

# Top Five Reasons to Have (and Use) an Employee Handbook

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# Today's Presenters



## **John Dickinson, Esq.**

- Experienced in employment litigation, wage and hour compliance and labor relations
- Holds Board Certification in Labor and Employment Law from The Florida Bar
- Named to Best Lawyers in America, Chambers USA Guide, Florida Super Lawyers, Florida Trend's Legal Elite and AV rated by Martindale-Hubbell



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- ThinkHR's Chief Knowledge Officer
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# Why You Should Have a Handbook

# Why Have an Employee Handbook?

## Reason #1: Compliance

- Communicates company policies and procedures
- Contributes to uniform and consistent application/enforcement of policies

## Reason #2: Employer protection

- Reduces claims of improper employer conduct
- Mitigates risk of employee lawsuits

# Why Have an Employee Handbook?

## **Reason #3: Helps define your corporate culture and communicates what is important to your company**

- Employee road map for understanding company values and expectations
- Cultural cues for employee behavior

## **Reason #4: Gives employees the rules they need to know**

## **Reason #5: Important tool for winning the war for talent**

- Provides valuable information about the company

# 2

## Top 10 Policy Focus Areas



# 1. Non-solicitation/Non-distribution Policies

- Employers may restrict solicitation by employees to actual non-work time and may restrict distribution to actual non-work time and non-work areas.
- Avoid phrases like “work hours,” “company time,” or “during hours of operation.”
- Consistent enforcement is key.

# 1. Non-solicitation/Non-distribution Policies

## ConAgra Foods

- Non-solicitation policy unlawful, where discussion regarding union authorization caused another employee to stop working during working time.
- Minimal disruption (a few seconds).
- Context is key – employees were not asked to sign authorization cards during work time; employees were told during working time that the cards were placed in their lockers.

## 2. Social Media Policies

Consider NLRA “protected concerted activity” rule.

- *Kroger Company of Michigan*— employer policy requiring employees to supplement online postings about their employment with a disclaimer found to be unlawful.

Clicking “Like” on Facebook may constitute protected concerted activity.

- *Richmond District Neighborhood*—employees’ Facebook conversation not protected, given egregious nature of posts.

## 2. Social Media Policies

### *Three D, LLC*

- Facebook exchange included comments that the employer could not do tax paperwork correctly, called the owner a “shady little man,” and claimed he “pocketed” taxes from paychecks.
- Termination of employee who clicked “Like” of initial post held unlawful.

### 3. Civility Policies

- Insubordination, lack of respect, cooperation, discourteous behavior– too subjective (*Hooters; First Transit*)
- Dignity and respect requirement issued in response to union activity unlawful (*Care One*)
- Negativity policy requiring employees to speak well of one another unlawful (*Hill & Dales*)
- Rule against gossiping upheld, as gossip is “commonly defined” (*Lytton Rancheria*)
- Ethics and decorum standards upheld (*Hill & Dales*)

## 4. Confidentiality Policies

**Beware of referring to information about wages, benefits and terms and conditions of employment as confidential in employment policies.**

- *Hooters*— unauthorized dispersal of sensitive Company operating materials and information, including financial information found to be overbroad.
- *Lily Transportation*— disclosure of confidential information, including employee information contained in confidential personnel files found to be overbroad.

