

00:00

The broadcast is now starting and all attendees are in listen only mode.

00:10

Welcome to today's webinar everyone. I'm Ana Hobson from hrsimple.com and I will be moderating today.

00:17

Today's presenter is Emily from Fredrikson and Byron. The presentation today will be about an hour long and if you have any questions please submit them into the question box and she will get to them at the end of the webinar.

00:29

If you'd like to view any other webinars from ourself or our partners you can go to [hrsimple.com/events](https://hrsimple.com/events) and we have those listed for you.

00:41

Hrsimple provides federal and State specific manuals we make law employment easy.

00:47

Our books are written by top labor attorneys and cover topics such as vacation policies, employee documentation and how to fill out the I-9 Form.

00:53

You can go ahead and view these resources at [hrsimple.com/shop](https://hrsimple.com/shop).

01:04

So today's presenter is Emily from Fredrikson and Byron. She's an experienced advisor and litigator for employers. She defends employers against allegations of sex discrimination, age discrimination, race discrimination, FMLA and ADA violations, wrongful termination and violation of public policy, and torturous interference.

01:24

to help employers maintain a productive

01:26

workplace and avoid litigation emily

01:28

partners with clients to provide

01:30

supervisor and manager training

01:32

investigate internal discrimination

01:34

complaints provide reasonable

01:35

accommodations to disabled employees and

01:37

navigate issues surrounding family and

01:39

medical leave

01:41

so on that note i'm going to pass things

01:43

over to emily so we can go ahead and get

01:45

the webinar started

01:56

all right

01:58

thank you very much and anna can you see

02:00

my slide

02:03

looks like it's still loading  
02:05  
don't see it quite yet  
02:07  
okay there is a thing that says you've  
02:09  
been made the presenter  
02:11  
and when ready show screen so i will  
02:13  
click on that i just saw that  
02:17  
okay perfect it looks great  
02:19  
okay wonderful  
02:21  
hi everyone thank you anna for that  
02:23  
introduction and thanks to all of you  
02:25  
for tuning in today  
02:27  
for this presentation about employee  
02:29  
handbooks  
02:30  
i have been litigating employment cases  
02:33  
and advising employers for about 15  
02:36  
years now  
02:37  
and i have worked with employers who  
02:39  
have really gigantic handbooks  
02:42  
that cover every imaginable topic as  
02:46  
well as employers who provide employees  
02:48  
with essentially a one-page handout with  
02:50  
with basic work rules  
02:52  
there are certainly numerous resources  
02:55  
and  
02:55  
tons of vendors out there available to  
02:58  
help you organize and build and revise  
03:01

your employee handbook so i will not be  
03:04  
providing an exhaustive list of every  
03:07  
policy that you should include and and  
03:09  
really there's no one-size-fits-all it  
03:11  
really depends on your on your  
03:12  
particular situation so  
03:15  
instead i'm going to talk first about  
03:17  
five policies that address the most  
03:20  
critical legal risks in the employment  
03:23  
relationship as well as some additional  
03:25  
areas i think a handbook should address  
03:28  
second  
03:29  
we'll talk about some new considerations  
03:31  
that may compel you to add or revise  
03:34  
your current handbook policies  
03:37  
and then third just some general  
03:39  
guidelines you know things to keep in  
03:41  
mind when you are creating or revising a  
03:44  
handbook  
03:47  
so in addition to litigating employment  
03:49  
cases on behalf of employers and  
03:51  
advising employers regarding compliance  
03:53  
with the law i also assist my firm's  
03:56  
mergers and acquisitions group by  
03:58  
conducting due diligence reviews of  
04:00  
employment issues when a client is  
04:02

buying another company  
04:04  
so these next few policies are the  
04:06  
policies that are really front and  
04:08  
center when i review a target company's  
04:11  
policies and practice  
04:13  
practices excuse me because they  
04:15  
indicate whether or not the target  
04:17  
company has taken steps  
04:19  
to reduce the risk of liability in the  
04:21  
employment categories that can result in  
04:23  
the most liability or the most  
04:26  
reputational risk so let's go over some  
04:29  
of these big five policies that are the  
04:31  
the biggest areas of legal risk  
04:37  
first on this list is always to find out  
04:39  
if the employer has an at will  
04:41  
employment statement and a contract  
04:43  
disclaimer in its handbook this is a  
04:46  
statement that the employment  
04:47  
relationship is at will  
04:50  
and it often comes right at the  
04:52  
beginning of an employee handbook  
04:54  
sometimes it appears several times most  
04:57  
commonly statements regarding at will  
04:59  
employment say something like this  
05:01  
this handbook is not a contract  
05:03

employment is not guaranteed for any  
05:05  
specific duration  
05:08  
the employee or the employer may  
05:10  
terminate the employment relationship at  
05:12  
any time for any reason with or without  
05:14  
notice  
05:15  
similarly the employer may change your  
05:17  
job title duties responsibilities  
05:20  
compensation benefits and other terms or  
05:23  
conditions of employment at any time  
05:26  
the at-will employment statement is  
05:27  
usually repeated a few times in a  
05:29  
handbook and in other employment forms  
05:31  
and documents just to make sure that no  
05:34  
other policy accidentally contradicts  
05:36  
the at-will employment policy  
05:39  
for example a restatement of at-will  
05:41  
employment  
05:42  
may and should appear in the company's  
05:44  
offer letters  
05:46  
it may also appear on the form that you  
05:48  
use for performance improvement plans  
05:51  
because you know some employers issue  
05:54  
pips performance improvement plans that  
05:55  
provide a period of time such as 30 days  
05:58  
or 90 days for the employee to show  
06:01

improvement  
06:02  
a statement about at will employment is  
06:04  
important here so that it is clear  
06:06  
that the employer is not promising  
06:08  
employment for that 30 or 90 day period  
06:12  
my advice to clients is to issue  
06:14  
performance improvement plans that  
06:16  
require one immediate and to sustained  
06:20  
improvement and to not include any  
06:23  
specific period of time like 30 days or  
06:25  
90 days  
06:27  
because we don't want an employee to  
06:28  
improve and be a model employee for 90  
06:30  
days and then revert back to the same  
06:33  
old performance issues and then we think  
06:35  
we have to start all over with a new  
06:37  
performance improvement plan instead of  
06:39  
just saying okay well they improved but  
06:41  
they didn't sustain the improvement so  
06:43  
now it's time for discipline or to  
06:45  
terminate  
06:47  
so usually if there is a at will  
06:49  
employment statement on the pip form it  
06:51  
will say something like this performance  
06:53  
improvement plan does not alter the at  
06:56  
will employment relationship and you  
06:58

know by the same token if you were to  
07:01  
include that even if you don't have that  
07:02  
duration even if you have the  
07:04  
recommended language it's clear that  
07:06  
just because you improve if just because  
07:08  
you improve immediately and just because  
07:10  
you sustain that improvement also  
07:12  
doesn't mean that you're guaranteed  
07:13  
employment for any period of time  
07:16  
at will employment statements also  
07:18  
appear in communications about wage and  
07:20  
salary increases the best practice in an  
07:24  
offer letter or in a you know any or a  
07:27  
pay raise memo  
07:28  
is to  
07:29  
list pay per week or per month or per  
07:32  
pay period and not as an annual amount  
07:35  
to avoid inadvertently promising  
07:37  
employment for one year  
07:40  
so why is this at will employment  
07:42  
statement in the handbook such a big  
07:43  
deal well when things are going well  
07:46  
people sometimes say things and make  
07:48  
promises they should not make  
07:50  
so if a manager or supervisor promises  
07:54  
an employee a promotion  
07:56

