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How To: Assemble An Employee Handbook

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If you're like many entrepreneurs, you're too busy running your company to think about how to run it. So you create a vacation policy when an employee asks for time off and a dress code when someone arrives at the office wearing an inappropriate T-shirt. Sound familiar? If so, it's time to put your HR policies in writing.

For one thing, codifying policies in a handbook gives you a measure of legal protection in the event that an employee sues you for wrongful termination, harassment, or illegal discrimination. "A handbook isn't lawsuit-proof," says Elaine Tweedy, director of the University of Scranton Small Business Development Center in Pennsylvania. "But what the court system looks at first is your policy. And if it's not in writing, then you can't prove you have one." Of course, it's better if employees don't sue at all, and formal policies can help there, too, by generally encouraging fairness and consistency.

Plus, if you formulate your employment policies with a progressive, employee-friendly cast, they can be powerful tools for recruiting and maintaining morale. "The primary benefit of putting together a handbook is that the owner can design a work experience that he wants for himself and the people who work for him," says Rick Galbreath, president of Performance Growth Partners in Bloomington, Illinois.

The pages that follow will get you started. And once you put the policy down on paper, follow it. "If you don't," says Tweedy, "your employee has every right to sue you."

Put Your Policies in Writing

1. See the Big Picture

The tradeoff at the center of any employment manual pits consistency against flexibility. Codifying policies and then following them consistently will generally help protect you against lawsuits. But there are legal and necessary kinds of discrimination--between productive and unproductive workers, for example--and your manual shouldn't be so rigid or specific that it limits your ability to make such distinctions. (You may, for instance, want to give a star salesperson extra vacation time.) How to strike the right balance? Rick Galbreath recommends emphasizing in the handbook's introduction that these are merely *general* guidelines. And throughout, avoid language that locks you into a course of action--for example, use *we may* instead of *we will*.

Preserve the "at will" relationship

Most states define employment as "at will," which means that either party may end the relationship without notice, for any reason or no reason at all. In practice, case law has put limits on that blanket discretion (Most obviously, employers can't fire people because of age, race, or gender). More to the point, courts have in some cases decided that statements made in employee handbooks amount to a contract that limits the employer's at-will

prerogative. So it's crucial that nothing can be construed as a contract or promise. In fact, make that disclaimer explicit early. Avoid expressions such as "permanent employee," "probation," and "introductory period." And be sure to state that you're entitled to change the policies at your sole discretion.

2. Cover the Legal Bases

The relationship between employer and employee is governed by more laws than you probably realize. Some even apply to businesses with just a single employee. So even the most basic employee handbook needs to reflect the most important of those laws. You can get specific language appropriate for your business and location from an HR consultant or lawyer, or from the software listed in "[Resources](#)" at the end of this Guidebook. These three categories are among the most important:

Harassment and discrimination

In general, these statements should do four things: one, affirm that you are an equal opportunity employer in every respect; two, make plain that you do not tolerate harassment or illegal discrimination and outline the steps an employee can make to report violations (theoretically, two people should be designated to receive these reports); three, describe the steps your company will take in response to discrimination or harassment claims; and four, make it clear that an employee who makes a complaint will not face retaliation.

Wage and hour issues

Identify, as generally as possible, the days and hours of the workweek as well as the rules for breaks and meals. Because salaried employees are typically exempt from laws, that, among other things, mandate overtime pay for hourly workers, you should establish guidelines for determining which employees fall into which categories. Specify the overtime formula. This is also the place to define full-time, part-time, and temporary employment if you want to distinguish employees who are eligible for benefits from those who are not.

Safety

Companies that operate in potentially dangerous work environments should detail a safety policy that accords with state and federal regulations. Here, as in all areas of labor law, "federal law creates the floor, not the ceiling," says attorney Marc Jacobs of the Chicago-based firm Seyfarth Shaw. Indeed, your state may have other laws that require a policy statement; check with an employment attorney or your state's department of labor.

3. Lay Down the Law

Here's the place to cover basic guidelines for employee behavior. Among the issues you may want to address are attendance and tardiness; a dress code; personal use of the phone, the Internet, and e-mail; and confidentiality. You might also detail a drug and alcohol policy, including notice about testing.

The case for limited rules As companies grow, they tend to adopt ever more policies as circumstances demand. These policies can cover topics such as wearing perfume in the office and what can be posted on the break room bulletin board. But many HR advisers argue for restraint, noting that heavy-handed rules can undermine an otherwise healthy corporate culture. Focus on the company's core needs and regulate just those behaviors that are most incompatible with those needs, says Tweedy. If it doesn't matter whether an employee arrives at 8:30 sharp to do her work, then you may not need to articulate a tardiness policy. If your employees interact with customers only over the phone, you may not need a dress code.