## 4. Confidentiality Policies

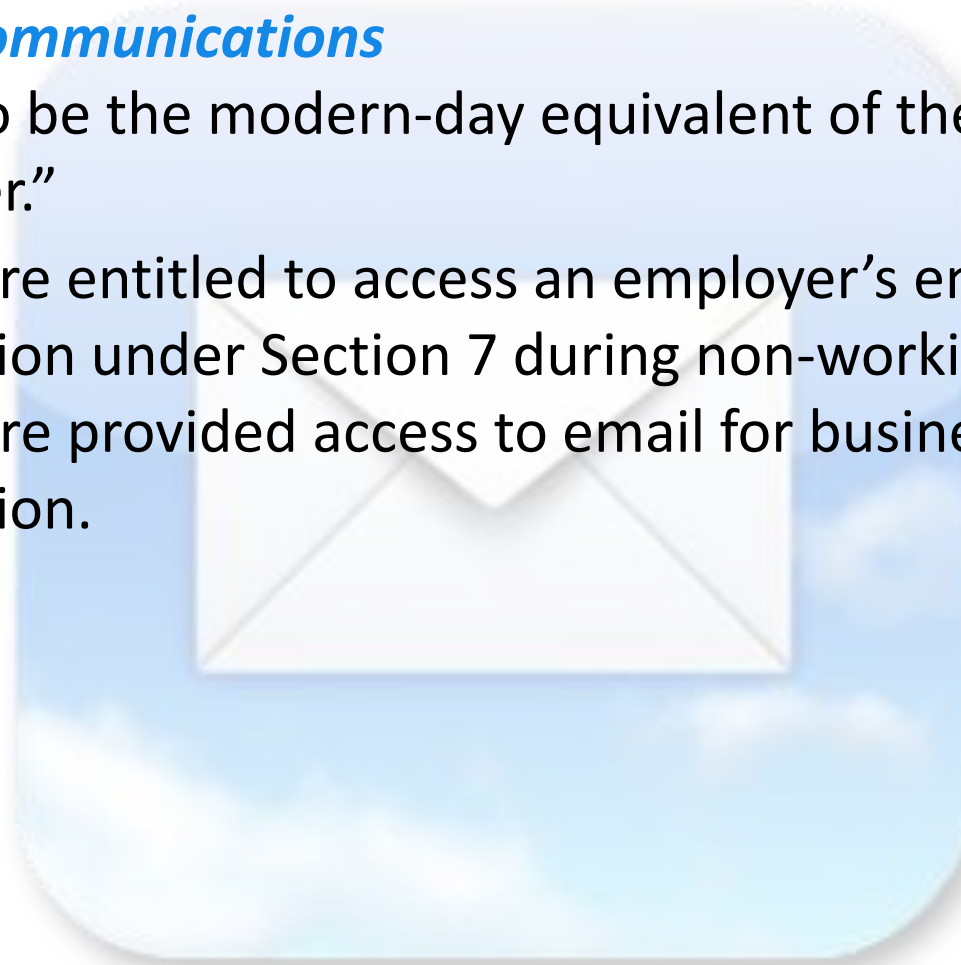
**Beware of referring to information about wages, benefits and terms and conditions of employment as confidential in employment policies.**

- *Flex Frac Logistics*—employees required to sign a pledge not to discuss confidential matters, including personal information and documents.
- *Phillips Electronics* – employees prohibited from discussing discipline decisions.
- *Muse School, CA*– employees prohibited from disclosing any information about school, family of founders, or financial affairs including compensation.

# 5. Employer Email Policies

## **2014 Purple Communications**

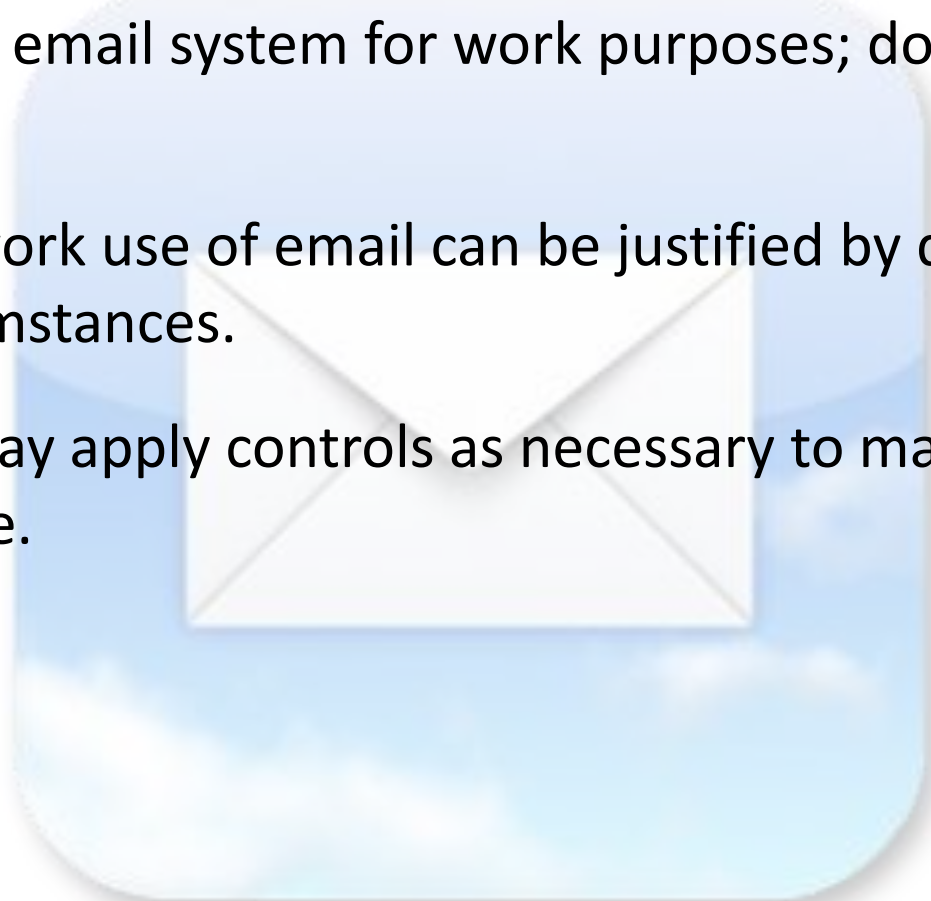
- Email held to be the modern-day equivalent of the workplace “water cooler.”
- Employees are entitled to access an employer’s email system for communication under Section 7 during non-working time if employees are provided access to email for business communication.