or that the company will not fire the  
07:58  
employee for certain conduct the the  
08:01  
forceful at will statement in the offer  
08:03  
letter and in the handbook is a quick  
08:05  
rebuttal if that employee is terminated  
08:07  
and claims breach of contract  
08:12  
so these are simple statements and i'm  
08:14  
sure you have all seen them make sure  
08:16  
these statements are included and that  
08:18  
they do not get eliminated in the  
08:20  
interest of shortening the handbook at  
08:22  
that next revision meeting when you're  
08:24  
talking about issuing a new new version  
08:27  
of the handbook  
08:32  
authorization to work in the united  
08:34  
states is also a big risk area no  
08:37  
employer wants to be in the position of  
08:39  
being nervous  
08:40  
when a government agency decides to  
08:42  
conduct an audit well let me take the  
08:44  
back you're going to be nervous  
08:46  
obviously but you want to know that you  
08:47  
have done everything you could to be in  
08:49  
compliance  
08:50  
lots of employee handbooks do not  
08:52  
include this information because it is  
08:54



seen as a pre-hire issue  
08:56  
but this process of verifying  
08:58  
eligibility for employment occurs within  
09:01  
the first three days of employment most  
09:03  
routinely and a new employee will be  
09:05  
terminated if that employee cannot  
09:07  
comply  
09:08  
so i think it belongs in the handbook  
09:11  
also handbooks most certainly are for  
09:14  
employees but they also serve to remind  
09:17  
management and human resources of their  
09:20  
responsibilities this is an area where i  
09:23  
recommend the handbook include specifics  
09:27  
about what documents must be presented  
09:30  
who will examine the documents how the  
09:32  
form i-9 will be filled out and how  
09:35  
records will be maintained  
09:38  
i-9 audits often reveal that employers  
09:41  
have been making routine errors when it  
09:43  
comes to verifying authorization to work  
09:46  
in the u.s  
09:47  
a thorough policy  
09:49  
that includes the the details and that  
09:52  
is in the employee handbook for everyone  
09:54  
to see  
09:56  
um is it is a really good way oh and  
09:58

also updated to comply regularly with  
10:00  
dol rules  
10:02  
is a good way to build in some  
10:03  
accountability to reduce the risk of a  
10:05  
process that might be unfair to  
10:07  
employees  
10:08  
and provide confidence when the  
10:10  
government comes knocking  
10:12  
and a statement that employment is  
10:14  
contingent on providing documentation of  
10:16  
eligibility to work in the us should  
10:19  
also be in your offer letters to new  
10:22  
hires  
10:26  
all right let's move to  
10:28  
the third of my of my big five  
10:31  
and that is pre-employment drug testing  
10:34  
drug-free policies and all  
10:37  
pre-employment screenings  
10:39  
many states are extremely stringent when  
10:42  
it comes to drug testing in the  
10:44  
workplace  
10:45  
many states also require that employers  
10:48  
distribute a compliant policy if they  
10:51  
plan to test  
10:53  
handbooks and offer letters should  
10:55  
clearly state that employment and that  
10:58

offers of employment  
11:00  
are contingent on the results of a drug  
11:02  
screen or whatever the the  
11:04  
pre-employment testing is including a  
11:06  
background check for example  
11:09  
beyond testing your handbook should  
11:12  
include policies regarding alcohol that  
11:15  
makes sense  
11:16  
so if your company has events where  
11:19  
alcohol is served make sure there is an  
11:22  
appropriate carve out for those events  
11:24  
but not such a huge carve out that you  
11:26  
cannot take disciplinary action  
11:29  
if drinking at an event leads to someone  
11:31  
being impaired in a work setting even  
11:35  
the holiday party of course is a work  
11:36  
setting  
11:37  
now more than ever the workplace is not  
11:40  
found by any specific place or any  
11:42  
specific time  
11:44  
so office holiday parties if any of  
11:46  
those are happening even  
11:49  
are not the only concern these days  
11:52  
so consider whether your policy handles  
11:55  
a situation  
11:56  
where an employee is impaired say while  
11:58

on a video conference with a direct  
12:01  
report  
12:02  
or while texting with the client  
12:06  
in states with highly technical drug  
12:08  
testing statutes such as my own  
12:11  
i advise clients to go ahead and have a  
12:14  
policy that allows drug testing if they  
12:16  
want to have the ability to do it and to  
12:19  
make sure of course that it complies  
12:20  
with the law  
12:22  
but to carefully consider  
12:24  
whether a situation requires drug  
12:26  
testing before they take the step of  
12:28  
doing a test  
12:30  
in many cases it's really not necessary  
12:33  
to do a drug test  
12:35  
or to screen for alcohol  
12:37  
because the conduct by itself regardless  
12:40  
of whether it was caused by being under  
12:43  
the influence warrants disciplinary  
12:46  
action  
12:48  
and as soon as you drug test then you  
12:50  
bring that entire force of the the drug  
12:52  
testing statute and everything the drug  
12:55  
testing policy under the scrutiny  
12:57  
potentially of the courts  
13:01

and i just wanted to add another note  
13:03  
about uh about drug testing and about  
13:05  
alcohol and drugs if you do have  
13:08  
employment contracts with executives  
13:10  
so executives that are not at well  
13:12  
employees make sure that impairment due  
13:15  
to alcohol or drugs and any usage of  
13:18  
illegal drugs at work or on personal  
13:20  
time are reasons to terminate for cause  
13:26  
now  
13:27  
excuse me i'm going to do a little bit  
13:28  
of a psa here finally i think this is a  
13:31  
really great  
13:33  
time for employers to take a look at  
13:34  
what you have in place to help employees  
13:37  
who may be having issues with substance  
13:39  
abuse or addiction  
13:42  
i think we've all seen that employees  
13:44  
mental health has taken a hit in the  
13:46  
last year and a half  
13:47  
and it's um i think it's kind of common  
13:49  
knowledge certainly no secret that  
13:51  
people sometimes choose to self-medicate  
13:53  
with alcohol and other substances um  
13:56  
when they are  
13:58  
suffering from depression or anxiety or  
14:01

other issues related to mental health  
14:04  
layering on top of that we also have a  
14:06  
bit of a labor shortage in many places  
14:10  
so  
14:10  
this is a great time to try to be a hero  
14:12  
for your employees to try to  
14:15  
retain and support them so if you're  
14:18  
looking to be that hero this might be a  
14:20  
good time to fortify  
14:21  
your your benefits to provide more  
14:24  
access to counseling and other resources  
14:27  
for addiction both for the employees and  
14:30  
for their um and for their families and  
14:33  
dependents  
14:35  
um  
14:36  
it's not the right choice for for every  
14:38  
employer  
14:39  
but i certainly am working with a lot of  
14:41  
employers who are having trouble  
14:44  
hiring and retaining employees and this  
14:47  
is one area where you might find a need  
14:49  
that that you can fulfill  
14:54  
okay so that brings us to  
14:57  
number four that's wage and hour  
14:59  
policies  
15:01  
wage and hour mistakes can be an  
15:03

employer's largest uninsured risk and  
15:07  
prevention in my view really starts with  
15:09  
your employee handbook  
15:11  
i advise employers to include quite a  
15:14  
bit of law in their wage and hour  
15:16  
policies in their handbook and this is  
15:18  
not necessarily a policy that's going to  
15:20  
be  
15:22  
labeled wage an hour this is probably a  
15:24  
collection of policies  
15:28  
over time  
15:30  
exempt and non-exempt employees kind of  
15:32  
the definitions of who they are  
15:35  
i really like a policy that defines what  
15:38  
is meant by exempt and non-exempt  
15:41  
potentially depending on your employee  
15:43  
population even getting into  
15:46  
what  
15:47  
what makes a position  
15:49  
possibly  
15:50  
exempt from the flsa  
15:53  
and i like a policy that explains when  
15:55  
overtime must be paid  
15:57  
i think this is a case where  
16:00  
you know prevention is the best cure  
16:03  
and  
16:04

