

Spring Cleaning Your Employee Handbook: Updates and Best Practices:

Is your Employee Handbook a dust collector or a "living" document that reflects your organization's values, types of business, and practices?

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GSHRC

Introduction

Is your Employee Handbook a dust collector or a “living” document of your organization’s values, policies and standards?



Introduction

Laws change, businesses change, standards change. The employee handbook is an important legal document that should reflect your organization's culture and actual real-time policies and practices, but not your hopes, dreams and aspirations.

NOTE: We thank Andrea Chatfield, Esq. for use of her presentation materials. These materials and the presentation are intended to inform you generally about new developments and current trends in the law, and not to provide legal advice, nor should they be used as a substitute for legal advice in specific situations.



Purposes of an Employee Handbook

- *Share the organization's vision, mission, and values – Reflect the workplace's culture*
- *Disseminate legally required policies*
- *Communicate expectations*
- *Facilitate consistency*
- *Establish the terms and conditions of employee fringe benefits*
- *Guide employees on where they can go for help*
- *Provide a defense when employment decisions challenged*

RECENT CASELAW

NH Employment Law changes quickly, so it is important to keep up-to-date with recent court decisions.

NH Employee Handbook Case

Casey v. St. Mary's Bank, 2023 DNH 063 (5/16/23)

- Breach of contract claims based on employee handbook provisions were dismissed (i.e., the employer won).
- The handbook included a disclaimer: this handbook is **not “intended to provide any contractual obligations related to continued employment, compensation or employment contract. . . .”**
- The employee argued breach of contract based on a military leave pay policy and an EEO policy prohibiting discrimination against servicemembers.
 - The military leave pay policy dealt with “compensation,” so the disclaimer was effective.
 - The EEO policy was not so specific as to be a contract offer.



NH Employee Handbook Case

Common Handbook Problems and Mistakes

- Relying too much on canned policies
- Length – too short (*Hello Tesla*) or TMI – too long and detailed
- Out of date – culturally, legally, and/or practically
- Making promises the organization cannot keep (“*we shall . . .*”)
- Stating what you wish the workplace to be (“*your supervisor will provide you with meaningful and timely feedback*”)
- Confusing organization of policies
- Omitting/misstating employee rights



Multi-State Employers

- Make sure to address state-specific issues, particularly leave issues, PTO, and laws regarding discrimination/harassment.
- Format options:
 - One handbook with state-specific Appendix?
 - One handbook containing all policies, with state-specific policies clearly labeled?
 - Different handbook distributed on state-by-state basis?
- Use disclaimer – if an applicable state or local law provides a greater benefit or right, that law will be followed.
- Seriously consult legal counsel!



Multi-State Employers

- Typical policies that are state-specific, include without limitation:
 - Discrimination and harassment
 - Paid time off and payout at end of employment
 - Paid and unpaid Family & Medical Leave required by various states and municipalities
 - Other types of leaves of absence
 - Final Pay
 - Pay Practices
 - Drugs & Alcohol

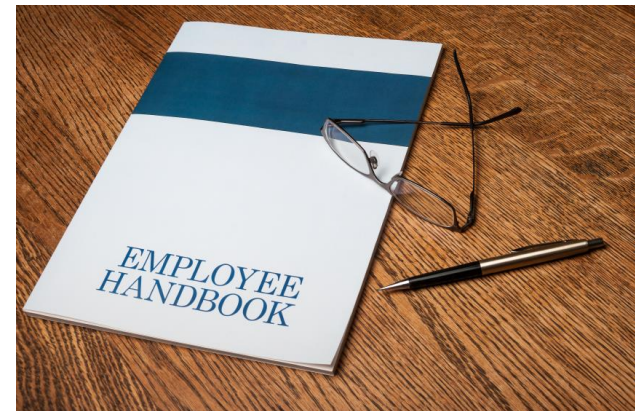


Overall Format and Accessibility

- Hard copy v. electronic and how to access
- How will you make and disseminate updates
- Retaining signed Acknowledgement of Receipt
- Translations – produce versions for employees whose first language is not English, or who are vision-impaired
- How to get employees to read the Handbook:
 - Staff meetings – spotlight a timely policy or introduce changes
 - Periodic reminders
 - Trainings – provide copies of relevant policies in training sessions on harassment, HIPAA, data security, etc.
 - Focus during orientation of new employees
 - Follow relevant policies in HR actions and investigations

