



Employee Handbooks

Is Your Handbook Up to Par?



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Introduction & Disclaimer

CEA – California Employers Association



- Over 80 years of HR support for employers
- On-site, Training, Compliance, Essential Skills, HR Hotline
- Subject Matter Experts

Consult an attorney on any issues of legal significance to you

This presentation should not be relied upon as legal advice



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What We'll Cover Today....

- Handbook benefits & risks
- Essential provisions
- Personnel records and policies
- Best practices



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Essentials



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Handbook vs. Policy Manual

Handbooks:

- Generally applicable policies
- Abbreviated coverage
- For everyone



Policy Manuals:

- Procedures to implement policies
- Detailed coverage / forms
- Managers and Supervisors



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Creating Your Handbook

- Assess current policies/new policies required
- Begin the drafting process. Remember, the ideal handbook has policies that are:
 - Carefully & clearly worded
 - Accurate reflections of your policy
 - Consistent with applicable legal requirements
 - Understood by the audience
 - Not a snooze-fest



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So Many Benefits



- Evidence of at-will employment
- Explanation of Policies
- Set expectations for employees
- Uniformity/Consistency
- Defense to harassment allegations
- Union Avoidance
- #1 Rule- Set a positive tone for your business



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Some Risks.....

- Not following...
- Not reviewing...
- Not updating...



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Skip This Stuff

- "Probationary" periods
- Lock step disciplinary procedures
- Policies that are subject to frequent change
- Policies or language that implies job security or contractual obligations
- In-depth supervisory or manager information
- Details of benefit plans



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Arbitration



- Written by an attorney
- Cannot require employee to bear expenses they would not have to bear in a court action (no fee split or allocation)
- Must provide for neutral arbitrators
- No limit on remedies



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At-Will

- Employee or Employer can change the terms and conditions of employment (termination, demotion, transfer, reassignment) without advance notice or cause
- Not subject to change except in writing signed by the employee and an expressly designated company representative
- Include integration clause - supersedes prior agreements



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Discipline Guidelines

- Present discipline as "guideline" rather than required progressive steps
- Reiterate that employment is at-will and that disciplinary action does not alter at-will status
- Suggested language, "Violation of any company policy, either written or otherwise, may result in disciplinary action up to and including termination."



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Harassment Prevention

- Policy now required which must identify the 15 protected classes under FEHA.
- Policy must make clear the duty to report complaints and create a complaint process that ensures:
 - confidentiality;
 - a timely response;
 - an impartial and timely investigation by qualified personnel;
 - documentation and tracking for reasonable progress updates;
 - appropriate options for remedial actions and resolutions;
 - And timely closure.
- Employee is not required to complain directly to immediate supervisor; alternative routes for lodging a complaint provided.
- No retaliation for lodging a complaint or participating in an investigation



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Harassment Policy Distribution

- Print and provide a copy to all employees with acknowledgment form to sign and return.
- Send policy via e-mail with an acknowledgment return form.
- Post policy on intranet with tracking system to ensure all employees read policy and acknowledged receipt.
- Discuss and document policies upon hiring and/or during new hire orientation.
- 10% or more of employees who speak a language other than English must have policy translated.



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OSHA Non-Retaliation Policy

- Employers can not retaliate against employees who report an injury or illness.
- Employers must inform employees about this anti-retaliation rule in writing with a signed acknowledgement form.



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Sample Non-Retaliation Statement

Employees have a right and are therefore encouraged to report any workplace injury or illness. Employees who report workplace illnesses or injuries are expressly protected from retaliation and no adverse action will be taken against employees for doing so. If employees believe that adverse or retaliatory action has been taken, they should immediately report such actions to (HR, Board of Directors, etc.) any company official not involved in the complaint.



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Discrimination Avoidance

- Know all of the protected classes
- Make employment decisions based on work related factors such as:
 - work performance
 - attendance issues
 - safety violations
 - violation of company policy, etc.



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Leave/Time Off Policies



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Pregnancy Disability Leave (PDL)

- Employers with 5 or more employees for 20 or more weeks in the current or preceding year
- Up to 17 1/3 weeks of job protected leave and continued health benefits for employee "affected by pregnancy" - no such thing as "maternity leave"
 - "Due to...", or a "Condition Related to...."
 Pregnancy, childbirth or related medical condition, it is medically advisable for an employee to transfer or otherwise to be provided a reasonable accommodation



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PDL – Disabled by Pregnancy

- Severe morning sickness
- Bed rest
- Pregnancy-induced hypertension
- Loss or end of pregnancy
- Recovery from childbirth
- Post-partum depression



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PDL – How Much Time Off?