if employees are aware of when they are  
16:06  
deserving of being paid overtime  
16:09  
that is  
16:10  
the best thing you can do to shield  
16:12  
yourself  
16:13  
from a lot of liability later i think  
16:16  
knowledge is the the right way to go  
16:18  
here  
16:19  
um  
16:20  
it is certainly fine to require  
16:23  
non-exempt employees to have permission  
16:25  
to work overtime it's fine to have that  
16:28  
in your policy but if they fail to get  
16:30  
that permission they must be paid the  
16:32  
overtime rate for the time worked and i  
16:35  
think that should be explicit in the  
16:37  
policy  
16:38  
you will be paid for every hour of work  
16:41  
our rule  
16:43  
is that you must have permission to work  
16:45  
overtime if you do not get that  
16:47  
permission you may be disciplined but  
16:49  
you will be paid for every hour worked  
16:52  
and you will be paid the overtime rate  
16:54  
for any hours worked over 40. just with  
16:57  
the caveat that um there's at least one  
16:59



state that i'm aware of there may be  
17:01  
more where  
17:02  
sometimes overtime is owed if someone  
17:05  
works more than a certain number of  
17:06  
hours in a day so obviously always look  
17:08  
at your particular state laws  
17:12  
your handbook should be very explicit  
17:14  
about how time must be tracked  
17:18  
who has authorization to make changes to  
17:21  
time records  
17:22  
and disciplinary consequences when the  
17:24  
rules are not followed  
17:27  
because the the flsa and other wage and  
17:30  
hour laws are so technical  
17:33  
about penalizing employers when they  
17:36  
don't follow the law i think your  
17:38  
handbook needs to be just as specific  
17:41  
and technical  
17:42  
about disciplining employees when they  
17:45  
don't follow your policy  
17:47  
because that policy and employee  
17:51  
behavior that it incense is your  
17:53  
backstop against wage and hour liability  
17:58  
employees who supervise others need to  
18:00  
be trained on the importance of  
18:01  
compliance the importance of paying  
18:04

employees for all time worked and the  
18:05  
risks of non-compliance  
18:08  
there are a few exceptions to fair labor  
18:11  
standards act  
18:13  
and state law minimum wage and overtime  
18:15  
rules but there is no exception just  
18:17  
because an organization an industry  
18:20  
or a particular supervisor has  
18:22  
historically allowed off-the-clock work  
18:27  
so i have an example here and this may  
18:29  
not speak to your particular  
18:31  
organization  
18:32  
but i think it's a decent illustration  
18:34  
of how important it is to comply with  
18:37  
wage and hour law  
18:39  
why the liability can add up and why  
18:41  
it's so important  
18:42  
that your handbook policy kind of meet  
18:45  
this challenge  
18:46  
so if let's say you have a part-time  
18:48  
employee maybe this is a college student  
18:50  
who is very ambitious is trying to get a  
18:53  
foot in the door and let's say he is  
18:56  
paid ten dollars an hour and he's  
18:59  
supposed to work 20 hours a week  
19:01  
so  
19:02

with that he would make 200 a week or 10

19:05

400

19:06

a year i didn't recheck my math so

19:08

please please don't test me on this

19:10

please don't check um but let's say the

19:12

employer

19:13

is not tracking the time they're just

19:16

going to trust this person this college

19:18

student to track time don't work any

19:20

more than 20 hours a week and we're just

19:22

going to pay you 200 okay

19:25

and the employee goes ahead and works

19:27

off the clock because the employee wants

19:29

to get ahead wants to impress the boss

19:32

wants to get a job after graduation so

19:35

there could even be a supervisor

19:36

encouraging such behavior you know oh we

19:39

got this big project you know i'm gonna

19:40

be really impressed if you can get this

19:42

done and no one's even really thinking

19:44

about the the rate of pay or the the

19:46

hours limitation

19:48

because you know this this college

19:49

student has really become part of the

19:50

team and that everything is fine until

19:54

you fail to hire this person full time

19:56

when he graduates and he gets mad  
19:58  
and he hires an attorney to sue for all  
20:01  
those unpaid wages for the past three  
20:03  
years so  
20:04  
for the purposes of this example if that  
20:06  
employee was actually working 40 hours a  
20:09  
week  
20:10  
that would be ten thousand four hundred  
20:12  
dollars in straight damages per year  
20:14  
okay  
20:15  
just just paying in what he actually  
20:17  
worked  
20:18  
but we have a three year look back  
20:20  
period if it was willful  
20:22  
and that might be so that would be 31  
20:25  
200  
20:26  
and it's doubled because that's what the  
20:28  
statute says so it's actually 62 400  
20:33  
and under the flsa the employer is also  
20:36  
responsible for the employees attorney  
20:38  
fees so you might end up doubling that  
20:41  
and the employer's attorney fees have to  
20:43  
be paid to so maybe we have to triple  
20:45  
that 62 400  
20:47  
and now we are at nearly two hundred  
20:49  
thousand dollars  
20:51

and  
20:52  
remember we're just talking about one  
20:53  
employee so what if you had five  
20:55  
what if you're in a college town you  
20:57  
hire  
20:58  
five people in the same academic program  
21:01  
so now you're looking at close to a  
21:02  
million dollars in liability  
21:05  
and  
21:06  
supervisors can be held personally  
21:08  
liable  
21:09  
for violations of the flsa if the  
21:12  
supervisor is instrumental in causing  
21:14  
the violation and this is why this can  
21:17  
be an employer's single largest  
21:19  
uninsured risk most epli employment  
21:23  
practices liability insurance policies  
21:25  
are um are not don't cover this  
21:29  
so make sure your handbook clearly  
21:31  
explains time tracking for non-exempt  
21:34  
employees and the importance of paying  
21:36  
for every hour worked and overtime rates  
21:40  
when required  
21:41  
this is not an area where you want to  
21:43  
try to get a bargain and have people  
21:45  
working off the clock  
21:47

i i really  
21:48  
i apologize it took a lot of time really  
21:51  
drove that one home because it's very  
21:52  
important and something i want to make  
21:54  
sure  
21:55  
is in your handbook and is in your  
21:57  
handbook with some detail  
22:00  
okay  
22:01  
so finally we are at  
22:03  
number five  
22:05  
now we're talking about discrimination  
22:08  
and harassment and  
22:10  
non-retaliation and disability  
22:13  
accommodation  
22:14  
your handbook must address each and  
22:16  
every bullet on this slide  
22:19  
my preference is that each of these six  
22:21  
things be in bold type or underlined  
22:24  
they each deserve at least their own  
22:27  
paragraph  
22:28  
or more so there is no mistake that you  
22:30  
have addressed all of these things  
22:33  
if your organization is in multiple  
22:35  
states or you're thinking of being in  
22:37  
multiple states you always need to check  
22:40  
state law and stay up to date on state  
22:42

law to make sure you address the  
22:44  
protected classes and other requirements  
22:47  
in each state including any required  
22:50  
training i'm sure some of you are in  
22:52  
states that have specific requirements  
22:54  
about the type of training you provide  
22:56  
about harassment discrimination and  
22:58  
retaliation  
23:00  
you will notice that i have sexual  
23:02  
harassment as a separate bullet this is  
23:05  
important because it's treated  
23:06  
differently sex harassment is the only  
23:09  
form of protected class discrimination  
23:11  
that has the separate category of quid  
23:13  
pro quo or this for that harassment  
23:16  
where someone with authority conditions  
23:18  
and any employment benefit  
23:21  
on the employee permitting or  
23:22  
participating in behavior based on sex  
23:25  
so your policy should specifically  
23:27  
address this and the the best way to do  
23:29  
it to make sure that you have done your  
23:32  
duty in this area is to address sexual  
23:34  
harassment separately  
23:37  
i also want to call out the last thing  
23:39  
on this list  
23:41