Prominent Disclaimers

- In the Introduction and/or Acknowledgement Page:
 - At Will statement
 - Handbook is not a contract of employment or guarantee of any term, compensation, or benefit
 - Handbook is subject to change and management's interpretation
 - Rights Under National Labor Relations statement
 - Group Benefits Statement – actual plan documents govern (also can be placed in benefits section of handbook)
 - Current handbook supersedes and replaces prior handbooks, policies and practices
 - Multi-State coverage
 - Who the handbook covers



SPECIFIC POLICIES

Important policy considerations to include in your
Handbook

EEO and Harassment Policies

Federal & NH Laws Against Discrimination

Laws prohibit **discrimination** and **harassment** on the following bases, and prohibit **retaliation** against employees who, in good faith, allege violations of the law or participate in investigations:

Race (including protected hair styles)	Gender identity/gender expression
Color	Pregnancy
National origin	Genetic information
Age	Physical or mental disability
Religion/creed	Marital status
Sex	Military or veteran status
Sexual orientation	

Victims of domestic violence, harassment, sexual assault, or stalking.

Anti-Harassment Policies

- Defines what conduct is prohibited;
- Is comprehensible to workers (e.g., employees with limited literacy skills or limited proficiency in English);
- States that it applies to every level of employee, to customers and other relevant individuals;
- Requires that supervisors report harassment when they are aware of it;
- States that the policy applies to conduct off-the-job if it impacts the workplace;
- Reserves the ability to take corrective action even if conduct does not violate the policy;
- Prohibits retaliation;
- Tailored to workplace;



Anti-Harassment Policies

- A statement that employees are encouraged to report conduct they believe to be prohibited harassment even if they are not sure that the conduct violates the policy;
- Clearly identifies multiple and accessible points of contact to whom reports of harassment should be made and includes contact information (especially important for remote workers);
- Explains the employer's complaint process, including the process's anti-retaliation and confidentiality protections.
- Is widely disseminated – provided upon hire, during harassment trainings, posted in a place and manner so that it can be easily found, printed in employee handbook; and
- Is periodically reviewed and updated.



Effective Anti-Harassment Policies

Certain states require private employers to develop and disseminate specific sexual harassment policies as well as other requirements, and also provide guidelines and tips and some even have model policies:

California
Connecticut
New York Employer Tool Kit
District of Columbia
Maine
Massachusetts
Oregon
Rhode Island
Vermont
Washington

Reasonable Accommodation (RA) Policy

- For employers with 15 or more employees (total) for Federal statutes, lower coverage thresholds under States' laws
- RA required under Pregnant Workers Fairness Act, ADA, and Title VII
- Replaces the ADA Policy
- Covers applicants and employees who need RA based upon:
 - Disabilities
 - Pregnancy, Childbirth and Related Medical Conditions
 - Religious Beliefs



DEI – Changing Landscape

- New Hampshire law update.
- In March 2025, the EEOC and DOJ released two technical assistance documents regarding DEI discrimination:
 - What To Do If You Experience Discrimination Related to DEI at Work; and
 - What You Should Know About DEI-Related Discrimination at Work.

DEI – Changing Landscape

The EEOC's **examples** of DEI-related discrimination included:

- disparate treatment in hiring;
- access to or exclusion from leadership development programs;
- access to mentoring, sponsorship, networking;
- access to internships, fellowships, and summer associate programs; and
- access to employee resource groups or other employee affinity groups.

The EEOC publication included that, “Depending on the facts, an employee may be able to plausibly allege or prove that a diversity or other **DEI-related training created a hostile work environment. . . .**”

Takeaways: Review all relevant policies, development programs, resource groups, and training programs; train managers involved in hiring .

Employment Categories

- Describe differences between
 - exempt/non-exempt
 - full-time/part-time
 - Limited part-time:
 - Seasonal, temporary, per diem
- Different obligations/benefits based on job classification.

