "Sample Handbook" in the left-hand navigation.

This article was written by employment lawyer Kenneth A. Sprang, Esquire, DC International Counsel, 5335 Wisconsin Ave., NW, Suite 440 Washington, DC 20015, 202-683-4090, ksprang@dcinternationalcounsel.com.

Sexual Harassment — Know the Basics

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Most employers know that it is illegal to make hiring or work-related decisions based on a person's sex. However, it is also vitally important to understand how harassment in the workplace can lead to violating Title VII. The best practice is to prevent workplace sexual harassment from happening in the first place, and even for small businesses, to have a reporting protocol in place if it does. Employers should also note that many state laws prohibit similar conduct.



What Exactly Is "Sexual Harassment?"

Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical sexual conduct that unreasonably interferes with an employee's work performance, or creates an intimidating, hostile or offensive work environment. An employer is responsible for harassment by a supervisor that results in a tangible employment action. A "tangible employment action" means a significant change in employment status. Examples include hiring, firing, promotion, demotion, undesirable reassignment, a decision causing a significant change in benefits, compensation decisions, and work assignment.

However, even if harassment did not lead to a tangible employment action, the employer may still be liable unless the company proves that:

1. It exercised reasonable care to prevent and promptly correct any harassment; and
2. The employee unreasonably failed to complain to management or to avoid harm otherwise.

Protect Your Business with a Reporting System

Businesses should have a reporting protocol in place to address workplace harassment. Employers should clearly communicate that sexual harassment will not be tolerated in their work environments. This can be most effectively done with training that also makes

pension plans and their requirements.

The navigator provides a checklist and suggested resources for maintaining compliance. Pension laws change frequently. Employers can minimize problems by doing a once-a-year review to ensure they maintain compliance.

The IRS also recognizes that mistakes can be made unintentionally, and many errors can be corrected without notifying the agency. The navigator offers suggested options to employers seeking to correct errors and bring their plans back into compliance.

Although the Retirement Plan Navigator is aimed at small business owners, it also can help mid-size businesses review their options as well. Individuals who want to better understand their employer's plan may also find it of use.

The Web-based guide will be kept up to date as pension laws and regulations change.

employees feel encouraged to use the grievance system.

The U.S. Equal Employment Opportunity Commission (EEOC), which enforces Title VII, says that small businesses may fulfill their responsibility to prevent and promptly correct harassment through less formal measures. For example, if a business owner maintains regular contact with employees, the owner can tell employees at staff meetings that harassment is prohibited, employees should promptly report harassment, and they can go "straight to the top" to air their grievances. Owners must then conduct a prompt, thorough and impartial investigation, and take appropriate corrective action to fulfill their responsibilities under Title VII.

A number of states, such as California, also require sexual harassment prevention education for supervisory employees.

Ultimately, prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process. If harassment does occur, owners should take immediate and appropriate action when they learn of the harassment or when an employee complains.

- [Guidance on Employer Liability for Harassment by Supervisors](#)
- [EEOC Questions and Answers for Small Employers on Employer Liability for Harassment by Supervisors](#)

Hiring New Employees — the Selection Process

Your selection process can be your key to finding employees who are just the right fit for your company. And when you come right down to it, one of the most important factors that contributes to the success of your business is the effectiveness of your employee selection process.

Interviews, candidate backgrounds and comparisons to other successful employees are all common tools that employers use to select their personnel. Employee testing is another method which, when properly administered, is an outstanding predictor of future employee performance. However, some of these hiring tools have common pitfalls that can throw off the accuracy of the selection process. They can mean the difference between success and failure in employee selection, and lawful and unlawful hiring.



Identify the Skills Needed for the Job

Many hiring managers understandably rely on their impressions of the

potential employee's personality, interviewing skills and chemistry with the candidate as major guiding factors in making their hiring decision. While this seems intuitive and a "comfortable" way to hire, statistical research shows that injecting these kinds of soft criteria into your selection process can weaken the overall success of your selection process.

So during the selection process, it is very important to use a handful of objective criteria (6-8), which will help provide you with a way to accurately predict how successful that candidate will be in terms of job performance. This isn't to say that having compatible personalities in your workplace isn't important. But, over-reliance on a candidate's personal traits or chemistry in the office can detract from your ability to predict, say, how many sales they will make in a month. The best way to avoid this mistake is to focus on the skills required for the job and how they relate to fulfilling job responsibilities and goals.

Be Precise

Along these lines, it is also important that your objective criteria relate as precisely as possible to the position you are filling. For example, a fairly general skill, such as word processing, is a less valuable criterion for hiring a paralegal as processing legal documents like a complaint or motion. Another example is in sales, where a candidate who previously worked in cold calling may not excel in a business that conducts one-on-one, complex negotiations.

Use Validated Tests To Comply with Anti-Discrimination Laws

Skills testing can be a very valuable part of your hiring process. However, to ensure accuracy, and compliance with federal law, employers should use validated tests in accordance with the [Uniform Guidelines on Employee Selection Procedures](#). Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act (ADEA) prohibit employers from using discriminatory employment tests and selection procedures.

Remember, even if an employee test is not intended to discriminate against protected classes, an employer can still be liable for a discriminatory impact. The Uniform Guidelines instruct employers on how to administer professionally developed tests and thereby avoid violating these federal laws.

OSHA Program to Focus on Employer Recordkeeping

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) is initiating a national emphasis program (NEP) on recordkeeping to assess the accuracy of injury and illness data recorded by employers.



The NEP will focus on the accuracy of injury and illness data kept by employers in high injury and illness rated industries. Records inspections, employee interviews and workplace inspections are all components of the NEP.

The recordkeeping NEP involves inspecting occupational injury and illness records prepared by businesses and appropriately enforcing regulatory requirements when employers are found to be under-recording injuries and illnesses.

"Accurate and honest recordkeeping is vitally important to workers' health and safety," said acting Assistant Secretary of Labor for OSHA Jordan Barab. "This information is not only used by OSHA to determine which workplaces to inspect, but it is an important tool employers and workers can use to identify health and safety problems in their workplaces."

The inspections include a records review, employee interviews, and a limited safety and health inspection of the workplace. The NEP will focus on selected industries with high injury and illness rates.

Newsletter provided by:

Law Offices of Travis Bowen, PC
136 East South Temple, Suite 1050 84111
(801) 364-0123 | www.bowenlaw.com