retaliation probably deserves its own  
23:43  
slide if not its own hour-long  
23:46  
presentation  
23:47  
more and more plaintiff side attorneys  
23:50  
are suing only for retaliation  
23:54  
so they leave out the sex discrimination  
23:56  
claim or the the age discrimination  
23:59  
claim and just have the retaliation  
24:02  
claim  
24:03  
so they don't have to prove the employer  
24:05  
discriminated on the basis of sex or age  
24:09  
in a in a particular decision  
24:11  
they just have to prove the employer  
24:13  
took an adverse action  
24:15  
and retalia in retaliation for the  
24:18  
complaint of discrimination so when the  
24:20  
employee says hey  
24:22  
i need you to look at this i think i was  
24:23  
discriminated against on the basis of my  
24:25  
age  
24:27  
and then the employer does something or  
24:29  
you know terminates employment whatever  
24:31  
within some period of time  
24:33  
the the employee doesn't have to prove  
24:35  
that they were actually discriminated  
24:36  
against on the basis of age they just  
24:38



have to prove there was retaliation for  
24:40  
the complaint  
24:41  
of age discrimination  
24:43  
and the damages potential is the same  
24:46  
even without any proof of discrimination  
24:49  
based on protected class  
24:51  
so yeah let that sink in a little bit  
24:53  
they don't have to prove  
24:55  
that you did anything adverse based on a  
24:58  
protected class they just have to prove  
25:01  
that  
25:02  
human nature  
25:04  
may be  
25:05  
prevailed and that you didn't like the  
25:07  
person anymore after  
25:09  
they complained that they were  
25:11  
discriminated against based on a  
25:12  
protected class  
25:14  
so i think this is a really important  
25:17  
um  
25:18  
thing to make sure you address very  
25:19  
carefully in your employee handbook  
25:24  
okay  
25:25  
so this is this is all part and parcel  
25:27  
of a big policy number five  
25:30  
your anti-discrimination anti-harassment  
25:33

and no retaliation policies are only as  
25:35  
good as your complaint reporting  
25:36  
procedures  
25:38  
so your handbook must outline how to  
25:39  
safely report policy violations  
25:42  
instructions to report to your  
25:44  
supervisor are not enough of course  
25:46  
because employees need to have a direct  
25:48  
line to leadership and to human  
25:50  
resources if needed  
25:52  
to safely report something of course  
25:54  
we're thinking about the  
25:56  
scenario where the supervisor is the one  
25:58  
who's discriminating or harassing  
26:00  
um i also advise employers to have  
26:03  
um you know an employee hotline um to a  
26:06  
third party vendor so you know this this  
26:09  
is going to depend a little bit on the  
26:10  
size of employer you are  
26:12  
so an employee can alert an employer  
26:15  
to a situation without identifying him  
26:17  
or herself and no one likes anonymous  
26:19  
complaints um  
26:21  
and it's it's always easy to say that oh  
26:24  
we can't do anything about it if it's  
26:25  
anonymous we can't investigate because  
26:28

we don't have facts we don't know who to  
26:29  
talk to  
26:31  
but i think it's better to know about  
26:33  
the issue and see if you can draw out  
26:35  
the complainant  
26:37  
i think that's better than not knowing  
26:38  
it all because  
26:41  
bad things tend to not go away  
26:43  
they they tend to get bigger if  
26:45  
someone's harassing one person they're  
26:47  
probably harassing others  
26:49  
and i think it's it's good for an  
26:51  
employer to know about the issues um so  
26:54  
they can do something  
26:55  
so your handbook policy should include  
26:58  
information about who is trained to  
27:00  
receive reports  
27:02  
and you know when i when i think about  
27:05  
training for supervisors this is top of  
27:07  
the list  
27:08  
um because i really think that that  
27:10  
first five seconds after an employee  
27:12  
kind of gets up the courage to say  
27:14  
something  
27:16  
is um really critical i think those  
27:18  
first five seconds are when the employee  
27:20

decides okay this this the company's  
27:23  
going to be with me or against me  
27:25  
um and if they don't get the reaction  
27:27  
they're looking for when they make that  
27:29  
report  
27:30  
um they're likely to think they need to  
27:32  
get an outside attorney or some other  
27:35  
help because they need someone on their  
27:36  
side  
27:38  
so  
27:38  
in that first five seconds i want to  
27:41  
make sure that that supervisors and  
27:42  
managers and my clients  
27:45  
say something along the lines of thank  
27:47  
you for telling me this this was the  
27:49  
right thing to do we don't tolerate  
27:51  
harassment or discrimination you're not  
27:53  
necessarily saying that the complaint of  
27:54  
behavior  
27:55  
does rise to the level of illegal  
27:57  
harassment or discrimination but you're  
27:59  
saying the company doesn't tolerate  
28:00  
harassment or discrimination  
28:02  
um and then the next steps really really  
28:04  
depend on your organization um let's  
28:06  
let's go meet with human resources  
28:09

um  
28:10  
you know if the if the employee waited  
28:12  
until a time when everyone was super  
28:14  
busy to to decide to drop this bombshell  
28:17  
you might want to say  
28:18  
i can't talk to you right now but let's  
28:20  
find a time when we can talk  
28:22  
and if there are any safety issues that  
28:25  
need to be addressed do that immediately  
28:27  
it's worth dropping everything else  
28:30  
and you know the first questions of  
28:32  
course are going to be about  
28:32  
confidentiality  
28:34  
and you'll want to be able to answer  
28:36  
those  
28:37  
correctly  
28:38  
by saying that  
28:40  
we'll keep the information confidential  
28:42  
to the extent  
28:43  
that allows a full unfair investigation  
28:46  
and you want to make sure to mention  
28:47  
retaliation  
28:49  
so  
28:50  
thank you  
28:52  
we don't tolerate that  
28:54  
make plans for for the next step and  
28:57

address any safety issues

28:59

confidentiality and retaliation

29:06

okay so

29:08

investigations

29:09

oh my light turns off automatically when

29:12

i don't move i'll try to be more

29:13

animated sorry about that

29:15

um

29:16

i do not think a handbook policy needs

29:19

to go into a lot of detail

29:22

about the investigation procedure that

29:25

your company

29:26

is going to

29:28

undergo so

29:30

you know despite what is on the slide

29:31

here about the components of an

29:33

investigation i think your handbook

29:36

policy should just state pretty simply

29:39

that all reports of harassment

29:41

discrimination and retaliation will be

29:44

investigated

29:45

and appropriate action will be taken

29:48

because an investigation does not have

29:50

to be complicated

29:52

you know sometimes an investigation is

29:55

talking to the complainants

29:56

and talking to  
29:58  
the the respondent or the person accused  
30:00  
of the action  
30:02  
sometimes that's all you need to need to  
30:04  
do  
30:05  
to do a full and fair investigation no  
30:08  
one needs to call law enforcement the  
30:10  
fbi doesn't need to be involved  
30:13  
it just it doesn't always have to be  
30:15  
that big of a deal  
30:17  
um  
30:18  
other situation of course call for you  
30:21  
know i.t to get involved and pull emails  
30:24  
you may be asking to image people's  
30:27  
cell phones if there's a  
30:29  
allegation of inappropriate messages you  
30:31  
may be looking at computer activity  
30:34  
you may be pulling in other people who  
30:35  
might have witnessed the behavior  
30:38  
um  
30:39  
you know you have a  
30:41  
a  
30:42  
point in the process where you may have  
30:43  
to make some credibility determinations  
30:46  
is this founded or unfounded  
30:48  
documenting it all the way and an  
30:50

