

HUSCH BLACKWELL



DEVELOPING YOUR PLAYBOOK: Employee Handbook Essentials

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Goals

- Set the tone
- Communicate expectations
- Communicate policies and procedures
- Explain benefits offered
- Affirm compliance with state and federal law
- Create good evidence

Employee Handbook Essentials

- View the handbook as a potential exhibit
- Demonstrate your commitment to comply with the law
- Accurately reflect your **ACTUAL** practices



"Your Honour, I'd like this entered into the record as Exhibit 'B'."

Know Which Employment Laws Apply To Your Company

One or More Employees

- Fair Labor Standards Act (FLSA)
- Equal Pay Act of 1963 (EPA)
- All requirements under Immigration Reform and Control Act of 1986 (IRCA)
 - Except anti-discrimination provisions
- Occupational Health and Safety Act (OSHA)
- Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
- Fair Credit Reporting Act (FCRA)
- Section 1981 of the Civil Rights Act of 1866

Three or More Employees

- Workers compensation (Wisconsin)



Four or More Employees

- Anti-discrimination provisions of IRCA
 - Anti-discrimination based on national origin protection under IRCA if 4 to 14 employees
 - Larger employers are subject to Title VII which prohibits national origin discrimination

Fifteen or More Employees

- Title VII
- Americans with Disabilities Act of 1990 (ADA)
- Genetic Information Nondiscrimination Act of 2008 (GINA)

Twenty or More Employees

- Age Discrimination in Employment Act of 1967 (ADEA)
- Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

Fifty or More Employees

- Family and Medical Leave Act (FMLA)
 - Covered employees have worked for the employer for at least 52 weeks (do not need to be consecutive) and for at least 1,250 hours in the 52 weeks before they take leave
- Wisconsin Family and Medical Leave Act (WFMLA)
 - Covered employees have worked for the employer for at least 52 **consecutive** weeks and for at least 1,000 hours in the 52 weeks before they take leave

One Hundred or More Employees

- Worker Adjustment and Retraining Notification Act (WARN Act)



Employee Handbook Essentials

- At-will employment
 - An employee handbook may modify the at-will employment relationship
 - At-will clause
 - Reaffirm throughout



Key Policies

Equal Employment Opportunity Policy

- Wisconsin Fair Employment Act
 - prohibits discrimination based on **age**; **race**; creed; **color**; **disability**; marital status; **sex**; **sexual orientation**; pregnancy, childbirth, maternity leave, and related medical conditions; national origin; ancestry; **arrest record**; **conviction record**; military service; use or nonuse of lawful products off the employer's premises during non-working hours; and declining to attend a meeting or to participate in any communications that are religious or political
- Expressly prohibit discrimination and retaliation
- Include reporting procedures

Anti-Harassment Policy

- Prohibit ALL forms of workplace harassment
- Outline reporting procedures
- Affirm commitment to investigate all claims
- Prohibit retaliation



Anti-Retaliation Policy

- Stand alone policy



Anti-Retaliation

Wage and Hour Policies

- Minimum wage
- Overtime
- Payroll practices
- Paycheck deductions
- Meal and rest periods
- Paid time off
- Timekeeping practices

WEEKLY TIMESHEET

	Mon	Tu	Wed
Start Time	9 AM	9 AM	
End Time	5 PM	6 PM	
Reg Time	8 -	8 -	
Over Time		1 -	

Leave of Absence and Time Off Policies

- Holidays
- Paid time off (PTO)
- Vacation days
- Sick days
- Personal days
- FMLA, WMFLA
- Military service leave
- Jury duty leave



Injury and Accident Reporting Policy

- Should require ALL workplace injuries and incidents to be reported
- Outline reporting procedures
- Return to work procedures



Disability Accommodation Policy

- American's with Disabilities Act (ADA)
 - Interactive process
 - Reasonable accommodation
- How to request a reasonable accommodation
- What information may be required
- How will the policy be administered
- How will accommodation decisions be made
- No Retaliation

Employment Classifications and Employee Benefits

- Clearly define classifications (full-time, part-time, exempt, non-exempt)
- Define benefits offered
- Explain benefit eligibility



Immigration Law Compliance Policy

- Immigration Reform and Control Act of 1986 and other federal, state, and local laws



BE CAREFUL: NLRA Section 7 Rights

- Confidentiality
- Use of company-provided email, phone, laptop, etc.
- Social media
- Standards of conduct
- Limiting solicitations and/or distribution of materials at work

Confidentiality Policy

- Defines confidential information
- Addresses use and disclosure of confidential information
- Stresses importance of protecting confidential information
- Reminds employees they are obligated to keep this information confidential
- Consequences for disclosure

IT/Communications Policy

- Key issues:
 - Communicate: no expectation of privacy
 - Reaffirm that anti-harassment policy applies to the use of company devices
 - Personal use – internet, cellphone, social media

Standards of Conduct Policy

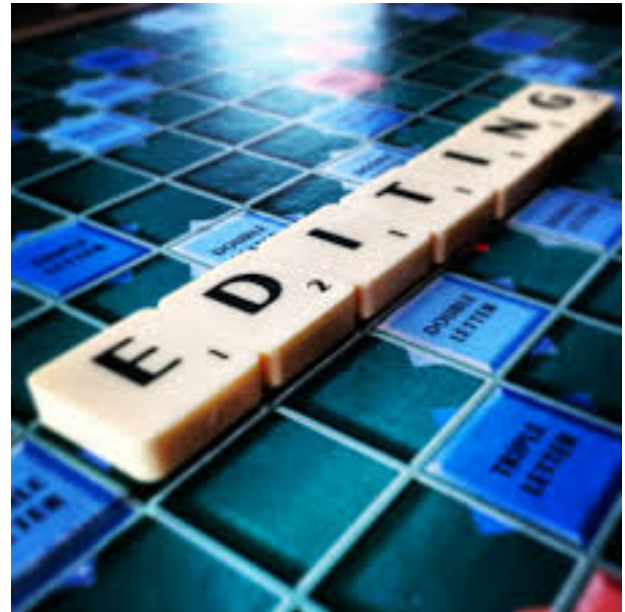
- Sets expectations
- Provides examples of prohibited behavior
- Should be consistent with the actual expectations and the culture of the company

Progressive Discipline Policy

- “Guidelines” not “mandatory”
 - State steps are discretionary and employer reserves the right to skip any steps
- Avoid a detailed list of disciplinary steps
- Reaffirm at-will employment and note that termination may occur without cause
- Note that it does not apply to reductions in force

Employee Handbook Essentials

- Include an acknowledgment form
- Give yourself the right to modify
 - Date the new edition
 - Acknowledge again



Employee Handbook Essentials

- Know what laws apply to your company
- Consider all relevant laws if you are a multi-state employer
 - Madison, Wisconsin
- Consider CBA if union employees

Employee Handbook Essentials

- Follow your policies/procedures
- Have good reason for granting exceptions
 - Document



Employee Handbook Essentials

- Should be easy to read and understand
- Avoid ambiguities
- Ensure policies and terms used are consistent
- Consider translations



QUESTIONS?