The case against threats Similarly, resist repeatedly reminding employees of the punishment they face for each infraction, which is a strategy employers often use to avoid paying unemployment benefits to a fired worker. "I consider a handbook a good-news document," says J. Reed Roesler, a Peoria-based employment lawyer. "You don't want to be reading about losing your job on Day One." Besides, as Galbreath points out, few employers confront the worst-case scenarios they write rules for – and when they do, the conduct tends to be so egregious

that an explicit rule isn't necessary. Aim to lay out the discipline procedure in general terms; for guidelines, see "Detailing Discipline."

4. Explain the Benefits

State and federal laws require you to provide certain benefits. If you have 50 or more employees, for instance, you must comply with the federal Family and Medical Leave Act. You'll also have to allow for jury duty and workers' comp leave. Many states demand other leaves, such as for military service.

Voluntary benefits These, of course, depend on the state of the labor market and the sort of corporate culture you aim to create. Besides insurance and retirement accounts, these can include employee assistance programs (wellness programs, say, or substance abuse or other counseling) and family and bereavement leaves.

Marking time off More companies are abandoning separate vacation and sick leave policies for combined "paid time off," to discourage employees from taking unused sick days at the end of the year, notes HR consultant Jan Petersen of Employer Success in Reno, Nevada.

5. Put the Onus on Your Staff

Every company should require employees to acknowledge with a signed document that they have received and read the handbook, and that they will seek clarification about any unclear aspect. Some acknowledgements go further and seek written authorization for other legal protection measures, like annual credit checks or drug testing. "It can be a great opportunity to reduce your liability," says Galbreath.

Detailing Discipline

Opinions vary widely on how explicitly to articulate discipline policy. As a general rule, employers can protect themselves by giving employees a warning and a chance to reform their behavior before firing them. (After all, it's harder to complain convincingly if you were warned that the conduct violated company policy.)

- **The Common Mistake** Many companies make the mistake of putting a formal "progressive discipline" policy in writing: A first infraction gets a verbal warning; the next one gets a written warning; the next, perhaps a brief suspension; and only then termination. The problem is that codifying that process "can obligate you to do things that you don't always want to do," says Fred Holloway, an HR consultant in Medford, Oregon. You might want to cut a trusted, longstanding employee some slack even after a flagrant infraction, for example, or immediately fire an underperformer for a relatively minor one. And formal progressive discipline policies can undercut your "at-will" status in the eyes of a court.
- **The Better Option** Instead, Galbreath suggests writing a policy that focuses on encouraging positive behaviors and avoids threats. Begin by articulating the expectation that employees will practice self-discipline and meet performance goals. Then explain that, in the unlikely event that an employee fails to meet those standards, the organization will provide the coaching, counseling, and, in some cases, discipline necessary to assist the employee. This sort of language, says Galbreath, "tells employees that your goal is to help them succeed, not fire them." As always, the tradeoff for this flexibility is a potentially weaker defense in the courtroom when you are contesting discrimination or wrongful termination suits. Your feel for your corporate culture will determine whether it's a tradeoff worth making.

Steal This Manual?

Commissioning an employee handbook can be expensive.

The consultants we spoke to charge \$1,000 to \$5,000 and up. No surprise that many entrepreneurs undertake the effort on their own. But be warned: Many start with the employee handbook of another company and substitute

their own name--and end up adhering to laws that, say, wouldn't ordinarily apply to small businesses.

You can find software or downloadable forms to create your own employee manual, often for \$100 to \$200 (see "Resources," below). If you go this route, be prepared to rewrite. A good manual "reflects the intent and spirit of the owner," says Casey Willson, a Maryland-based retail and restaurant consultant. "When you get into boilerplate, it becomes a protective device rather than an enabling device."

And though you will definitely want an employment lawyer to review your handiwork, don't hire one to write the handbook for you. "It's like having an electrical engineer change a light switch for you," says Galbreath. "This is a practical document, not a legal document."

Resources

You will find guides to federal labor laws at osha.gov and small-business resources and contact information for state labor agencies at dol.gov.

The Society for Human Resource Management has a directory of HR consultants at shrm.org.

[Smallbusinessnotes.com](http://smallbusinessnotes.com) offers a free model handbook. The Alexander Hamilton Institute's Complete Policy Handbook (\$100) is a CD-ROM with editable policies with state-by-state guidelines. And Policies Now is a deluxe program (hrtools.com; \$199) that uses a Q&A wizard to help you customize a manual.

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