appropriate response but if you put all  
30:52  
of that into your handbook  
30:55  
and then someone comes and makes a  
30:57  
pretty simple complaint and you're able  
30:58  
to investigate it with uh you know two  
31:01  
conversations in one day um you know  
31:04  
what's going to show up in that petition  
31:06  
is i complained and they didn't do an  
31:08  
investigation they didn't do anything  
31:11  
that may happen anyway but i just think  
31:13  
it's important that your handbook policy  
31:15  
not make any particular promises about  
31:19  
how um  
31:21  
involved  
31:22  
something needs to be in order to be  
31:25  
called an investigation  
31:29  
another you know before i move to the  
31:31  
next uh topic another thing is that you  
31:34  
might want to mention in your policy  
31:35  
that um  
31:37  
uh that that the company or the  
31:39  
organization  
31:40  
may bring in a third party to do an  
31:43  
investigation um under certain  
31:45  
circumstances there's lots of cases  
31:48  
where this might happen it might just be  
31:49



because human resources or leadership  
31:51  
doesn't have time to do an investigation  
31:52  
and it needs to be done quickly  
31:54  
um  
31:56  
or it may be that there's concern about  
31:58  
a conflict of interest and i you know i  
32:00  
think it goes without saying that if  
32:01  
somebody makes a complaint of harassment  
32:03  
about  
32:04  
uh the ceo or the president  
32:07  
and hr  
32:09  
is in this the same chain of command and  
32:10  
is ultimately reporting to the ceo or  
32:12  
president then chances are that human  
32:15  
resources  
32:17  
may have some credibility issues if  
32:18  
they're the ones doing the investigation  
32:26  
okay so  
32:27  
obviously there are a lot of other  
32:30  
policies that most employers are going  
32:33  
to want to include  
32:35  
in a employee handbook so  
32:39  
these are outside those like big five  
32:41  
risk areas but still very important  
32:46  
so  
32:46  
first of all uh conduct  
32:50

most employers choose to have a list of  
32:53  
of things that  
32:55  
violate  
32:57  
workplace policies  
33:00  
you know you're never going to list be  
33:02  
able to list everything  
33:04  
every type of conduct that may lead to  
33:06  
an employee  
33:08  
being disciplined or terminated from  
33:09  
employment so there's definitely a  
33:11  
balancing act  
33:13  
um to be made here as far as whether you  
33:15  
want to get really specific about some  
33:17  
things whether you want to be very broad  
33:20  
about  
33:21  
you know any inappropriate conduct or  
33:24  
um you know those sorts of things you  
33:26  
know obviously you're going to always  
33:28  
include the the um  
33:30  
the favorite attorney phrase  
33:32  
conduct including but not limited to the  
33:35  
following and then you have your your  
33:37  
list of things that are are not allowed  
33:41  
um  
33:42  
you know i notice a lot of times that  
33:44  
employers make a distinction in their  
33:46

mind  
33:47  
between  
33:48  
there's between  
33:51  
misconduct  
33:52  
and poor performance  
33:54  
so if you are making that  
33:56  
distinction and you want that to be in  
33:59  
your employee handbook  
34:01  
be clear about that that you know you  
34:03  
can have a  
34:04  
list of bad behavior  
34:06  
um  
34:07  
that you know  
34:09  
may include things like um you know  
34:11  
you're not allowed to burn candles right  
34:13  
you're not allowed to  
34:14  
um  
34:15  
cook tuna fish in the office microwave  
34:17  
um you know things like that or you're  
34:20  
not allowed to um  
34:22  
you know obviously anything that might  
34:24  
be considered as violence in the  
34:25  
workplace or make threats  
34:27  
um but then on the other side you have  
34:28  
work performance issues you know failure  
34:30  
to follow  
34:32

um the the reasonable instructions of a  
34:34  
supervisor with regard to a project  
34:37  
so i just i just bring that out to you  
34:39  
you know it's one of those things that  
34:40  
you might want to decide in your  
34:41  
employee handbook do you treat  
34:44  
essentially bad behavior issues  
34:46  
differently than you treat work  
34:48  
performance issues  
34:50  
um  
34:51  
i think lots of times it is it is a good  
34:53  
idea to do that because if it's a bad  
34:56  
behavior issue  
34:57  
um you may not want to you know if it's  
34:59  
lying if it's  
35:01  
lying on a time card something like that  
35:04  
um you know these are things that people  
35:06  
probably knew were wrong when they did  
35:08  
them or they should have  
35:10  
um so these are things that maybe don't  
35:12  
require you know a warning and then you  
35:14  
know if you if you have a progressive  
35:16  
discipline policy  
35:18  
um you may not want to implement it in a  
35:20  
case like this where someone does  
35:22  
something that's dishonest or is just  
35:23

you know on the bad behavior side of  
35:25  
things whereas if it's a work  
35:26  
performance issue  
35:28  
um we may be talking about performance  
35:30  
proof improvement plans we may be  
35:32  
talking about coaching  
35:34  
um and then eventually if none of those  
35:37  
things work  
35:38  
um  
35:39  
removing someone from employment so  
35:41  
again just bringing up that issue as  
35:43  
something to consider  
35:45  
as you're talking about your your  
35:47  
conduct policies  
35:54  
there we go  
35:55  
so  
35:56  
um  
35:57  
most employee handbooks include  
35:59  
information about disciplining employees  
36:03  
and  
36:05  
in in reality um  
36:07  
people often do not like to take the  
36:09  
step of going through the official  
36:12  
um discipline policies because it's it's  
36:15  
time-consuming  
36:16  
it usually involves some confrontation  
36:19

that we don't like very much  
36:21  
um  
36:22  
so  
36:23  
we we often kind of leave these things  
36:25  
until  
36:26  
we get to the the review or the  
36:29  
evaluation at the end of the year and by  
36:31  
that time it's too late  
36:33  
so  
36:33  
your disciplinary policy should include  
36:38  
in it  
36:39  
the possibility of informal coaching  
36:42  
and you know in a perfect world we would  
36:45  
be able to trust our supervisors and  
36:47  
managers every time there was a  
36:50  
lack of performance or a conduct issue  
36:53  
we would be able to trust them to say  
36:54  
okay it's time for warning number one  
36:57  
it's time for the verbal warning that  
36:59  
needs to be documented  
37:00  
but in actuality what we usually have is  
37:03  
more of an informal  
37:04  
uh email saying  
37:06  
i told you to do it this way and you  
37:08  
didn't um  
37:11  
and  
37:11

then  
37:13  
because we want to we want to include  
37:14  
that informal coaching in our policy so  
37:18  
that when things go bad quickly  
37:20  
we can say oh wait there's some informal  
37:22  
coaching here so don't tell me right now  
37:25  
that you've never been talked to about  
37:26  
this so that you never received any  
37:28  
discipline because this is under the  
37:29  
heading of discipline and you received  
37:32  
this informal informal warning or  
37:34  
informal coaching so  
37:37  
um  
37:38  
that's what i would advise that your  
37:39  
disciplinary policy is pragmatic in that  
37:43  
way  
37:44  
um if you do have the  
37:46  
you know the kind of three strikes and  
37:48  
you're out or the progressive  
37:49  
disciplinary  
37:51  
policy make sure to also allow for the  
37:54  
reality of the situation which is that a  
37:55  
lot of these conversations are more  
37:57  
informal but we all leave them knowing  
38:00  
that the employee needs to do something  
38:02  
differently and that the supervisor  
38:06

