



**Lowenstein Sandler's Executive Compensation and Employee Benefits Podcast: Just Compensation**

**Episode 51:  
Handbook on Handbooks: Creating the Right Employee Handbook for Your Company**

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**Megan Monson:** Welcome to the Lowenstein Sandler podcast series. Before we begin, please take a moment to subscribe to our podcast series at [Lowenstein.com/Podcasts](https://Lowenstein.com/Podcasts), or find us on Amazon Music, Apple Podcasts, Audible, iHeartRadio, Spotify, SoundCloud or YouTube. Now let's take a listen.

**Jessica Kriegsfeld:** Welcome to the latest episode of *Just Compensation*. My name is Jessica Kriegsfeld and I'm an associate in Lowenstein Sandler's Executive Compensation Employment and Benefits practice group. I'm joined today by Lauren Hollander.

**Lauren Hollender:** Good morning. I'm Lauren Hollander. I'm counsel in the same group here at Lowenstein Sandler. I've been practicing law for close to 20 years and regularly work with employers on employee handbooks, which we will discuss today.

**Jessica Kriegsfeld:** As Lauren mentioned, today's episode we'll discuss the nuances of employee handbooks, including best practices for creating, distributing and maintaining employee handbooks. We will emphasize the key items that should be included in an employee handbook and tips for compliance with state and federal law, as well as practical considerations for employers. This is not intended to be an exhaustive discussion, and we encourage you to consult with your legal counsel to ensure that your employee handbook is drafted and maintained in compliance with applicable laws. To get us oriented, what's the purpose of an employee handbook and why is it important for companies to have one?

**Lauren Hollender:** Sure. Employee handbooks are very important to clearly communicate a company's policies and expectations to its employees. First, a handbook demonstrates a company's commitment to comply with applicable laws. It also reduces repetitive questions to supervisors and human resources representatives, since the policies, practices, and decision-making of the

company are explained. It can also serve as evidence in a wrongful termination litigation. If there's a suit, it can show that policies were communicated, that unlawful behavior was prohibited, and that employees were aware who they could turn to for help if they were harassed or treated unfairly.

Today we'll discuss the specific of employee's handbooks throughout this episode, but at a high level, employee handbooks do the following. First, they set expectations, including outlining company rules and performance expectations. They explain health and welfare offerings, such as retirement plans, available paid time off, including sick leave, leave of absence policies, and core working hours. They support the consistent and fair treatment of employees by providing supervisors and human resource representatives a set of rules to follow when handling employment-related issues. And this is important because within the workplace, consistency is the key. We want to treat various employees similarly in similar situations. Handbooks serve as a resource for employees to understand their rights and benefits and find answers to common questions about their employment. And the handbook also outlines reporting mechanisms for employees to report problems within the workplace, such as complaints of discrimination, harassment, or other conduct in violation of company policy or the law.

**Jessica Kriegsfeld:** What are some initial drafting considerations for a company that's creating a handbook or reviewing their existing handbook?

**Lauren Hollender:** Well, first you want to use plain language and avoid legalese. Handbooks are for the employees to understand an employer's policies and they should not be unnecessarily complicated to understand. At the same time, an employer doesn't want to be too informal or cheeky in the handbook since this will leave the employee with the impression that the employer doesn't take his policy seriously. So, you must set a positive and professional tone within the handbook. This is often one of the first impressions that employees have about a company. Include enough information in the handbook so that policies can be understood, but you want to avoid providing too much detail that could be interpreted as creating a contractual agreement or preventing an employer from using discretion in certain instances.

In the handbook, you want to include contact information for a representative of the company, so employees know who to contact if they have any questions about the company's policies. Typically, this is your HR representative or it might be a person in management. You want to evaluate the demographics of the workplace when distributing and planning your handbook. For example, if you have a large percentage of

your workforce that speaks another language, you may want to consider providing a copy of the handbook in that other language.

**Jessica Kriegsfeld:** Let's look at the very beginning of an employee handbook. What would you expect to see on the first page or two?

