



## WEBINAR OVERVIEW

### **Practical Tips for Employee Handbooks and Policies**

May 24, 2023

#### **INTRO/SETTING THE STAGE**

- Importance of a Well-Drafted Employee Handbook
- Why Companies Need Employee Handbooks and Policies
  - Key to Good Employee Relations
  - Evolving Legal Updates
  - Minimizing Risk

#### **Key Components of the Handbook and What Policies Should Be Included**

- What to Include/Not to Include
- “Must-Have” Policies

#### **Recent Updates**

- Electronic Copies of Mandatory Workplace Postings
- New York Paid Family Leave
- Protected Absences
- New York Paid Vaccination Leave Extended
- Amendments to Working Mothers in the Workplace Act
- New York Pay Transparency Law
- New York City Pay Transparency Law

#### **Other Key Considerations When Drafting or Revising Employee Handbooks**

#### **HRtelligence TIPS**

# WEBINAR OUTLINE

## I. INTRO/SETTING THE STAGE

### A. The Importance of a Well-Drafted Employee Handbook

- A well-drafted employee handbook reaffirms the nature of the employment relationship and states the terms and conditions of employment.
- Employee handbooks that are well-drafted, current, and legally proper are an aid for employers in defending against claims of discrimination, harassment, breach of contract, wrongful termination, and other employment law claims.

### B. Why Companies Need Employee Handbooks/Policies

#### 1. Key to Good Employee Relations

- Employee handbooks provide a uniform and convenient means to provide employees with information about the terms and conditions of their employment in one place.
- When well drafted, they clarify any ambiguity with respect to these terms and conditions so employees are on notice of the nature of their relationship with the employer and the employer's expectations.
- Handbooks also provide the guidelines for fair and consistent employee treatment and serve as a reference for supervisors and managers when their subordinates have questions about the terms and conditions of their employment.

#### 2. Evolving Legal Updates

- The handbook reflects the latest labor laws and social norms.
- The handbook outlines recent legal updates

#### 3. Minimizing Risk

- Employee Handbooks are the number one most important tool that an employer can have to protect itself from future liability.
- From a legal perspective, employee handbooks often are the first piece of evidence an employer uses to defend itself against claims of discrimination, harassment, breach of contract, wrongful termination, and other allegations by employees.

- The handbook can substantiate the employer's commitment to lawful employment practices and corroborate the employer's position that it treated a particular employee in accordance with its neutral procedures.

*Note: The employee handbook also provides the employer the opportunity to take a mindful approach to potentially thorny employee issues that are likely to arise and to minimize the risk related to those situations. The number of policies to include in an employee handbook is discretionary, but employers should aim to make the employee handbook as complete as practicable to avoid instances where the employer must develop "ad-hoc" policies to address individual situations.*

## **II. Key Components of The Handbook and What Policies Should Be Included**

### **A. What to Include/Not to Include**

#### **1. What Should Be Included in the Handbook?**

- User-friendly language and a reasonable length.
- Policies regarding applicable federal, state, or local employment laws.
- Operational policies.
- Benefits.
- General standards that are applicable to the employer.
- General disclaimer that notifies employees and managers that this handbook supersedes all prior handbooks and that the policies are subject to change with or without notice.
- Employee review and acknowledgment.

*Note: When onboarding a new employee or creating/revising an employee handbook, it is essential to distribute it to employees for review and acknowledgment. Otherwise, how will employees be aware of the expectations?*

#### **2. What Should NOT be Included in the Handbook?**

- Legalese.

*Note: Do not include employment, arbitration, non-solicitation, non-competition, or non-disclosure agreements. These are legal documents that need to be created by an employment law attorney and should be presented to employees separately.*

- Company procedures, work processes, and job descriptions should not be included so that you will not need to update the entire handbook each time one of these changes. It is a best practice to outline these in a separate file.
- Health and welfare benefits details. These should be included in a separate benefits guide to be updated annually.
- Policies that may infringe upon the National Labor Relations Act (NLRA).