meant to to convey that message  
38:09  
um  
38:11  
you know i i always i think i'll  
38:14  
probably reiterate this before the end  
38:15  
of the presentation too but i always  
38:17  
like to make sure that um when there is  
38:20  
a progressive disciplinary policy that  
38:22  
it's clear that the employer does not  
38:24  
have to follow that that there are there  
38:26  
are situations where you certainly don't  
38:29  
have to have  
38:30  
a warning a second warning and a final  
38:33  
written warning before termination  
38:34  
occurs  
38:36  
every situation where there's discipline  
38:38  
should include the um  
38:41  
the language that that further issues  
38:44  
may lead to discipline up to and  
38:47  
including termination of employment  
38:54  
another kind of big big category of  
38:56  
necessary  
38:58  
policies for an employee handbook is the  
39:00  
safety and security issues how are you  
39:02  
going to  
39:04  
handle  
39:06  
driving if you have employees that are  
39:08



driving on the job how are you going to  
39:10  
handle violence  
39:13  
threats to physical security and of  
39:14  
course data security  
39:16  
all of these are you know very in-depth  
39:19  
we don't have time to address them all  
39:20  
today um  
39:22  
and they also are really facts specific  
39:25  
excuse me based on your your situations  
39:28  
but definitely need to be included  
39:32  
and then just uh excuse the laundry list  
39:35  
here but um  
39:36  
other things you might want to include  
39:38  
in your employee handbook  
39:39  
respectful workplace policies sometimes  
39:42  
are useful workplace relationships  
39:44  
policies  
39:45  
um  
39:46  
regarding the probationary introductory  
39:49  
period i see that a lot in employee  
39:51  
handbooks i personally don't advise  
39:54  
including that because unless there's a  
39:56  
some anomaly of state law  
39:59  
employers aren't really allowed to treat  
40:01  
new employees any differently than  
40:03  
they're allowed to treat employees who  
40:04

have been with the company  
40:07  
longer than 30 days or longer than 90  
40:09  
days and i think there's just as much  
40:11  
danger that the employee has a false  
40:13  
sense of security after that period as  
40:16  
there is a benefit to the employer of  
40:18  
saying well this is just your  
40:19  
probationary period  
40:22  
working hours schedules um  
40:25  
confidential information how we protect  
40:27  
that at the employer and that there's no  
40:30  
expectation of privacy if the employee  
40:32  
is using um company resources to  
40:35  
communicate  
40:36  
those types of things  
40:41  
dress guidelines leaves from work  
40:43  
conflict of interest and ethics  
40:46  
the company's policy regarding  
40:47  
employment references usually that those  
40:49  
all need to be referred to hr and that  
40:52  
only dates of employment and last  
40:54  
position will be provided  
40:56  
what happens when there's separation of  
40:58  
employment  
40:59  
and of course the acknowledgement of the  
41:01  
handbook that we like to collect from  
41:03

everybody  
41:07  
so i want to go through some some new  
41:09  
considerations and these are things that  
41:12  
may prompt you to say uh we need to  
41:15  
revise our employee handbook we need to  
41:17  
revise these policies we need to  
41:19  
add some policies  
41:21  
um  
41:22  
[Music]  
41:23  
and uh because we are in a slightly  
41:25  
different world than we than we were in  
41:27  
a year and a half ago for one thing okay  
41:31  
so  
41:32  
i know um those of you who are  
41:36  
embroiled in human resources  
41:38  
remote work  
41:40  
is the subject of about every webinar  
41:42  
that that you can sign up for so i don't  
41:44  
want to go into it  
41:46  
with tons of detail  
41:49  
um other than to say i think it's  
41:51  
perfectly fine at this stage of the game  
41:53  
if you're not able to provide employees  
41:56  
with  
41:57  
a lot of certainty about what your  
41:59  
policy is going to be  
42:02

but when you do get to that point be  
42:04  
clear as to whether remote work is based  
42:06  
on position whether it's permanent or  
42:09  
temporary whether it's subject to change  
42:12  
whether there are conditions on a remote  
42:14  
work can someone work remotely if  
42:16  
they're on a performance improvement  
42:18  
plan  
42:18  
is this a right or a privilege how much  
42:21  
notice are you going to give an employee  
42:23  
if they have to return to the workplace  
42:27  
there's just so many things to to  
42:29  
consider and i i want to go back i want  
42:31  
to make sure i didn't um cause confusion  
42:33  
i think you need to have a  
42:36  
a um policy and a communication  
42:39  
right now but it may not be  
42:42  
the final word on what your company is  
42:45  
going to do if we ever get to a truly  
42:48  
post-pandemic  
42:49  
situation so i i think it's fine to to  
42:53  
have a policy now but just make sure to  
42:56  
say like this is subject to change you  
42:58  
know please don't don't move to montana  
43:00  
if you're not already in montana um  
43:03  
because we may need you to come back to  
43:05

the workplace at some point this is not  
43:07  
the time to make  
43:08  
permanent permanent changes like that  
43:10  
and assume that it's all going to be  
43:11  
okay  
43:13  
um  
43:15  
you know we don't want remote work most  
43:17  
companies don't want remote work to  
43:19  
automatically become  
43:20  
a reasonable accommodation but it's  
43:23  
going to undoubtedly affect these  
43:24  
analyses um so going back to the  
43:27  
disability accommodation policy that  
43:29  
you're going to have you know take a  
43:31  
look at that policy with an eye to  
43:34  
um  
43:35  
where you're where you're sitting on  
43:36  
remote work right now so you know  
43:39  
you might normally have not required a  
43:42  
uh  
43:43  
a note from a doctor about immediate  
43:45  
accommodation but now if employees are  
43:48  
kind of pushing the envelope and asking  
43:50  
for more work from home accommodations  
43:52  
that might be something that you want to  
43:53  
start  
43:55

including for example  
44:02  
okay  
44:03  
and um the vaccine policy so  
44:06  
you know the mandate that was somewhat  
44:08  
recently announced includes uh fines of  
44:12  
14 000 for each violation  
44:15  
but there is an additional enforcement  
44:17  
mechanism that would include higher  
44:19  
fines if an employer willfully or  
44:21  
repeatedly violates the mandate um and  
44:25  
these signs could go as high as seventy  
44:27  
thousand dollars for each serious  
44:29  
infraction and seven hundred thousand  
44:30  
dollars for each  
44:32  
willful or repeated infraction  
44:36  
so you know we don't have all the  
44:37  
details on this yet so  
44:40  
you know until we do and if you're a  
44:42  
private employer with fewer than 100  
44:45  
employees any policy regarding vaccines  
44:48  
should include the following elements  
44:50  
who is required to be vaccinated is it  
44:52  
everyone or is it only certain rules  
44:54  
maybe based on  
44:56  
certain roles based on interaction with  
44:58  
the public or travel those who can't  
45:00

work remotely  
45:02  
does it include temporary workers  
45:03  
contractors interns  
45:06  
um  
45:08  
obviously you have to include um the  
45:10  
availability of accommodations for  
45:12  
sincerely healed excuse me sincerely  
45:14  
held religious beliefs and for  
45:16  
disabilities  
45:18  
or and you may want to include another  
45:20  
you know on your form if someone's  
45:22  
asking for an exemption  
45:24  
other other reasons now  
45:26  
you might say well why would i include  
45:28  
that we're only going to provide  
45:29  
exemptions for sincerely hold religious  
45:31  
beliefs and for disabilities  
45:34  
that's a great point sure so why would  
45:35  
you include any other reason well  
45:37  
including any other reason  
45:40  
might  
45:42  
entice the person who's going to claim a  
45:45  
non-sincerely held  
45:47  
belief or  
45:48  
claim a disability that doesn't have  
45:51  
anything to do with the vaccine that  
45:53

