

3 Key Developments Requiring Updates to Your Employee Handbook in 2013

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Most employers know that it is good practice to have an **employee handbook** in place in order to communicate workplace rules, policies and procedures to employees, protect both employer and employee interests, and to ensure a consistent response to common scenarios. While employers are generally aware that handbooks should cover a wide variety of topics including, but not limited to, discrimination, harassment, benefits, compensation, attendance, employee conduct, performance, discipline, and workplace safety and that employee handbooks should be reviewed and updated on a frequent basis, employers need to revisit their handbooks this year and make sure to cover some critical areas.

In 2013 employers should consider revisiting, reviewing and if needed, revising their employee handbooks to cover these important areas:

- **Social Media Use.** With the use of social media is on the rise, this is a topic that must be addressed in an employee handbook. The employee handbook should discuss the use of social media at work and using the employer's resources. However, based on recent decisions handed down by the National Labor Relations Board (NLRB), employers need to avoid overly broad social media policies and blanket prohibitions that restrict employees from collectively discussing working conditions. Further, it is wise for employers to include a policy that addresses the ownership of social media accounts established for business-related purposes on websites such as Twitter, LinkedIn and Facebook.
- **Equal Opportunity Policies.** In 2013, it is critical for employers to revisit their handbooks and policies regarding equal opportunity in the workplace. In order to minimize the risk of liability based on developments on both the state and federal level, it is advisable for employers to have firm workplace policies prohibiting discrimination based not only on race, sex, religion, age, and disability, but also new and emerging protected cases such as genetic information, sexual orientation and gender identity and expression, victims of domestic violence, sexual assault and stalking, criminal background, and unemployment status. Employee handbooks should also communicate to employees that the employer is willing to make reasonable accommodations to employees based on disability, religion, pregnancy, and sexual orientation if doing so would not cause the employer undue hardship. Employers should also make sure that their policies regarding Family and Medical Leave are update to date and comply with the latest legislative changes on the both the federal and state level.

- *Avoid Overly Broad Blanket Rules.* Based on a number of decisions recently handed down by the NLRB, employers need to make sure that employee handbook policies regarding various topics such as confidentiality and investigations, at-will employment, employee communications, and social media do not violate Section 7 of the National Labor Relations Act (NLRA) and the right of both union and non-union employees to engage in protected concerted activities. This means that employers should avoid overly broad wording and blanket rules that prevent both union and non-union employees from engaging in collective activity to improve their wages hours and working conditions. While the decision of the D.C. Circuit Court of Appeals in *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013) has cast some doubt on the authority of the NLRB with respect to some of these decisions by ruling that the NLRB lacked a required quorum because the three January 2012 recess appointments by President Obama to the NLRB were invalid because the Senate was not technically in recess when he made the appointments, this decision will likely be challenged in the Supreme Court. As a result, employers should stay on top of this issue as it could potentially affect notable NLRB decisions.

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