**Lauren Hollender:** Well, a first page is typically a welcome statement from the CEO or other high-level management official. Though a welcome statement is not legally required, many employers begin their handbooks with a welcome statement from the company's CEO to introduce the company and welcome employees. A well-drafted welcome statement serves to communicate a company's values, culture, and goals. In the handbook, you want to include an opening disclaimer. It's a good idea to note at the very beginning of an employee handbook that the handbook is not a contract. Rather, in the absence of a formal written employment agreement, the presumption of employment is that all employees are employed at will. This is a very important concept. This means that both the employee and the company have the option of terminating the employment relationship at any time with or without cause or notice. Employment is not guaranteed for any specific duration. This affords the employer significant flexibility in managing its workforce.

The handbook should also let employees know the company reserves the right to modify the handbook and that all other terms and conditions of employment may change at any time in the company's discretion. Directions on who to contact if the employee has any questions, that's another factor important to include within the handbook. Even the best handbook is only a guideline. Much further direction is required on day-to-day level, and employees should know that their questions are welcome and that there are persons who can assist them if the handbook does not address a particular subject or concern.

**Jessica Kriegsfeld:** Moving into the actual content of the employee handbook, what types of policies should employers include?

**Lauren Hollender:** Well, for the most part, having an employee handbook is not legally required. It's certainly what we consider best practice for an employer to put the following policies I'm about to discuss in writing. One an equal employment opportunity policy. This is an important policy to include at the forefront of a handbook. The policy demonstrates an employer's compliance with anti-discrimination laws and offers support for a legal defense against discrimination claims. The policy lets supervisors and managers know they are responsible for ensuring equal opportunity and non-discrimination within the workplace. In addition to being prohibited from violating this policy, supervisors and managers are put on notice that they have an affirmative duty to report instances of harassment or

discrimination to human resources or company management so that it can be addressed. An EEO policy provides a complaint procedure for employees who feel they have been subjected to discrimination, ensures that no retaliation will be taken against them for making a complaint in good faith. In contrast, the making of a false or bad faith complaint constitutes grounds for disciplinary action up to and including termination. Note that state or local law may recognize protected classes in addition to those protected by federal law. So, employers should ensure that the equal employment opportunity policy includes all of the protected classes in the jurisdiction in which employees work.

Another policy that is important to include is your anti-harassment policy. This is a required policy in some states, specifically New York. A good policy should include the following: a clear definition of what constitutes harassment, a complaint procedure including a complaint form in New York, that's something that's required in that jurisdiction, an explanation of the investigation process and what employees should expect in terms of methodology, timeline, confidentiality, and information concerning the outcome of the investigation and any resulting disciplinary action. Employees are often surprised to learn that they don't necessarily have a right to that information if they were only a witness to something that is being investigated. In contrast, if the employee was the complainant or the subject of a complaint, the company typically shares the outcome of an investigation with the employee. The anti-harassment policy should also note a retaliation protection provision, clearly stating that the company protects employees against adverse employment action if they make a complaint of harassment or assist an investigation in good faith.

Next, it's important to have a whistleblower policy. Again, this is required in many jurisdictions, including New York and New Jersey. What this policy tells employees is that they should and are protected against retaliation from the company for making a good faith report to management if they believe anybody within the company is engaging in either unethical or illegal behavior. For example, behavior such as fraud, embezzlement, violation of government safety or manufacturing regulations, or other laws or regulations. Another important handbook policy is a policy that outlines job accommodations on account of disability, including pregnancy or related medical conditions, religion, and in response to domestic violence. Accommodations may be required under the Americans with Disabilities Act, the Pregnant Workers Fairness Act, Title VII, or applicable state law. You want employees to know who to turn to in the event they require a job accommodation and what they can expect in the instance that an accommodation request has been made.

Another important policy, confidential and proprietary information policy. This policy informs employees about, one, what types of information are considered confidential; two, how employees are supposed to handle sensitive company information; and three, the consequences of violating the policy. It reminds employees that the policy applies both during and after employment, so they must protect confidential and proprietary information even if they voluntarily leave the company or are fired. They must return all company documents to the company upon termination.

