

Personnel Policy

Hotlist:

What we love and hate

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SUMMIT LAW GROUP

ENERGY PASSION COMMITMENT SHIRTSLEEVES

General Principles

- Policies should be clearly explained.
- Policies should be consistent with the present law.
- Appropriate in all jurisdictions?
- Given the evolving nature of the law, “catch-all” provisions should be included where appropriate.
- Good handbooks make clear that at-will employees are at-will employees.

General Principles (cont.)

- Disclaimers should be used where appropriate.
- Do not over promise.
- A policy will be most effective if it reflects the workplace culture and expectations (as they are, or as the employer would like them to be).
- Policies should reserve management's right to exercise flexibility where appropriate.

Example 1

Appropriate Dress and Grooming for Men:

- Men should wear business slacks/pants and dress shirts. Denim jeans or sweats do not meet this standard.
- Please wear conservative colors such as navy, black, gray, white or tan.
- Pocket scarves, if worn, should be in a conservative and coordinated color.
- Shoes should be leather or suede in black, brown or cordovan.

Example 1

Appropriate Dress and Grooming for Women:

- Women should wear business attire such as skirts or slacks, blouse and blazer or a dress.
- Please wear in conservative colors in the skirt, slacks, blazers and hose such as navy, black or gray, white or tan.
- Shoes should be leather or suede.
- No fingernail jewelry or decorative nail accessories. If nails are polished, use conservative and professional judgment. Black nail polish does not meet this standard.

Example 1

PROBLEMS:

- Treats women and men differently.
- Depending on the workplace, may seem oppressive.
- May reflect out-dated standards or a previous workplace culture.

Example 1

IMPROVED VERSION:

GROOMING AND APPEARANCE

Since most of the employees of [EMPLOYER] come in contact with the company's customers and the general public, employees are expected to dress in good taste with respect to the job they perform, and to be personally well-groomed. If your dress or appearance conflicts with this basic guideline, your supervisor will discuss it with you and suggest changes.

Example 1

TAKEAWAYS:

- Grooming and appearance policies need not distinguish between men and women. Avoiding unnecessary distinctions based on sex reduces risk of sex discrimination claims.
- Allows for flexibility.
- General communications of expectations may be appropriate in this workplace. In another, specifics regarding appropriate dress may be necessary.
- Tell employees that policies are relevant to them by periodically updating dated policies.

Example 2

[EMPLOYER] is committed to a policy of equal employment opportunity. The Company is committed to treating all employees and applicants without regard to race, color, creed, religion, sex, age, national origin, citizenship, veteran or marital status, sensory, or physical or mental disability.

Example 2

PROBLEMS:

- Missing protected category
- Does not include catch-all (just in case)
- Vague with respect to what “treating” means

Example 2

IMPROVED VERSION:

[EMPLOYER] is committed to a policy of equal employment opportunity for all employees and applicants for employment, without regard to race, color, creed, religion, sex, age, national origin, citizenship, veteran or marital status, sensory, physical or mental disability, **sexual orientation, gender identity, and all other bases protected by law.** All employees and applicants will have the freedom to compete on a fair and level playing field with equal opportunity for competition. **Equal employment opportunity covers all personnel/employment programs, management practices, and decisions, including recruitment/hiring, merit promotion, transfer, reassignments, training and career development, benefits, and separation.**

Example 2

TAKEAWAYS:

- In listing protected categories, keep up with the latest developments in federal, state, and local laws.
- Local takeaway: The improved version includes gender identity because, although gender identity falls with the definition of sexual orientation under state law, in at least one local jurisdiction, the City of Seattle, the Seattle Municipal Code says that gender identity is separate from sexual orientation.
- Given the evolving nature of the law, catch-alls can be helpful.
- The policy is more meaningful if it provides concrete examples of its scope.

Example 4

Complaint Procedure. If you believe that you or another employee has been harassed, you should talk to the person engaging in the harassment and tell that person to stop. If this doesn't work, you are encouraged to report the harassment to your supervisor or any manager. If the harassment doesn't stop, we encourage you to report the matter to human resources.

Example 4

PROBLEMS:

- Tells employee her or she must deal with alleged harasser.
- Encourages—doesn't require—reporting
- Mandatory chain of reporting may create legitimate hurdle for employee.

Example 4

IMPROVED VERSION:

Harassment Complaint Procedure. Any employee who experiences, witnesses, or learns of harassing conduct by another employee **must** promptly **report** the conduct immediately. The conduct can be reported to any of the following persons.

- Your supervisor;
- Your department head;
- Your manager; or
- [insert proper department or manager]

Example 4

TAKEAWAYS:

- Providing an effective complaint procedure may be key in avoiding liability for co-worker harassment.
- Balances desire for centralized reporting with alternatives if alleged harasser is in employee's management chain.
- Requires reporting.
- It is okay to suggest that it is appropriate for an employee to tell the alleged harasser that the conduct is unwelcome, and that may be an effective way to end harassment. However, it should be clear that employees are not required to engage with the alleged harasser to obtain relief.