- 4 months/17.3 weeks (FT)
- 692 hours for 40 hours/wk
- Monthly average of hours for less than FT employees
 - 553.5 hours for 32 hours/wk
 - 346.5 hours for 20 hours/wk



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Paid Sick Leave - CA

Healthy Workplaces/Healthy Families Act
Effective: 7/1/15

- Purpose – 3 days off for all employees to address their own health needs and health needs of their families. To protect employees from losing their jobs when they use sick days.
- Great idea in theory...difficult for employers to manage



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Option 1 - Accrual Method

- Employees begin earning time on their 1st day of work
- All employees earn 1 hour of paid sick leave for each 30 hours worked
- **Includes all** hours worked, including overtime (not holidays, vacay)
- Exempt employees are assumed to work 40 hours/week
- Employers must allow an accrual of 48 hours **or 6 days**
- Usage may be capped at 24 hours **or 3 days**
- Accrued, unused time must carry over to the next year
- Employees must be allowed to take PSL by 90th day of employment
- Not paid out at termination
- If an employee separates and is rehired within 1 year of separation you must restore the accrued and unused sick leave.



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Option 2 - Annual Lump Sum

- Lump sum
- Employer grants at least **24 hours or 3 days** of paid sick leave annually
- July to July, anniversary date, calendar year, etc.
- No accrual or carryover required
- Not paid out at termination of employment
- Employees are able to use the time on the 90th day of employment



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“3 DAYS”

“3 DAYS” means the equivalent of the number of hours regularly scheduled multiplied by 3.

Example: For an employee scheduled to work four 10-hour days, 3 days would equal 30 hours (not 24).

See this Opinion Letter:

<http://www.dir.ca.gov/dlse/opinions/2015.08.07.pdf>



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Option 3 – Existing Employer Policy

- Use current PTO policy as long as it:
 - Existed prior to January 1, 2015
- Meets accrual, carryover and use requirements of law; or
- Provides at least 24 hours **or 3 days** of paid sick leave (or equivalent paid leave or PTO) per year of employment, calendar year, or 12 month basis
- **And** makes the paid leave available for the **same purposes** and under the **same conditions** as in the law
- **PTO so it must be paid out**



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Vacation Policies

- Employers discretion
- Reasonable cap
- Be careful of consistency
- No use it or lose it allowed
- Paid out at termination
- “Personal Days” / “Floating Days”




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SB 63: New Parent Leave Law

WHY?

Expansion of leave for parents who want baby bonding time

- Expands parental leave coverage
- Employers with 20-49 employees now must allow up to 12 weeks New Parent Leave time
- Employers with 50 or more employees fall under CFRA and already offered this
- Employee eligibility: 12 months + 1,250 hours worked + work at a location with 20-49 employees in a 75 mile radius



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AB 908: Paid Family Leave & State Disability Benefits Increase

WHY?


Makes SDI and PFL more meaningful for low wage workers.


- Effective 1/1/18
- Increases wage replacement for PFL and SDI from 55% to:
 - 60% to 70% depending on income – calculation is on the EDD website
- Eliminates one week waiting period from Paid Family Leave claims
- San Francisco employees may receive additional compensation from their employers.


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So Many More.....

- FMLA – Federal Family Medical Leave Act
- CFRA – CA Family Rights Act
- Voting Time
- School Suspension
- School Activities
- Military Service
- Military Spousal Leave
- Bone Marrow/Organ Donator
- Etc.....




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Wage and Hour



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2018 Minimum Wage Increase

January 1st	Small Employer	Large Employer
2018	\$10.50	\$11.00
2019	\$11.00	\$12.00
2020	\$12.00	\$13.00
2021	\$13.00	\$14.00
2022	\$14.00	\$15.00
2023	\$15.00	\$15.00



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Minimum Wage

- Workday
 - Any consecutive 24-hour period beginning at the same time each calendar day
- Workweek
 - Any 7 consecutive days, starting with the same calendar day each week
- Importance of defining workday & workweek
- Regular Rate of Pay includes:
 - Bonuses, piece work earnings, commissions
 - Not tips, but service charges are included



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Overtime

Non-exempt employees who work more than:

- 8 hours in a “workday”
- 40 hours in a “workweek”
- 7 consecutive days in a workweek are entitled to overtime



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3 of the Minimum Wage Impacts

	Overtime (1.5x)	Double Time (2x)	Exempt Wage Test
25 or Fewer Employees	\$15.75	\$21.00	\$43,680 <i>(was \$41,600)</i>
26 or More Employees	\$16.50	\$22.00	\$45,760 <i>(was \$43,680)</i>

Consider Travel Time Pay impacts



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29 Cities and Counting...