*Note: The NLRA protects an employee's rights to engage in protected, concerted activities to address or improve working conditions; or refrain from engaging in these activities. Some examples of prohibited policies include: forbidding employees from discussing wages and other employment issues or an overly restrictive social media policy.*

## **B. Must Have Policies**

1. Equal Employment Opportunity/Non-Discrimination
2. Anti-Harassment
3. Anti-Retaliation (including whistleblower protection)
4. Complaint Procedure
5. Disability and Reasonable Accommodation
6. Workplace Violence
7. Pay Practices
8. Paid Time Off and Leaves of Absence (including sick leave)
9. Hours of Work and Attendance
10. Standards of Conduct
11. Non-disclosure/Confidentiality
12. Communications – Email, Social Media, Internet, Phone
13. Drug and Alcohol Testing (if applicable)
14. Employee Handbook Acknowledgement

*Note: If your Company operates in multiple jurisdictions, it must have policies which address the laws in all of those jurisdictions.*

## **III. RECENT UPDATES**

### **A. Electronic Copies of Mandatory Workplace Postings – Effective December 16, 2022**

- As of December 16, 2022, Section 201 of the New York Labor Law requires employers to maintain electronic copies of all mandatory employment postings that are published in the workplace, including all postings physically posted at the workplace pursuant to state or federal law or regulation.
- The electronic copies must be readily available to employees on the employer's website or through e-mail.
- Employers are also required to inform employees that they have a right to obtain employment postings electronically.

### **B. New York Paid Family Leave Changes**

- As of January 1, 2023, the definition of "family member" under the New York Paid Family Leave Law has been expanded to include siblings. This means that employees may now take paid family leave to care for a sibling with a serious

health condition. The term "sibling" includes biological, adopted, step- and half-siblings, regardless of where they reside.

- In addition, the New York statewide average weekly wage is now \$1,688.19, which means the maximum weekly benefit is \$1,131.08. This is \$62.72 more than the maximum weekly benefit for 2022.
- Also, employees will now contribute 0.455 percent of their gross wages per pay period. The maximum annual contribution for 2023 is \$399.43, which is \$24.28 less than the maximum annual contribution in 2022.

## **C. Protected Absences**

- As of February 19, employers may not discipline employees for taking lawful absences pursuant to federal, state or local law. Section 215 of the New York Labor Law, which prohibits employers from penalizing, threatening, or discriminating or retaliating against employees for engaging in activities that are protected under the law, has now been amended to include an employee's use of any legally protected absence pursuant to federal, local or state law as a protected activity.

*Note: Although the law does not expressly define a legally protected absence pursuant to federal, local or state law, it presumably protects the use of any absences or leaves granted by the New York Paid Family Leave Law, the New York Paid Sick Leave Law, the New York Emergency COVID-19 Paid Sick Leave Law, the New York Paid Leave for COVID-19 Vaccinations Law, the New York City Safe and Sick Leave Law, the Family and Medical Leave Act, and the Americans with Disabilities Act, as well as other laws that authorize employee absences or leaves.*

- The amendment to Section 215 of the New York Labor Law also prohibits employers from "assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay." Accordingly, this provision effectively prohibits the use of no-fault attendance policies in New York.

*Note: The law provides a private cause of action for current and former employees to initiate a lawsuit to recover damages from employers that violate their rights under the law. In addition, the New York Department of Labor (NYDOL) may require employers that violate Section 215 to provide liquidated damages, back pay, and reinstatement or front pay. The NYDOL can also impose civil penalties of between \$1,000 and \$10,000 on first-time violators and up to \$20,000 for subsequent violations.*

## **D. New York Paid Vaccination Leave Extended**

- The New York State Paid Vaccination Leave has been extended through December 31, 2023. The law requires that all employers provide employees with up to four hours of paid leave to receive a COVID-19 vaccination, including boosters.

*Note: The New York City Child Vaccination Leave law, which required employers to provide paid time off for employees to accompany their children when they receive COVID-19 vaccinations, expired on December 31, 2022.*

## **E. New York State COVID-19 Leave Law Remains in Effect**

- The New York State COVID-19 Sick Leave law remains in effect. The law requires employers to provide job-protected sick leave to employees who need to take leave because they are under a mandatory or precautionary order of quarantine or isolation due to COVID-19.