Employee Classification:
Full-Time
Part-Time
Temporary



\$ Pay Policies and Breaks \$

- Easy way to communicate in writing about your pay practices, pay periods, pay days, forms of payment and other details required by NH and other States' law.
- Address:
 - “Safe Harbor” language under the FLSA related to salary deductions
 - Time Records
 - Pre-approval for overtime work
 - Work schedules and Breaks
 - Regular shifts/business hours
 - Federal law on breaks of less than 20 minutes
 - States' laws on meal breaks – e.g., NH law - 30 minutes unpaid unless allowed to eat while work
 - Lactation breaks (more on this below)

\$ Pay Policies and Breaks \$

New Hampshire Law on Lactation Breaks (NH RSA 275:78-83):

- Took Effect on July 1, 2025
- Applies to Employers with 6 or more employees
- Employers must adopt a **written policy** that addresses the provision of “sufficient space” and “reasonable break periods” for nursing employees that need to express milk during working hours. The policy must be provided to employees at the time of hire (as well as made available to existing employees).
- Employers who fail to comply with the law, including failing to have a written policy, may be fined up to \$2,500.

Paid Time Off

- NH and other States' Laws require employers to provide written notices to employees regarding policies and practices for fringe benefits
- Paid Holidays
 - Eligible Employees
 - List of Holidays (actual dates must be posted annually)
 - New Hampshire law regarding Veterans Day
 - Check other states' laws
- PTO (vacation, sick, personal)
 - No 2 policies are the same!
 - Eligible Employees
 - Accruals
 - Use and Request
 - Pay out at Employment Termination
- State laws on earned sick and/or personal time



Multi-State Employers – Mandatory PTO

- Mandatory **Paid Sick leave** or **Earned Time Laws**
 - Alaska, Arizona, California, Colorado, Connecticut, Maine, Maryland, Massachusetts*, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Washington D.C.
 - Plus, numerous cities, towns, counties

***MA** additional purpose for paid sick leave: For employee or spouse to address physical or mental health needs related to pregnancy loss or failed assisted reproduction, adoption or surrogacy.

Leave Policies

- Vary depending on the size of your organization and the state in which your organization is located.
- Common examples:
 - Pregnancy/Childbirth Leave
 - Parental Leave
 - Administrative Leave
 - Unpaid Leave
 - Small Necessities Leave
 - Military (& military spouses)
 - First Responders' or State of Emergency Leave
 - FMLA
 - Personal Leave
 - Bereavement
 - Jury Duty/Witness
 - Domestic Violence
 - Crime Victim Leave
 - State-specific Paid FMLA

Multi-State Employers Paid Family and Medical Leave Laws

- States with **mandatory PFML** programs
 - California, Colorado, Connecticut, Delaware, District of Columbia, Maine, Maryland (2027), Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Washington
- States with **voluntary PFML** programs
 - New Hampshire and Vermont

New Law - NH RSA 275:37-f

Leave of Absence to Attend Medical Appointments for Childbirth, Postpartum Care, and Infant Pediatric Medical Appointments

- Became effective **January 1, 2026**.
- **Coverage:** Covers NH employers with **20 or more** employees.
- **Eligibility:** **Any** employee of a covered employer needing time away for qualifying medical appointments is eligible.



New Law - NH RSA 275:37-f

- **Time:**

- Up to **25 hours** for qualifying medical appointments.
- If both parents of a child work for the same employer, they will have a combined total of 25 hours – not 25 hours each.

- **Which medical appointments qualify?**

- The employee's own medical appointments for childbirth and postpartum care; and
- The employee's child's pediatric medical appointments within the 1st year following the child's birth or adoption.

New Law - NH RSA 275:37-f

Is the time off paid? Generally, no.

PTO usage:

- The law says employees must be **allowed** to use accrued vacation/PTO during this time;
- The law doesn't say whether PTO use can be **required**.
- NH DOL has indicated that PTO use can be required during this leave under a bona fide PTO policy requiring PTO use during absences generally.

Salaried employees:

Remember federal and state limitations on salary deductions.