- Berkeley, Cupertino, El Cerrito, Emeryville, Long Beach, Los Altos, Los Angeles City and County, Malibu, Milpitas, Mountain View, Oakland, Palo Alto, Pasadena, Richmond, San Diego, San Francisco, San Jose, San Leandro, San Mateo, Santa Clara, Santa Monica, and Sunnyvale.
- Hotels in Long Beach, Los Angeles, Santa Monica
- [Great fact sheet on our website - HR Answers/Additional Resources](#)



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Breaks and Meal Periods

- Current wage/hour claim fad
- Include a section in handbook setting forth meal and break period policy
- Train managers regarding legal requirements



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Rest Breaks

- An employer is to ***authorize and permit*** an employee to take ten minutes “net” rest time for every four hours worked
- A rest period is to be in the middle of a work period
- Rest periods need not be recorded on time cards

Hours Worked	Rest Periods
0 – 3.5	0
3.5 – less than 6	1
6 – less than 10	2
10 – less than 14	3



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Meal Periods

- **An employer may not permit an employee to work for a period of more than five hours** per day without providing a meal period of not less than 30 minutes, except when the total work period per day is no more than six hours.
- Over 5 hours but not more than 6 hours – 1 waivable 30-minute unpaid meal period

Hours Worked	Meal Periods
Less than 5	0
Over 5 up to 10	1
Over 10	2



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best practices

More policies to consider...

Your job gives you authority, your behavior earns you respect.

—Irwin Federman
A Personal View of Leadership

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Drug Free Workplace

- Recommended for all employers
- No law precludes disciplinary action against employees under the influence of drugs or alcohol at work
- Medical and Recreational Marijuana
- Everyone else - *“reasonable suspicion”*, no more post accident testing
- Substance abuse -protections under the ADA/FEHA and Labor Code

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Prop 64: Adult Use of Marijuana Act

- Permits recreational use of marijuana for adults age 21+
- No impact on Employer Drug Free Workplace Policies
- No requirement for accommodations for medical marijuana
- Still a Schedule 1 narcotic (i.e. heroin, meth) – Federally illegal
- Treat marijuana and alcohol usage the same in the workplace

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Mobile Phones/Music/Oh My



Employer can limit use to....

- Breaks/meal periods
- Out of the office
- After hours working
- Music in their work area



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Developing a Social Media Policy

- Banning all social media usage doesn't work
- Create a policy that navigates internet "rules of the road"
- Think carefully about how you are regulating (or not regulating) the use of social networking tools
- Union vs. Non-Union policies



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Outside of Work

Impacts the following types of policies:

- Moonlighting
- Dating / Personal Relationship (not enforceable). *Unless.....*
- Any other policy directed at lawful off-duty conduct



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Wrap Up - What Works?



- Review – make sure it's right
- Distribute – get those sign-offs back!
- Monitor your handbook's effectiveness
- Revise/review your handbook periodically



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CEA Handbook Support

- Sample Do It Yourself Template
- CEA Customized Handbooks
- Call us to discuss specific policies in your handbook



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Who's Ready? You!

- And we'll make it easy on you....
- Visit www.employers.org
- Click "Store" – "Employee Handbooks"



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2018 State/Federal Poster

- Available in English or Spanish
- Must post in a conspicuous place
- Post your IWC Wage Order
- Post the new transgender notice!



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BUSINESS WORKSHOPS 2018
10:00 A.M. - 12:00 P.M.
FREE HR HOTLINE: 1-877-282-3763

<p>September 6th, 2018 Social Media Marketing (Webinar) Register: https://webinarsocialmedia1.eventbrite.com</p> <p>September 11th, 2018 Human Resources - 9 a.m. and Hour (Webinar) Register: https://webinarsandhour.eventbrite.com</p> <p>September 13th, 2018 Sales and Labor Tax City of San Bernardino 201 N.E.S. San Bernardino, CA 92410 "2nd Floor Training Room" Register: https://webinarsalesandlabortax.eventbrite.com</p> <p>September 27th, 2018 Social Media Instagram 101 High Desert America's Job Center of California 17330 River Valley Blvd #109 Redlands, CA 92385 Register: https://webinarsinstagram101.eventbrite.com</p> <p>October 4th, 2018 Manufacture, Research and Development Partial Tax Exemption City of San Bernardino 201 N.E.S. San Bernardino, CA 92410 "2nd Floor Training Room" Register: https://webinarsmanufacturingtax.eventbrite.com</p>	<p>October 11th, 2018 Human Resources - Building Strong and Engaged Teams Ontario Chamber of Commerce 3200 Inland Empire Boulevard #130 Ontario, CA 91764 Register: https://webinarsbuildingstrongandengagedteams.eventbrite.com</p> <p>October 16th, 2018 Human Resources - How to Manage Leave of Absences (Webinar) Register: https://webinarsmanageleaveofabsences.eventbrite.com</p> <p>October 18th, 2018 Social Media - Stop Filling with White Content for Social Media Ontario Chamber of Commerce 3200 Inland Empire Boulevard #130 Ontario, CA 91764 Register: https://webinarsstopfillingwithwhitecontent.eventbrite.com</p> <p>November 1st, 2018 I-9 and E-Verify: How to Survive an I-9 Audit! City of Redlands City Council Chambers 35 Cajon St. Redlands, CA 92373 Register: https://webinarsi9.eventbrite.com</p>
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The WETA Workforce Development program is an equal opportunity employer program. Inquiry job and services are available open requests to individuals with disabilities. California Relay Service 711.

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Questions?



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Thank you for being here today!

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