



Best Practices Agricultural Businesses Should Follow When Creating or Revising an Employee Handbook

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An employee handbook is one of the most important tools that employers in the agricultural industry can have at their disposal to communicate with employees about important workplace issues. It can also serve as an excellent defense to claims. Having a handbook signals to employees that the business regards itself as a professionally managed and operated business, and helps assure employees that they will be treated fairly and consistently.

While many employers have handbooks, the creation of a handbook is too often seen as a one-time event, as opposed to an ongoing process. To be relevant and effective, a handbook needs to be reviewed and updated frequently in order to ensure that it accurately describes company policies and procedures, addresses changing laws and regulations, and aligns with company objectives.

For example, Michigan recently adopted a new law which required that some employers provide paid medical leave to eligible employees. If you are an employer covered by the new law, your handbook should address paid medical leave. Whether you are planning to update an existing handbook, or develop a new one, there are many important considerations to keep in mind.

Below is a list of best practices to apply when creating and maintaining an employee handbook:

Legal Compliance. To ensure compliance with applicable laws and regulations and to reduce risk in the event of litigation or government audit, a handbook must take into account federal, state and local laws and regulations. Laws vary by state and locality, while federal laws and regulations are uniform.

Accordingly, an employee handbook should be written in compliance with federal workplace laws and regulations such as the Fair Labor Standards Act (FLSA), the Civil Rights Act of 1964 (CRA), the Occupational Safety and Health Act (OSHA), the Family and Medical

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Leave Act (FMLA), and the Americans with Disabilities Act (ADA), to name a few. National Labor Relations Board (NLRB) rulings should also be taken into account. Other laws and regulations should be addressed on state-by-state and locality-by-locality bases.

Special Considerations for Multi-State Employers. While many agricultural businesses do not have multi-state operations, those that do must take this fact into account when preparing a handbook. It can be challenging, cumbersome and expensive for multi-state employers to maintain a handbook that complies with laws and regulations for each state in which employees are located.

One approach to consider is maintaining a single handbook that addresses federal laws and regulations, with addendums for each state where employees are located. This allows employers to maintain a uniform set of policies and procedures, and also address state and locality-specific laws and regulations, without the need to extend state and locality-specific policies across state lines.

Reinforce the Employment Status, Whether “At Will” or “Just Cause.” A handbook should affirmatively explain the employment relationship. In an at-will relationship, the employer retains the right to make employment decisions at any time, with or without notice and for any or no reason, as long as it is not an unlawful reason. In an at-will relationship, it is important to note that the at-will employment relationship cannot be modified unless it is in writing, for that purpose, and is signed by a specified person that would have such authority, such as the Executive Director or CEO.

In a just cause relationship, the employee will not be discharged from employment without “cause,” which should be defined in the handbook.

Payroll and Benefits. Policies related to payroll, frequency of pay, overtime, payroll deductions and social security number privacy should be addressed, as well as those related to health, dental and other benefits.

Work Hours, Attendance and Leave. Hours and scheduling expectations, vacation, leave (military, medical, parental, jury duty, etc.), and sick day policies should be explained.

Employee Conduct and Use of Technology. You should address rules of conduct, including nondiscrimination, prohibited harassment, prohibited weapons, use of drugs and alcohol, and expected behavior toward coworkers. It is also important to explain rules related to employee technology use and equipment care, including email, Internet, social media, laptop computers and cell phones and affirm that employees should have no expectation of privacy in any communications over the employer’s communications equipment.

Dispute Resolution Agreements. Consider including a separate arbitration agreement along with the handbook which requires that an employee resolve his or her claims against the employer through a private arbitration instead of by filing a lawsuit in court. Also consider an agreement which shortens the amount of time that an employee may bring a claim against the employer.



Acknowledgement. Ask employees to sign an acknowledgement that they have received the handbook policies.

These are just a few of the considerations and policies that an employer should address in an employee handbook. Every agricultural industry employer's policies, procedures and culture are different, so every handbook should be tailored to an employer's unique circumstances and business objectives. **Don't adopt another organization's handbook;** you may inadvertently undercut an important declaration or what would otherwise have been a good legal defense.

A good suggestion would be to have an employment attorney review the employee handbook because there are other policies that are required by law to be posted or communicated, such as notice of accommodation. The employee handbook is where those should be included. Having an attorney review your handbook is one of the simplest ways to avoid potential pitfalls.

One final point – we are often asked by owners of family owned farms, orchards and other agricultural operations whether employee handbooks are necessary, or even advisable, when the business primarily, or exclusively, employs a spouse, children, brothers, sisters or other family members. In short – “yes.” Whether you employ family members or not, state and federal law requires employees to be treated fairly and in accordance with the law. Especially if you have both family and non-family employees, having a handbook and defined policies in place can help ensure that all employees feel that they are on equal footing.

The creation of a new handbook, or revision of an existing one, is an ideal time to train employees regarding a company's policies and procedures, as well as the laws and regulations from which they were derived. Foster Swift's labor & employment law attorneys routinely help clients create, review, revise, and train their employees on employee handbooks.

For assistance with your operation's employee handbook, contact Karl Butterer at 616.726.2212 or at kbutterer@fosterswift.com. Karl is an established litigator with over 20 years of highly successful legal experience and currently concentrates his practice in the areas of employment, torts, civil rights, contract disputes as well as commercial litigation.

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