Example 6

Discipline. Failure to comply with Company policies and procedures may lead to discipline, including termination. If your performance is below standard, your supervisor will meet with you to discuss the problem areas and explain to you the areas of required improvement. If this discussion does not result in improvement, your supervisor will issue a written warning. Failure to improve after having been issued a written warning and a fair opportunity to improve will result in termination.

Example 6

PROBLEMS:

- Does not make clear that employer may exercise discretion to diverge from progressive discipline steps.

Example 6

IMPROVED VERSION:

- **Discipline.** The Company may take disciplinary action when it believes that an employee has not adhered to its expectations or that performance is unsatisfactory. Such action **may include** verbal warning, written warning, suspension, demotion, reassignment, or discharge. It is frequently appropriate to apply less severe corrective action initially and more severe measures if the problem persists. **Nonetheless, the Company may apply the discipline it considers appropriate under all of the facts and circumstances, up to and including immediate discharge without prior corrective action or notice.**

Example 6

TAKEAWAY:

- The employer wants flexibility to impose the level of discipline appropriate in a specific situation, notwithstanding a general policy of progressive discipline.

Example 7

Unused vacation accrual upon termination.

With respect to the Washington and California offices, unless approved in writing by supervisor, accrued but unused vacation will be forfeited upon termination.

Example 7

PROBLEMS:

- In California, “use it or lose it” not allowed with respect to vacation.

Example 7

TAKEAWAY:

- If you have operations in more than one state, do not assume that one policy is good for more than one state without first checking applicable laws.

Example 8

Voluntary and Involuntary Termination. If an employee wishes to terminate employment with the Company, two weeks' notice is required prior to the desired termination date. Such a termination is considered a voluntary resignation.

No payment for accrued sick or personal days will be made upon separation (voluntary or involuntary). If you have been employed by the Company for over six months, the balance of accrued but unused vacation will be paid upon voluntary resignation (*i.e.*, quit); however, if employment was terminated for cause by the Company, no vacation will be paid out unless required by state law.

Example 8

PROBLEMS:

- Requiring notice for termination undermines at-will employment disclaimer.
- Confusing: First indicates vacation payout will be limited to resignations with two-weeks' notice; later suggests only employees terminated "for cause" are ineligible for a vacation payout.

Example 8

IMPROVED VERSION:

Voluntary Terminations. To assist the Company in transitioning work responsibilities, employees who are voluntarily resigning from employment **are requested to provide** notice at least two weeks prior to the desired termination date. Employees who have provided at least two weeks' advanced notice and who have been employed by the Company for at least six months will be paid the balance of accrued but unused vacation upon termination. In all other situations involving voluntary terminations, there will be no payout of accrued but unused vacation upon termination, except as required by law.

Example 8

Involuntary Terminations. Employees who are involuntarily terminated and who have been employed for at least six months will be paid the balance of accrued but unused vacation upon termination, unless termination is “for cause.” Employees terminated for cause are ineligible for payout of accrued but unused vacation, except as required by law.

Example 8

TAKEAWAYS:

- Have someone other than the drafter read the policy to see if it makes sense.
- Work through the potential implications of each sentence.

FMLA Policies in Handbooks

POTENTIAL PROBLEMS:

- Is your statement of eligibility criteria accurate?
- Does the policy provide eligibility to care for persons other than those included under the FMLA?
- Does the policy clearly state the employee notice requirements and consequences for failure to provide required notice?
- Does the policy inform employees that fitness-for-duty reports will be required?

FMLA Policies in Handbooks

(cont.)

- If you change the way you determine the “12-month period” in which you evaluate an employee’s leave entitlement (*e.g.*, calendar, “rolling” 12-month period), you must give 60 days’ notice and allow employees to retain the greatest possible benefit during the transition.
- Does the policy clearly state the employee notice requirements and consequences for failure to provide required notice?

FMLA Policies in Handbooks

(cont.)

- Does the policy inform employees that fitness-for-duty reports will be required?
- Does the policy inform employees if use of accrued paid leave will be required during FMLA leave?

FMLA Policies in Handbooks

(cont.)

- Does the policy inform employees that the employer will seek to recover the cost of health benefits incurred during FMLA leave if the employee does not return to work at the end of the FMLA period for reasons other than the continuation, recurrence, or onset of a serious health condition, or other reasons beyond the employee's control?

FMLA Policies in Handbooks

(cont.)

OTHER SUGGESTED INCLUSIONS:

- Inform employees that the company reserves the right to request documentation proving the existence of an alleged family relationship.
- Catch-all to cover other aspects of the law and recent developments.
 - “In the event that any part of this policy is in conflict with state or federal law, then the state or federal law takes precedence over the conflicting provision of this policy. All other non-conflicting provisions of this policy will remain in full force and effect.”