# 5. Employer Email Policies

- Decision applies only to employees who have already been given access to the email system for work purposes; does not require such access.
- Ban on nonwork use of email can be justified by demonstrating special circumstances.
- Employers may apply controls as necessary to maintain production and discipline.



## 6. Cameras in the Workplace Policies

- *Boeing Co.*— policy prohibiting employees' use of camera-enabled devices without a valid business need and approved Camera Permit unlawful.
- *Professional Electrical Contractors*— prohibition of employees taking photographs or recordings at work without permission unlawful.

# 7. Anti-retaliation Policies

## *Dignity Health*

- Restriction on suspended employee communicating with co-workers during leave not unlawful.
- Termination of employee for sharing complaints with employees and managers unlawful.

# 8. Personal Electronic Devices Policy

## Decision time: does your organization allow it?

- Restrictions on authorized use
- Company reimbursements?

# 9. Benefits, Compensation and Time Off Policies

## Benefits

- Define eligibility
- Determine how much (or how little) goes into the handbook

## Compensation

- Ensure policies define benefits, pay and time off for employee classifications

## Time Off

- Ensure leave of absence rules are clear
- Paid time off, including new state/local sick leave laws

# 10. At-will and Arbitration Agreements

## At-Will Statements

- No representative of the Company has authority to enter into any agreement contrary to the foregoing employment at-will relationship.
- No manager, supervisor or employee has any authority to enter into an agreement for a specified period of time.

## Arbitration Agreements

- Board majority – employee waivers of class or collective arbitrations violate the NLRA.
- Three federal circuit courts of appeal, and several other courts, disagree.

# 3

## Suggestions for Your Handbook

# Non-solicitation/Non-distribution Policies

## Unlawful

ABC Company prohibits the distribution of literature during work hours in working areas and solicitation of employees during work hours, including by electronic methods. Solicitation or distribution of any kind by non-employees on Company premises or through Company networks is prohibited at all times.

## More lawful

ABC Company prohibits the distribution of literature during **work time** and in work areas and solicitation of employees during work time, including by electronic methods. Solicitation or distribution of any kind by non-employees on Company premises or through Company networks is prohibited at all times.



# Social Media Policies

## Unlawful

ABC Company prohibits harassment, threats or disparagement of fellow professionals, employees, clients, competitors or anyone else on social media. Do not make personal insults, malign, defame or disparage or use obscenities or engage in any conduct that would be unacceptable in a professional environment.

## More lawful

ABC Company policy requires employees to be thoughtful in all communications and dealings with others, including email and social media. Never harass, threaten, libel or defame fellow professionals, employees, clients, competitors, or anyone else. Nothing in this policy is intended to prevent employees from engaging in concerted activity protected by law.

