

HR Insights

5 Employment Policies to Review in 2023



Employee handbooks are important tools for establishing employee expectations, addressing workplace issues and defending against potential lawsuits. Failing to update employee handbooks regularly can make employers vulnerable to legal risks and liabilities, resulting in costly fines, penalties and attorneys' fees. Employment laws are often complicated, and employers need to be aware of any new regulatory developments that may impact their organizations and workforce. The start of the year provides employers an excellent opportunity to review and update the policies in their employee handbooks.

This article explores five employment policies employers should consider reviewing in 2023.

1. Pay Transparency

More employees are demanding pay transparency as a result of changing labor markets and workforce demographics. Pay transparency is when an employer openly communicates pay-related information to prospective and current employees through established practices. With demands for pay transparency increasing, some states have passed legislation in recent years requiring employers to be transparent, including California, Colorado, Connecticut, Maryland, Nevada, Rhode Island and Washington have passed pay transparency laws. Some cities, including New York City, Jersey City and Cincinnati, have also passed such laws.

As applicable laws and regulations related to pay transparency vary based on jurisdiction, employers must consider their legal obligations. This involves any jurisdiction where their employees physically work. Some jurisdictions' laws only require employers to provide pay ranges if the candidate requests it; others, like California's recently enacted pay transparency law, require employers to disclose this information upfront.

Even if an employer is in a jurisdiction that does not require pay transparency, it may be beneficial to provide pay-related information since employees and applicants are more frequently demanding it. To meet employee desires, employers should consider implementing practices—such as publishing pay scales for their open positions or hosting informational training sessions on pay-related topics—and updating their employment policies accordingly.

2. Paid Leave

In 2022, many states and localities enacted paid leave laws. This year, several previously enacted leave laws became effective in various states and cities throughout the United States; many other states have recently proposed paid leave legislation. These laws ensure workers continue receiving a portion of their wages when they're unable to work under certain circumstances, such as due to illness or the birth of a child.

Because of the increasing number of states and localities adopting paid leave laws, employers need to ensure their leave policies are current and comply with local laws. It is critical to review existing policies to confirm they conform to state and local regulations of the location where employees physically work. Additionally, an employer's leave policies can clearly explain when employees are eligible for paid leave and any steps they must follow to request it. Employers should also verify their leave policies do not unintentionally discriminate against employees based on a protected class.

3. Expense Reimbursement

Federal law requires employers to reimburse employees for expenses that cause an employee's pay to drop below the federal minimum wage. However, some state and local laws require employers to reimburse employees for work-related expenses, such as telephone or internet fees, office supplies, and heating or cooling costs. Employee expenses are considered wages under several state reimbursement laws and are subject to the same timing requirements as wage payments.

The number of lawsuits claiming employers failed to reimburse employee expenses is quickly rising, so it's vital that employers ensure their reimbursement policies comply with state and local laws. Additionally, when employers reimburse employees for office equipment or devices, it may create issues about who owns the item. Employers should consider reviewing their reimbursement policies to ensure they cover the following:

- Explain what expenses are reimbursable.
- Outline the timing of reimbursement payments.
- Establish who owns the device or equipment.
- State what happens to the device or equipment when the employment relationship ends.

4. Marijuana Use and Testing

Medical marijuana use is currently legal in 37 states, whereas recreational use is legal in 21 states. Many of these states protect employees from being terminated or denied employment opportunities due to off-duty, recreational marijuana use. Furthermore, President Joe Biden recently issued a presidential proclamation in 2022, pardoning federal convictions of simple marijuana possession offenses. President Biden also called upon governors to pardon simple state marijuana possession offenses.

Employers must ensure their marijuana use and testing policies comply with state regulations where their employees physically work. Employers who do not employ any workers in states where marijuana is legal can decide whether to screen employees for marijuana and how they will respond to a positive test result. This procedure should be clearly explained in the employee handbook.

5. Remote and Hybrid Work Arrangements

Many employers embraced remote and hybrid work out of necessity at the outset of the COVID-19 pandemic. While employers have continued to allow employees to take advantage of flexible work arrangements, many have not updated their employment policies to adequately address these arrangements.

Remote and hybrid work policies can set clear expectations surrounding employee work hours, communication and productivity. Some employers have invested in technology to digitally monitor remote employees to ensure they stay productive. However, in certain situations, employers must inform workers with written notice that electronic communications are being monitored and obtain their consent. For example, the Electronic Communications Privacy Act of 1986 prohibits employers from intentionally intercepting electronic communications unless they do so for business purposes or employees have provided prior consent. Some state and local laws also require employers to disclose to their employees that they're being monitored. Accordingly, employers must ensure their remote and hybrid work policies comply with data use and employee privacy notice requirements.

In addition to covering privacy and monitoring laws in their handbooks, employers should consider adding technology guidelines and requirements to their employment policies to account for remote and hybrid work arrangements. This can help organizations protect against cybersecurity threats. For example, employers may decide to require employees to use multifactor authentication on their personal devices for work-related matters.

Summary

Outdated policies can often expose organizations to unnecessary legal risks. Regularly reviewing and updating employment policies is an effective and cost-effective way for employers to protect themselves. By understanding the most important sections to review in 2023, employers can take steps to ensure their employment policies are current and reflect the most recent regulatory developments.

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