

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







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

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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



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."





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
 - 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.



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.



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 again 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, et





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Leave/Time Off Policies



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



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



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
 Targle year and all law are assumed to 40 hours are 6 days.
- 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 90^{th} 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"



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
- 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.

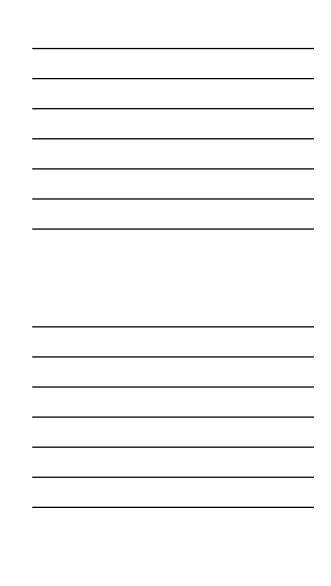


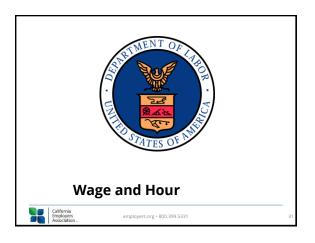
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So Many More....

- 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 Donation
- Etc.....







2018 Minimum Wage Increase Small Employer Large Employer January 1st 2018 \$10.50 \$11.00 2019 \$11.00 \$12.00 2020 \$13.00 \$12.00 2021 \$13.00 \$14.00 2022 \$14.00 \$15.00 2023 \$15.00 \$15.00 California Employers Association

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 (was \$41,600)
26 or More Employees	\$16.50	\$22.00	\$45,760 (was \$43,680)

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



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

Rest Periods
0
1
2
3



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 30minute unpaid meal period

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





Drug Free Workplace

- Recommended for <u>all</u> 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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Accordation

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

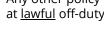




Outside of Work

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 signoffs 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 <u>www.employers.org</u>
- 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!





COUNTY Workforce Development Board	10:00 A.M12:00 F FREE HR HOTLINE: 1-877-282-37
September 6 th , 2018 Social Media Marketing (Webinar)	October 11th, 2018 Human Resource - Building Strong and Engaged Teams
Register: https://wdbsocialmedia1.eventbrite.com	Ontario Chamber of Commerce 3200 Inland Empire Boulevard #130 Ontario, CA 91764
September 11 th , 2018 Human Resources - Wage and Hour (Webinar)	Register: https://wdbbuildingstrongandengagedteams.eventbrite.com
Register histops/whereappenthous oversite the com September 129, 200 (200 cm) and 200 cm 200	October 16th, 2018 Human Resource- How to Manage Leave of Absences (Webinar) Register: https://wdbmanageleaveofabsence.eventbrite.com
	October 18th, 2018 Social Media - Story Telling with Video Content for Social Media Ontatio Chamber of Commerce
	3200 Inland Empire Boulevard #130 Ontario, CA 91764 Register: https://wdbstorytellingwithvideo.eventbrite.com
	November 1*, 2018 I-9 and E Verify-How to Survive an I-9 Audit City of Rediands
October 4th, 2018 Manufacture, Research and Development Partial Tax Exemption City of San Bernardino	City Council Chambers 35 Cajon St. Redlands, CA 92373 Register: https://wdb/Gaudif.eventbrite.com
201 N E St. San Bernardino, CA 92410 "2nd Floor Training Room" Register: https://sdbmanufacturingtax.eventbrite.com	
This WYOA Title-I flouncially assisted program, is an equal apportunity employer/program. As	unitary aids and service are available upon request to individuals with disabilities, California Relay Service 711.

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Questions?



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