*Note: The amount of sick leave and whether the leave must be paid depend on the number of employees an employer has and the employer's net annual income.*

## **F. Amendments to the Nursing Mothers in the Workplace Act – Effective June 7, 2023**

- On December 9, 2022, Governor Hochul signed into law amendments to the Nursing Mothers in the Workplace Act (New York Labor Law Section 206-c), which implements new written policy requirements and mandatory specifications for lactation rooms.
- There are several key amendments that employers should be aware of. The law will require employers to provide a location for employees to express milk that is (1) close to the work area; (2) well lit; (3) shielded from view; and (4) free from intrusion from other persons in the workplace or from the public. The designated location cannot be a restroom or toilet stall.
- In addition, the designated location must include, at a minimum, the following: (1) a chair; (2) a working surface; (3) nearby access to clean running water; and (4) if the workplace has electricity, an electrical outlet.

*Note: New York City has already required New York City employers to comply with similar lactation accommodation specifications since 2018.*

- The law requires the New York Labor Commissioner to develop and publish a written policy setting forth the rights of nursing employees to express breast milk in the workplace. Employers will be required to distribute such written policy to each employee upon hire, annually and upon returning to work following the birth of a child. In addition to informing employees of their rights, the written policy will set forth how a request may be submitted to the employer for a location that an employee can use to express breast milk, and it will require the employer to respond to such requests in a reasonable time frame, not to exceed five business days.
- The law also prohibits employers from retaliating against employees for exercising their rights under the law.

## **G. New York Pay Transparency Law – Effective September 17, 2023**

- On December 21, 2022, Governor Hochul signed the New York State Pay Transparency law.
- The law requires employers with more than four employees to include, in any advertisement for a job, promotion, or transfer opportunity that can or will be performed in the state of New York, the minimum and maximum annual salary or hourly range of compensation that the employer in good faith believes to be accurate at the time of the posting.
- The law also requires employers to disclose the applicable job description for the advertised position, if one exists and employers must keep and maintain certain records that demonstrate compliance with the statute, such as the history of compensation ranges for each job, promotion, or transfer opportunity and the job descriptions for such positions, if such job descriptions exist. If an advertised position is paid solely on commission, the advertisement must disclose a general statement providing that "compensation shall be based on commission."

## **H. New York City Pay Transparency Law**

- The New York City Pay Transparency Law went into effect on November 1, 2022. The New York City law requires employers with four or more employees and all employment agencies to disclose the minimum and maximum salaries or hourly wages offered in advertisements for jobs, including remote positions that can or will be performed, at least in part, in New York City.

## **I. New York Sexual Harassment Prevention Policy Updates**

- On April 11, 2023, the New York State Department of Labor (NYSDOL) recently released final and significant—substantive changes to New York State’s model sexual harassment prevention policy (the “Final Updated Model Policy”) and RESOURCES. (Effective immediately). There are significant changes to the policy. For example:
  - the toll free confidential hotline is referenced
  - changes address issues such as gender identity, remote work, and bystander intervention.

Importantly, the Final Updated Model Policy explicitly states that it reflects the minimum standard for compliant sexual harassment prevention policies and that “no section in [the Final Updated Model Policy] should be omitted.”

## **IV. Other Key Considerations When Drafting or Revising Employee Handbooks**

### **A. Share the Employee Handbook with Employees**

- You can provide printed copies of the employee handbook at new hire orientations and annual company training.
- If you are operating a remote workplace, you can email employees the employee handbook.
- You should also let employees know how they can access the employee handbook at any time, whether through a printed copy available in the company break room or an electronic copy on a company intranet.

## **B. Review the Employee Handbook Regularly and Update It As Necessary**

- Company management should review the employee handbook regularly to ensure that the policies and procedures are being followed and align with company practices. The employee handbook should be updated as necessary, with updates promptly communicated to employees.

## **V. HRtelligence TIPS**

- Keep the tone positive, professional and understandable.
- Support the company's culture and values.
- Avoid legal jargon or confusing terminology.
- Keep a copy of the employee handbook readily available to all employees.
- Retain employee acknowledgments in their personnel files.
- Include contact information for the company representative available to answer questions.
- Promptly communicate updates to employees and provide addendums with receipt of acknowledgement for any updates