One caveat I want to note, again, the handbook is not a contract. We discussed that at the beginning. So, if an employer does have significant concerns about protecting confidential information and owning intellectual property, the employer should have employees sign a separate non-disclosure and covenants agreement outlining exactly what is expected of employees and what restrictions, if any, this post-employment. For example, whether the employer will impose some type of restrictive covenant in what area, for how long, on what types of businesses, or whether the employer will impose a non-solicitation of employees or clients on the employee once they leave the company.

Another important policy is an email, voicemail, and computer networks policy. This is typically referred to as an acceptable use policy. This policy sets clear boundaries for how employees can use employer-provided email systems, voicemail, internet access, and other networks or software. It helps safeguard against malware and phishing attacks, data breaches, and unauthorized use of confidential information. It ensures legal and regulatory compliance, particularly for employers and industries subject to laws governing digital communication and data protection, such as California. It informs employees of the employer's monitoring practices. Many employers do monitor phone calls, emails, et cetera, and employees are told in this policy they have no expectation of privacy when using company-owned devices and platforms. This disclosure is specifically required in New York and maybe in other states. You must let employees know in advance that you reserve the right to monitor the company's systems.

**Jessica Kriegsfeld:** I'm sure employees will have questions about getting paid, paid time off, and daily administrative procedures. What policy of this nature should be included in the handbook?

**Lauren Hollender:** Well, employee handbook should describe payroll practices and compensation information. This is typically employees' number one concern, and they want to be able to access this information. However, exact pay rate information should be included in each employee's offer letter or employment agreement rather than the handbook itself. Although not required by law, most employers opt to include within the handbook a

description of employee classifications, namely exempt and non-exempt status under the Fair Labor Standards Act and what constitutes full-time and part-time status within the company. What this does is help employees understand which policies and benefits apply to them. For example, employers typically only extend group health benefits and paid vacation to employees who regularly work at least 30 hours per week. Also, non-exempt employees, as opposed to exempt employees, are eligible for overtime for work in excess of 40 hours per week. So, this policy helps employees understand their payroll information.

Within the handbook, it's important for an employer to outline attendance policies, identify core working hours, and let employees know what is expected of them when they need unscheduled time off. Employers should emphasize that regular and reliable attendance is an essential function of the job and that excessive absenteeism or failure to report to work on time may result in disciplinary action. This type of information or statement will serve employers well in the event they have someone who is exceedingly tardy or late to work. Within the handbook, employers should describe available meal and rest breaks which are legally required in quite a number of states, whether those breaks are paid or unpaid, and how non-exempt employees, in particular, are supposed to account for those breaks within the company's timekeeping systems. Are they clocking in and out? Are they not clocking in and out? This is important because there've been a number of lawsuits where employees claim they were not given legally available meal periods. So, it's important that the company have a methodology for keeping records of those meal and breaks.

Within the handbook, employers may describe an expense reimbursement policy or a policy that sets out guidelines for reimbursement of business-related expenses. It should advise employees when prior approval of expenses is required. It should also address the employer's policy on reimbursement of personal cell phone or internet charges associated with business use of personal devices. For example, California and Illinois specifically require reimbursement of those expenses. So, some companies have chosen to provide employees with a monthly stipend to cover those costs. They're not providing the whole cost of personal cell phone or internet, but rather trying to come up with a number that is a reasonable approximation of the business portion of those costs.

**Jessica Kriegsfeld:** What types of policies might an employer include in a handbook regarding conduct during work?

**Lauren Hollender:** Well, if it's important, they might consider adding a dress code. I know many businesses have moved to something informal, but informal isn't

treated equally in all work environments. So, you might want to more carefully define what is and isn't acceptable clothing within the workplace and specify whether outside when meeting with clients or customers, a different dress code is required. Companies should consider including a social media policy. This is important because social media can have really a significant impact on the company's reputation. That social media policy should, one, set guidelines for appropriate online behavior. You'll want to clarify what employees can and cannot say about the company online and when they can reference their employer online. You want to carefully instruct employees to make it clear in all their postings that they're not speaking on behalf of the company, but rather only expressing personal views. You should be instructing employees when they may be required to disclose their affiliation with the employer, especially if they're advocating something or taking a position on the internet.