New Law - NH RSA 275:37-f

Other important information:

- Job protection: Employees must be reinstated to their original jobs.
- Employees must:
 - Provide reasonable advance notice of the need for leave;
 - Make reasonable efforts to schedule appointments when not unduly disruptive to the employer's operations; and
 - Provide documentation (if requested by the employer) to show the time was used for a qualifying medical appointment.

New Law – NH RSA 110-C:1-a *Military Spouse Leave & Employment Protections*

- Effective January 1, 2026
- Applies to **any** employee working in NH for an employer with **50** or more employees at the same location in NH.
- An employer may not discharge, refuse to hire, or take any adverse employment action against an employee based on the **involuntary mobilization** of that employee's **spouse**.
- The new law creates a **leave of absence** and **right of reemployment** for employees due to the involuntary mobilization of their spouses.

New Military Spouse Protections

- An employee needing leave due to the involuntary mobilization of their spouse must notify their employer “**within 30 days** of their spouse receiving official notice of such mobilization.”
- The employer must respond to the employee with “**written** acknowledgment of the notice of deployment, **explicitly confirming** adherence” to the new law.



New Military Spouse Protections

- The **leave of absence**:
 - Is unpaid
 - No benefits or accrual of benefits need be provided
- The **duration** of the leave of absence is unclear:
 - The law says the intent is to provide employment protections **for up to 1 year and 1 day**; and
 - That the employee has reemployment rights for the same duration of time the employee's spouse would have reemployment rights under 38 USC 4312.
 - 38 USC 4312 provides reemployment rights as long as the "cumulative length of the absence and all previous absences . . . with that employer by reason of service in the uniformed services does not exceed **5 years**." That 5 years can be extended under certain circumstances.

New Military Spouse Protections

- Upon the spouse's completion of mobilization, the employee must **“report to or submit a timely application for reemployment”** to the employer.
- The law does not define how promptly this must occur to be a “timely application.”
- The law does say it is to be construed in conjunction with USERRA, so the reinstatement request deadlines for uniformed service members in USERRA might be the deadlines applied for the spouses.

New Military Spouse Protections

- **Reemployment** must be to the same position or to “a position of like seniority, status, and pay” for which the employee is qualified.
- “The employer may choose not to reemploy the employee if the employer certifies that its circumstances have so changed **as to make reemployment impossible or unreasonable** as defined by 20 C.F.R. Section 1002.139.”
- Complaints are to be filed with NH DOL within 180 days of the alleged violation. Employers can be liable for reinstatement, back pay, and any benefits lost due to the violation.
- The NH DOL or a court “may also award the employee reasonable attorney's fees and costs.”

New NH Leave Protections

Takeaways:

- Update leave of absence and time off policies to:
 - ❑ cover military spouse leave (if more than 50 employees in NH), and
 - ❑ include up to 25 hours of time off to attend medical appointments; and
 - ❑ Coordinate with FMLA where applicable.

- Educate managers on how to address situations and requests for time off in these circumstances.

Other Employee Benefit Policies

- Strike the right balance between providing a brief overview of group insurance benefits (health, dental, life, disability) and retirement savings plans, while providing more specific information about how other types of benefits (such as vacation) are accrued and used.
- Refer to Summary Plan Descriptions for full details.
- Workers Compensation and Temporary Alternative Duties
- Tuition Reimbursement
- Expense Reimbursement
- Referral Bonus
- Employee Discounts and Stipends

Work Conditions

- Attendance and Call-In Policies
- Dress Code
- Use of IT Resources
- Social Media
- Smoking (required by NH law)
- Drugs and Alcohol
- Visitors
- Driving on Company Business
- Personal Devices in the Workplace
- Violence and Weapons (see next slide)

Additional Update to Existing Policies

- ***NH Law on Firearms in Employee Vehicles*** (Weapons and/or Violence Policies) – Employers that receive public funds must allow employees to store firearms and ammunition in their vehicles on company property. Employers prohibited from asking about such firearms or searching vehicles.
- ***Check other States' laws***