other category might entice them to  
45:55  
write down the truth which may be i had  
45:58  
a client recently they're aware that the  
46:00  
employee doesn't have a sincerely held  
46:03  
religious belief for a disability but  
46:05  
just is is hesitant about getting the  
46:07  
vaccine for other reasons  
46:09  
so having that other other prompt on the  
46:12  
form um might might get you information  
46:14  
you need to more fully evaluate the  
46:16  
requests  
46:19  
and if you are going to require the  
46:21  
vaccine what proof of vaccine are you  
46:23  
going to require  
46:25  
just an attestation yes i'm fully  
46:27  
vaccinated  
46:28  
or are you going to require them to  
46:30  
submit  
46:31  
the vaccine card that they would have  
46:33  
gotten when they received the vaccine  
46:36  
and then you really got to sit down and  
46:38  
decide what are the consequences for  
46:40  
non-compliance when must employees meet  
46:42  
the requirements  
46:44  
you know is it just you have to have  
46:46  
first dose by this point or be fully  
46:47



vaccinated by this point  
46:49  
and  
46:50  
always a good idea include  
46:52  
non-retaliation in your policy  
46:55  
so i don't necessarily advocate having a  
46:58  
coven 19 vaccine policy in your handbook  
47:02  
i do think it's probably a good idea at  
47:05  
your next handbook revision to include a  
47:07  
policy we'll talk a little bit about  
47:09  
this when we have if we have time about  
47:11  
um  
47:13  
how the company might respond to  
47:16  
an emergency or certain situations which  
47:18  
could include  
47:19  
an outbreak of infectious disease  
47:22  
and that from time to time the company  
47:24  
may implement a policy requiring  
47:27  
a vaccine from time to time  
47:29  
and other health and safety um  
47:31  
requirements and protocols so  
47:34  
so yeah i don't think you necessarily  
47:36  
need to put the copin 19 vaccine in your  
47:38  
handbook i do think you want to think  
47:40  
about having a policy that um  
47:44  
that includes that among other things  
47:51  
and just what we're talking about here  
47:53

so also in a handbook response plans for  
47:55  
workplace violence extreme weather  
47:58  
infectious disease etc  
48:03  
and i wanted to to bring this up to a  
48:06  
lot of  
48:07  
clients are having issues with  
48:09  
a lot of employers are having issues  
48:11  
with um marijuana being legalized in  
48:13  
some jurisdictions and not others for  
48:15  
some purposes and not others  
48:17  
um so this may be something you want to  
48:20  
i should have mentioned this back in the  
48:21  
drug testing section i guess but decide  
48:23  
whether you want to alter your  
48:25  
requirements and screening there  
48:27  
um how you want to handle recreational  
48:29  
versus medicinal use of marijuana what  
48:32  
kind of medical proof you want to have  
48:35  
and whether this is a situation where  
48:36  
it's something you want to test for or  
48:38  
if you just want to  
48:41  
discipline or disqualify  
48:43  
for impairment  
48:48  
okay  
48:49  
and new types of paid leave for example  
48:52  
massachusetts last week extended to  
48:54

april 1 2022 the emergency paid sick  
48:57  
leave benefits for covid 19.  
48:59  
other states are doing similar things  
49:01  
not necessarily related to covid but  
49:04  
adding paid sick leave benefits  
49:06  
adding um  
49:08  
leave for victims of domestic violence  
49:11  
adding leave entitlements for caregivers  
49:14  
etc so we um you know this is a case of  
49:17  
looking at all your jurisdictions and  
49:19  
and staying up to date  
49:21  
and um adding these things to your  
49:23  
handbook  
49:24  
some people like to have a separate  
49:26  
handbook for every jurisdiction i i  
49:28  
advocate having kind of the general  
49:30  
statement that you know and other types  
49:32  
of leave is required by state law and  
49:34  
then kind of having another handout for  
49:36  
folks who are in particular states and  
49:38  
making sure of course that your your hr  
49:40  
and management that deal with those  
49:43  
it was exactly  
49:45  
what is what's required  
49:47  
all right so just some some general  
49:50  
guidelines about handbooks  
49:54

know your audience so you look at this  
49:56  
list here yeah we're talking to  
49:58  
candidates new hires we're talking to  
50:00  
employees who have been here for a long  
50:02  
time management supervisors we're  
50:04  
talking to our colleagues even in human  
50:06  
resources because the handbook is  
50:08  
something that keeps us all accountable  
50:10  
and then if things go sour  
50:13  
your employee handbook is exhibit a  
50:16  
um in terms of proving that you knew  
50:19  
what to do and then holding you to it  
50:22  
so it's opposing council it's the judge  
50:25  
it's the jury so when you are writing  
50:27  
your employee handbook be thinking about  
50:30  
all of these um all of these groups of  
50:33  
people  
50:36  
and you want to set the correct tone um  
50:39  
you know what talking about the at will  
50:41  
employment statement a lot of times like  
50:43  
you know the the letter at the beginning  
50:45  
from the ceo or the president  
50:48  
welcome to acme corporation we're so  
50:50  
proud to have you as part of the team  
50:53  
we can fire you at any time for any  
50:56  
reason with or without notice um  
50:59

i always think i mean yes we want to  
51:01  
have that at will employment statement  
51:03  
you know front and center and make sure  
51:05  
that it's clear  
51:06  
i'm not so much an advocate of putting  
51:08  
it in the welcome letter you know i  
51:10  
think we can have a welcome without  
51:13  
saying oh and by the way we're going to  
51:14  
cut you loose whenever we feel like it  
51:16  
um i think it's okay to to  
51:19  
to wait until we get to the table of  
51:20  
contents  
51:22  
to to add that  
51:23  
a lot of employee handbooks have a  
51:25  
mission statement talking about the  
51:27  
goals of the of the organization  
51:30  
that's great too just make sure you're  
51:32  
not making any promises  
51:34  
i always cringe a little bit when that  
51:36  
includes something like we're a family  
51:38  
here at acme corporation because it does  
51:40  
kind of um conflict a little bit with  
51:42  
the whole atwell employment statement  
51:44  
depending on how it's said  
51:45  
um  
51:46  
and you know i mentioned that the  
51:48

spelling the grammar the punctuation  
51:51  
because if we go back one slide right to  
51:53  
all of these people who are looking at  
51:55  
it  
51:56  
um  
51:57  
you lose a little credibility every time  
52:00  
you misspell a word you lose a little  
52:02  
credibility every time your grammar  
52:04  
punctuation is incorrect and you don't  
52:07  
want to lose that credibility with a  
52:08  
judge or a jury  
52:11  
so don't let those things get past you  
52:14  
make sure it's thoroughly reviewed  
52:16  
and also look for outdated references  
52:19  
when i look at an employee handbook um  
52:22  
no offense if you're still using any of  
52:24  
these devices but if it if it references  
52:26  
a palm pilot or a blackberry  
52:29  
um or talks about you know getting your  
52:31  
long distance telephone card to to use a  
52:34  
pay phone when you're traveling for work  
52:37  
uh that's a sign to me that  
52:40  
somebody's asleep at the wheel so not  
52:42  
not a good look  
52:46  
and of course what whatever's in your  
52:48  
handbook you know make sure it's up to  
52:49