Another policy to consider is a remote work policy. And post-pandemic, this has become increasingly common with many employers moving to a hybrid or fully remote schedule. So, you want to identify the procedure for requesting remote work if it isn't the ordinary course of business or state whether hybrid or remote work schedule is the norm, and if so, what are the expected online working hours. You want to require employees to keep the company informed of their remote work location and require pre-approval of any non-temporary change of remote work location for purposes of determining tax obligations. For example, if you think your employee is sitting at their home desk in New Jersey when they really have moved somewhere else, there might be different legal tax obligations and benefits available to the employees. So, you want to know when employees move and require them to tell you. You want to indicate in your remote work policy which expenses are subject to reimbursement by the company, and which are not. Again, I mentioned cell and internet. You want to indicate whether you'll be providing a stipend for those costs, whether there're any home office cost reimbursements, whether you're providing any company equipment, et cetera.

And in the remote work policy, you really want to set up expectations and you want to let the employee know that they must maintain the same level of work quality and productivity as if they were in a company office, that working from home is not a substitute for childcare. They should have those arrangements so that they can work continuously during the day. Remote employees are required to maintain regular contact with their coworkers and remote workers should specifically set an out-of-office reply on their emails when they're taking time off to ensure the worker is not abusing the company's paid time off policies. You want to know when they're working and when they're not working.

And finally, if I just had to add one more, I would say consider a drug testing policy. Some states and local law may impose nuances with respect to drug testing. For example, some states don't allow cannabis testing. Other states require protection of off-duty cannabis use. So, if you do want a drug test or if it's important to you, you should have a policy specifically setting forth what the terms of that policy are within the handbook.

**Jessica Kriegsfeld:** What type of information might an employer have in an employee handbook regarding benefits offerings?

**Lauren Hollender:** Well, employers may offer a number of health and welfare benefits, typically health insurance, maybe some dental insurance, as well as participation in a retirement plan like a 401(k). Benefits tend to be complicated, so my recommendation is typically to outline generally what the benefits are and who to contact for more information. Usually, employers have summary plan descriptions. You want to refer to those. You don't want to outline things too specifically, one, because details may change, terms may change, or the employer simply might want to change the policy or who they're insuring with. So, the policy should also, second, provide that in the event of any discrepancy between what's stated in the handbook and the actual terms of the benefit plan or program documents, the benefit plan documents will control.

**Jessica Kriegsfeld:** We previewed that some policies within the handbook address rights or benefits employers are required to provide employees. Can you discuss some of those policies?

**Lauren Hollender:** Well, the big one that comes to mind is sick leave. So, many states now require employers to provide a certain number of paid sick days to their employees. However, there are many ways to structure a sick leave policy. The policy may require employees to accrue sick leave over the course of the year based upon hours worked. For example, typically, the schedule is the employee will earn one hour of paid sick leave for every 30 hours worked, or some employers find it more practical to grant all available sick leave to employees upon hire and on January first of each year so they don't have to track this information. Some policies for sick leave will allow carry over unused sick leave at year-end. Some do not. And then state laws that require sick leave do vary greatly between the number of days required, the accrual rate, the ability to carry over sick leave. All these things might differ based upon state law, and this creates quite a challenge for employers with multi-state employee workforces who really only want to administer one policy, not many policies across state lines. So, employers may want to consider crafting a policy that provides uniform benefits to employees across all states, even if this means



providing some employees with greater sick leave benefits than would be required by the state law of the state in which they work.

Another policy that comes to mind in terms of required is vacation. I guess I should state the caveat, not necessarily required that most states don't require vacation, with the exception of Illinois. However, vacation policies are customary, and like sick leave policies, they may be written in any number of ways. Again, while the states don't necessarily require sick leave, many states have rules regarding what happens once employees earn sick leave. For example, California and Colorado prohibit "use it or lose it" policies, meaning once employees earn vacation it may not be forfeited at year-end or upon termination of employment if not used. Rather, in those states, the employee must always be paid out for unused vacation, either at year-end or upon termination. Again, the nuances of vacation policies can pose a challenge for multi-state employers who wish to adopt a uniform vacation policy. I attempt to work closely with employers on this issue in terms of how to craft the policy or whether the employer should consider what's called a flexible paid time off policy that doesn't set a specific number of days off.