# Civility Policies

## Unlawful

ABC Company policy requires all employees to be respectful to the Company, other employees, customers, partners, and competitors. Disrespectful conduct or insubordination, including, but not limited to, refusing to follow orders from a supervisor or a designated representative.

## More lawful

ABC Company policy prohibits rudeness or unprofessional behavior toward a customer, or anyone in contact with the Company. Employees shall not be discourteous or disrespectful to a customer or any member of the public while in the course and scope of Company business.

# Confidentiality Policies

## Unlawful

ABC Company prohibits employees from discussing customer or employee information outside of work, or from discussing work matters with others outside of work or in public places.

## More lawful

ABC Company prohibits the disclosure of business secrets, confidential financial data, or other non-public proprietary Company information. Do not share confidential information regarding business partners, vendors, or customers.

# Email Policies

## Unlawful

ABC Company prohibits employees from using the corporate email system for non work-related purposes.

## More lawful

ABC Company policy prohibits the use of the corporate email system by non-employees for any purpose, or by employees who do not use the corporate email system to do their jobs. Employees who use the corporate email system to do their jobs may only use the system for non work-related purposes during their non-working time and must refrain from attaching large data files or audio/video segments. Such employees are reminded that non-business use of the corporate email system is not private and is subject to monitoring in the same way as business email.

# Cameras in the Workplace Policies

## Unlawful

ABC Company prohibits an employee from operating a camera phone on Company property or while performing work for the Company.

## More lawful

ABC Company prohibits an employee from taking, distributing, or posting pictures or videos while on working time and from taking pictures in work areas except if the pictures were taken in work areas to engage in activity protected by the National Labor Relations Act, including, for example, taking pictures of working condition concerns, or to document health and safety violations. No confidential business records (such as customer lists) may be photographed.

# Anti-retaliation Policies

## Unlawful

ABC Company policy prohibits an employee from retaliating against an individual for negative statements, emails or posts about the employee or the Company. Rather, the policy instructs an employee to seek help from HR, who will guide any response.

## More lawful

ABC Company policy prohibits an employee from taking retaliatory action against any employee or Company representative.

# Personal Electronic Devices Policies

## **If an organization allows it**

ABC Company may allow employees to use their personal electronic devices for work purposes when authorized in writing, in advance, by the employee and management. Personal electronic devices allowed include [list]. The use of these devices is limited to management employees and those in [list departments or groups] and may be limited based on compatibility of technology.

# Personal Electronic Devices Policies

## Restrictions on authorized use

Nonexempt employees may not use their personal electronic devices for work outside of their normal work schedule without advanced management authorization. This includes, but is not limited to, reviewing and sending responses to work emails or phone calls.

While on unpaid leave of absence, employees may not use their personal electronic devices for work without authorization from management.



# Benefits, Compensation and Time Off Policies

## Benefits

- Provide details or refer to Summary Plan Description(s)

## Compensation

- Hours of work
- Employee classifications

## Time Off

- Ensure leave of absence rules are clear
- Paid time off, including new state/local sick leave laws

# At-will and Arbitration Agreements

## At-will Statements

- No representative of the Company has authority to enter into any agreement contrary to the foregoing employment at-will relationship.
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# Other Issues to Review for Your Handbook

## Accommodations

- Religious
- Medical

Hiring Barriers—“Ban the Box” legislation spreading

Increase in LGBT claims under Title VII

Supreme Court ruling on same-sex marriage in all states

Title VII Pregnancy Discrimination

# Creating Your Handbook

- Review policies relating to the Top 10
- Review employment, classifications, pay practices
- Make sure handbook documentation conforms to actual practices
  - Benefit plan documentation
  - Work rules policies
  - Payroll policies
  - Employment practices (“Ban the Box” rules)
  - Other employee communications
  - Opportunities for training and advancement

# Corporate Culture is Key

## Does your handbook:

1. Describe your company's culture and tell the company story?
2. Outline the rules of the road for behavior?
3. Communicate goals, roles, and responsibilities?
4. Give employees the information they need about the company to handle situations that arise?
5. Outline consequences for not following the company procedures?

# 4

## CEUs and Questions

# CEUs and Support

**HRCI Code: 249722**

**SHRM Code: 15-391E4**

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## **Constangy team**

Contact John Dickinson at 904-356-8900 or  
jdickinson@constangy.com

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