Ethics Policies

- Code of Ethics
- Conflicts of Interest/Outside Employment
- Legal Compliance
- Industry Specific Obligations
- Gifts
- Confidential Information
 - Definition
 - Legally Protected Information
 - Safe Practices
 - Do You Need a Contract



Standards of Conduct

- Policy that provides examples of conduct that is prohibited and are grounds for discipline up to and including “cause” termination for purposes of pay and benefits administration.
- Examples list must be non-exhaustive (*“including but not limited to . . . ”*)
 - Safety violations
 - Insubordination
 - Drug/alcohol use and/or possession
 - Theft, destruction, harassment, threats, and other illegal conduct
 - Dishonesty and falsification of documents and information
- Disclaimer that policy does not limit rights under the National Labor Relations Act

Discipline and Separation Policies

- Discipline or Corrective Action:
 - Convey expectations about workplace behavior.
 - Non-inclusive list of reasons for discipline.
 - Potential disciplinary process (and discretion to skip steps).
- Separation from Employment
 - At-Will statement
 - Whether to request notice of resignation
 - Return of Company property.
 - Payment upon separation, including PTO.
 - Don't need to list different ways employment may end.



New Policies to Consider

Remote or Hybrid Work Arrangements



Artificial Intelligence



Communicable Diseases



Video Conferencing



New Policies to Consider

- Remote or Hybrid Work Arrangements
 - Expectations (allowed, case-by-case basis, etc.)
 - Company equipment
 - Security of company/client Information
 - Ergonomics
 - Time tracking for non-exempt employees
 - Responsiveness and work schedules
 - Etiquette on video-conferencing



New Policies to Consider

- Artificial Intelligence
 - Permitted Uses
 - Use as a tool – not a replacement for decision making
 - Protection of company or client confidentiality
 - Security Measures and Prior Approval Required
 - Copyright & licensing issues
 - Open platform v. private, closed system
 - Best practices
 - Risks



New Policies to Consider

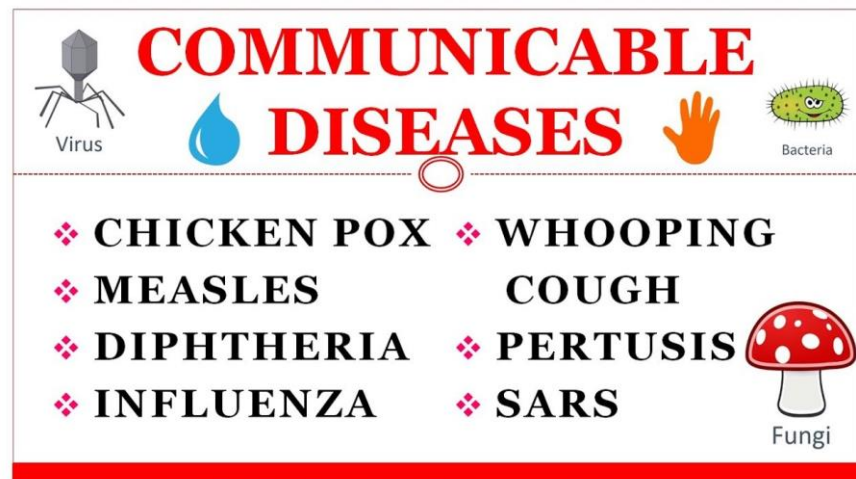
- Video Conferencing
 - Guidelines for use (cameras, chats, backgrounds)
 - Privacy and security and use of AI summaries
 - Application of appropriate conduct policies (harassment, IT Resources, etc.)
 - Behavioral expectations
 - Personal use of company account



New Policies to Consider

- Communicable Diseases

- It's not just about COVID
- Practice good hygiene and cleanliness
- Public health emergencies
- Stay home when sick
- Refer to sick time, PTO and medical leave policies
- Balance confidentiality, safety, non-discrimination
- Refer to Reasonable Accommodation Policy



An Employee Handbook Should . . .

Be part of your workplace culture

Be a living document

Be accessible

Be useful

Be carefully written

Be updated regularly

Be reviewed by legal counsel





**We thank our colleague Andrea G. Chatfield, Esq. for
use of her presentation materials.**

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