What definitely is required in many states and under federal law if the employer has 50 or more employees is a family and medical leave of absence policy. Again, the right to leave is something that's critically important to employees, and many employees look to the handbook to find more information on this subject. So, a family and medical leave of absence policy may be required under the Federal Family Medical Leave Act. Again, I mentioned if the employer has at least 50 employees who work within a 75-mile radius of one another. It may also be required by applicable state law. So don't think your home-free if your company doesn't need to comply with the federal law because many states have their own laws. Any policies you write on this subject should clearly explain when the employee is eligible for leave. There could be personal medical leave. There could be parental leave, leave to care for an immediate family member. A number of different types of leaves. The policy should communicate the length of available leave and the right to continuing healthcare coverage during leave and the right to reinstatement.

But many of these policies or laws require is job protection, meaning that if an employee takes leave under a federal state law providing them with leave, they have a right to be returned to their original or comparable job upon the expiration of their leave of absence. Typically, these laws don't require that the employer pay the employee during leave, rather they guaranteed an unpaid leave of absence. However, this doesn't necessarily mean the employee is not entitled to any compensation

during leave. Employees may be entitled to compensation from short-term disability benefits, workers' compensation benefits, paid family leave benefits, which are provided under state law, and a handbook should clarify what benefits may be available to employees during leave.

Some companies do provide some compensation during leave. We typically refer to these as paid salary continuation benefits, meaning that the employer will continue to pay the employee salary for a fixed number of weeks to be determined by the company during either a medical leave or a family leave, and these benefits are intended to supplement those insurance benefits I just discussed. So, if insurance benefits are available, the company is really paying the delta between what the employee's regular wages are less any benefits they're entitled to through state law insurance plans. Though we discussed these benefits during another podcast episode that Jessica and I did called "Navigating the Nuances of Parental Leave," so we're not going to get into the specifics of that here.

And then just finishing wrapping up in terms of required policies, again, there are a lot of other different required leaves, so the employer should consider including military leave, jury duty, voting leave, organ donation leave, domestic violence leave, et cetera, in their handbook based upon the requirements of state law.

**Jessica Kriegsfeld:** When an employer sends an employee handbook to an employee, how can the employer ensure that the employees received and understood it?

**Lauren Hollender:** It's really best practice to include an acknowledgement at the end of the handbook for an employee to sign that they've received it, reviewed it, and understood the handbook, and we typically include additional statements in there as well that the employee acknowledges their employment is at will and may be terminated with or without cause by the employer. If there's an obligation to inform employees that we're monitoring systems, we tend to include that in the acknowledgement form as well. Now, usually a one-page document that the employee is required to read after receiving the handbook, and this is particularly useful in the event of litigation so that we can show that the handbook was successfully communicated and received by the employee and that they were provided an opportunity to read it and ask questions. So, this acknowledgement form can either be a physically signed document that you return on paper to HR or many employers arrange for this to be signed electronically.

**Jessica Kriegsfeld:** Once a company has an employee handbook, what should the company think about going forward?

**Lauren Hollender:** Well, this is a living document and a document that definitely needs to be updated from time to time. The laws are constantly changing in this field,

and I think that employers should reflect upon whether their policies are working, so they might want to review their policies and determine if tweaks are needed. So, my recommendation is that employers should review this at least annually to determine whether changes or updates are needed.

**Jessica Kriegsfeld:** All employers should maintain an employee handbook that specifies an employer's policies, procedures, and benefits. Unfortunately, there's no one-size-fits-all option for an employee handbook. Employer size, workforce location, policy preferences, and culture are all likely to affect the terms of handbook policies. Employers should consult with legal counsel to ensure that their employee handbook is up-to-date and compliant with state and local law. Thanks for joining us today. We look forward to having you back for our next episode of *Just Compensation*.

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