date and then make sure you follow your  
52:51  
own policies the the benefit to a  
52:54  
handbook is that you know people know  
52:55  
their expectations um you're held  
52:57  
accountable for consistent treatment of  
52:59  
similarly situated employees  
53:01  
but if you don't follow your policies  
53:03  
again that's something opposing counsel  
53:05  
will definitely bring up they didn't  
53:06  
even follow their own policies here  
53:08  
so why wouldn't you follow your own  
53:10  
policies oh because you're trying to get  
53:11  
away with something something under the  
53:13  
table you knew what you were doing  
53:14  
wasn't right whether it's true or not  
53:16  
the perception is there so you want to  
53:18  
make sure your policies are up to date  
53:20  
and that you are following them  
53:24  
and i do like a handbook that preserves  
53:26  
discretion so that  
53:28  
again progressive discipline should be  
53:30  
optional the company has the right to to  
53:33  
use its at will employment policy  
53:35  
without going through you know steps one  
53:38  
two and three make sure that's optional  
53:41  
make sure you always include compliance  
53:43

with other applicable laws  
53:45  
um because laws change and we we can't  
53:48  
necessarily uh depending on how you how  
53:51  
you do it you can't necessarily revise  
53:53  
um the next day  
53:55  
um  
53:56  
leave things leave in language like it's  
53:58  
a case-by-case determination sometimes  
54:00  
we can't um do it exactly this way so  
54:03  
leave yourself some room  
54:05  
the discretion of management policies  
54:07  
may change with or without notice and  
54:09  
this is not a contract  
54:13  
and when it comes to reviewing and  
54:15  
updating obviously  
54:17  
you know  
54:18  
we want to do it as needed i think you  
54:20  
have to do it every three years so you  
54:22  
know we're in 2021  
54:25  
2018 seems like a lifetime ago so  
54:29  
you know the time goes fast but it was a  
54:32  
different employment world then so i  
54:34  
think you want to take a close look  
54:36  
every three years maybe there's not a  
54:37  
lot of changes that need to happen  
54:39  
and every policy in your handbook in my  
54:42



opinion should have a little note saying  
54:44  
when it was last reviewed or updated  
54:47  
so that if someone says wait a minute  
54:48  
did we  
54:49  
did we  
54:51  
update this policy after this law was  
54:54  
passed like when was the law passed when  
54:55  
we updated it yes  
54:57  
um  
54:58  
and that leave out information that  
55:00  
would become outdated quickly um i i  
55:02  
don't think you want to i hope we don't  
55:04  
need to  
55:05  
put a requirement in employee handbooks  
55:08  
that that masks are required i hope that  
55:10  
it's enough to have a  
55:12  
policy in your handbook that says from  
55:14  
time to time the company may need to  
55:18  
may need to implement protocols for for  
55:20  
public health and safety which may  
55:21  
include um mask wearing or you know etc  
55:31  
and then of course consider how you're  
55:32  
going to communicate  
55:34  
do you do you still provide a hard copy  
55:37  
what are the ramifications for updating  
55:39  
when you do provide a hard copy do you  
55:41

want to just have it available on your  
55:42  
internet so you can  
55:44  
make changes quickly  
55:46  
do they have to come to hr  
55:48  
and how are you going to communicate  
55:50  
changes and updates and you know i don't  
55:52  
think there's a one-size-fits-all  
55:55  
answer to these questions it really  
55:57  
depends on on your workforce how you  
56:00  
convey information and  
56:03  
how you want to communicate your  
56:04  
policies and handbook to them  
56:10  
so that in concludes my  
56:12  
my presentation and  
56:15  
uh anna if some questions came in i'd be  
56:18  
happy to take a few  
56:22  
sure  
56:24  
so the first one we have is a company  
56:27  
located in florida with remote employees  
56:30  
in different states do we need an  
56:33  
employee handbook for each of the states  
56:35  
and abide by each state law or just the  
56:37  
ones in florida  
56:40  
that is a really good question and  
56:43  
unfortunately it it really does depend  
56:45  
um  
56:47

so  
56:47  
you know there are states who  
56:50  
will not honor you know choice of law  
56:53  
provisions they're gonna hold you to  
56:55  
their non-compete  
56:57  
law they're going to hold you to their  
57:00  
laws regarding leave or break times etc  
57:03  
so if you have people especially during  
57:05  
the pandemic who are working remotely  
57:09  
one policy you have to have in your  
57:10  
company that needs to be communicated is  
57:13  
you know before you move away from the  
57:15  
your primary state of residence  
57:18  
you need to  
57:19  
let us know because there are some  
57:20  
states because first of all either we  
57:22  
have to we have to research the law of  
57:24  
that state  
57:25  
and find out what laws are going to be  
57:27  
held accountable to  
57:28  
um  
57:30  
and there may be some states where you  
57:32  
say no we can't we can't do that we're  
57:34  
we're not going to allow our employees  
57:36  
to work remotely from  
57:38  
you know state a  
57:40

because of the policies that may be so  
57:42  
out of whack  
57:43  
with um with what you do as a company  
57:46  
or put you at risk in terms of you know  
57:49  
the restrictive covenants that you have  
57:51  
in place for your employees  
57:53  
so  
57:54  
if an employee is in a different state  
57:57  
you have to do the research  
57:59  
um you have to you know speak to uh  
58:03  
most um you know ideally you're gonna  
58:05  
speak to  
58:06  
an attorney an employment attorney with  
58:08  
knowledge about that particular state  
58:10  
and and make a determination about about  
58:13  
what you need to do for that individual  
58:14  
employee  
58:19  
okay the second question we have is do  
58:21  
we need to notify employees when  
58:23  
revisions to the handbooks are made  
58:26  
yes you do so  
58:28  
um i think any time there's a revision  
58:31  
to the handbook you know it's always  
58:33  
easiest if it's on an employer intranet  
58:36  
where you can kind of push a  
58:37  
notification  
58:38

um it's not a big deal  
58:41  
if if the change to the handbook is  
58:45  
if you have a hard copy you don't  
58:46  
necessarily need to distribute one i  
58:48  
think it's enough to to make a  
58:50  
communication about what the change was  
58:52  
and if anyone wants to view the entire  
58:55  
handbook it's available at you know in  
58:57  
the hr office you can come get a copy or  
58:59  
whatever um  
59:01  
but  
59:02  
yes i think it's absolutely advisable to  
59:05  
communicate changes to the handbook  
59:07  
presumably if you're making the change  
59:08  
it's because there are new  
59:09  
responsibilities duties or obligations  
59:13  
and employees need to be aware of that  
59:18  
and then the last question we have today  
59:20  
is how specific do we need to get with  
59:22  
discipline and termination policies  
59:26  
yeah this is an area where i really  
59:29  
advocate um leaving yourself a fair  
59:32  
amount of discretion um you know when we  
59:35  
were talking about the you know  
59:36  
prohibited conduct listings you you want  
59:39  
to allow yourself a lot of discretion i  
59:42

i recently looked at a  
59:44  
handbook that differentiated between  
59:47  
major conduct violations and minor  
59:50  
conduct violations  
59:52  
and that you could only be terminated  
59:54  
immediately for major conduct violations  
59:57  
um  
59:58  
and it it doesn't it doesn't always fit  
60:02  
because sometimes there's 30 minor  
60:04  
conduct violations none of them were  
60:07  
major so you know per the per the  
60:10  
conduct for the handbook it  
60:13  
it worked to sort of tie the the  
60:15  
employer's hands  
60:17  
um so i think that um  
60:20  
policy is about you know what rises to  
60:22  
the level of termination of employment  
60:25  
you really want to  
60:26  
make those  
60:28  
pretty  
60:30  
pretty non-specific just so that you  
60:32  
have discretion because you don't want a  
60:35  
very specific policy about what conduct  
60:38  
is terminable to essentially eviscerate  
60:41  
your at will employment policy or cast  
60:44  
doubt as to the the reason why you were  
60:46

terminating that employee

60:51

all righty it looks like that's all the

60:52

questions we had today thank you so much

60:54

emily thank you have a nice day everyone