



Multi-State Handbook Updates for 2023 and Beyond:

What to Look Out for and Why it Matters

October 27, 2022

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2022 Seyfarth Shaw LLP. All rights reserved. Private and Confidential





Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

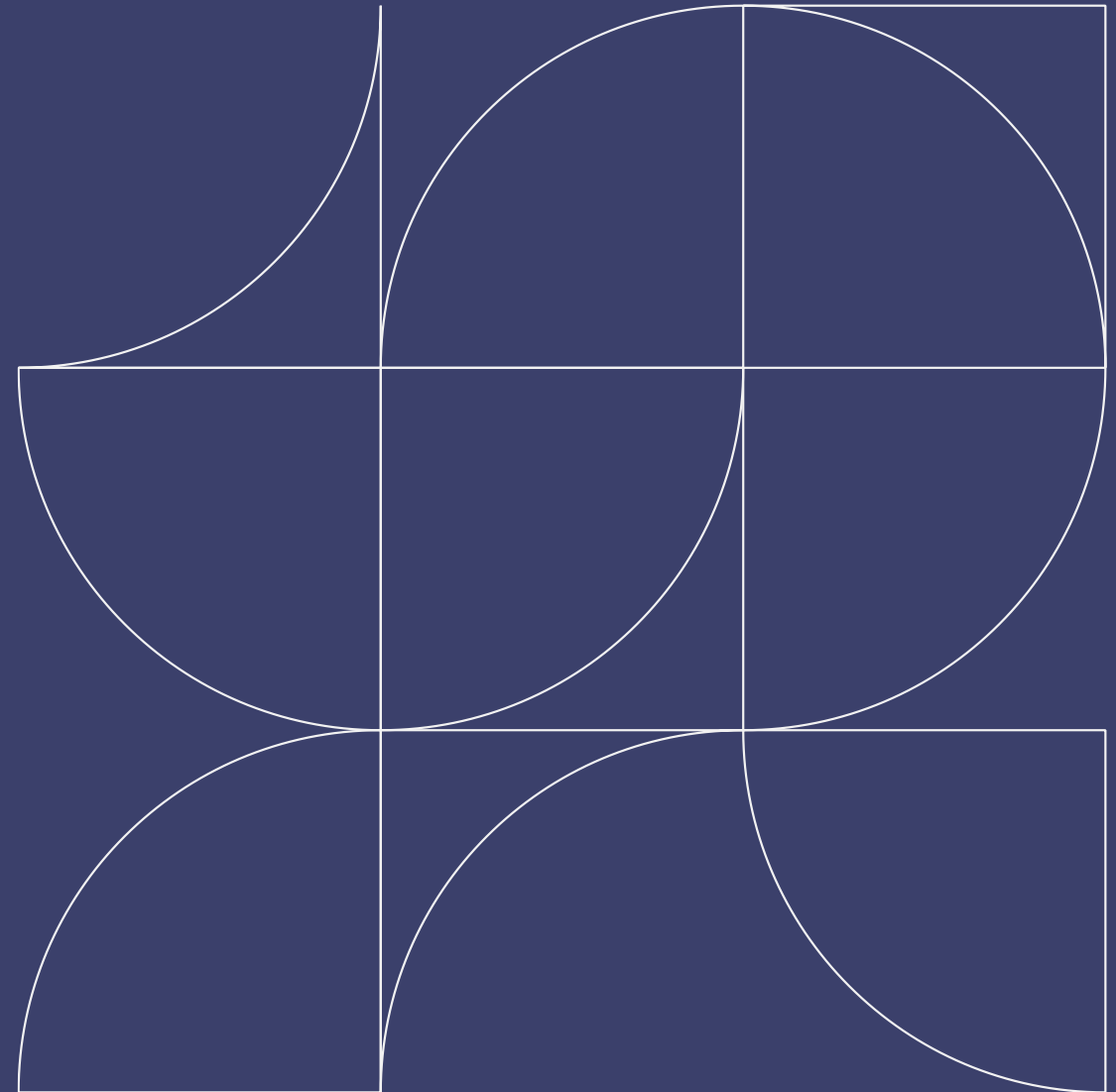
Seyfarth Shaw LLP

“Seyfarth” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

©2022 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

1

Introduction



Speakers



Chelsea D. Mesa
Partner
Los Angeles
cmesa@seyfarth.com
(213) 270-9725



Megan P. Toth
Partner
Chicago
mtoth@seyfarth.com
(312) 460-5974



Jean D. Wilson
Counsel
Boston
jwilson@seyfarth.com
(617) 946-4809



Renate M. Walker
Associate
Atlanta
rewalker@seyfarth.com
(678) 686-8508

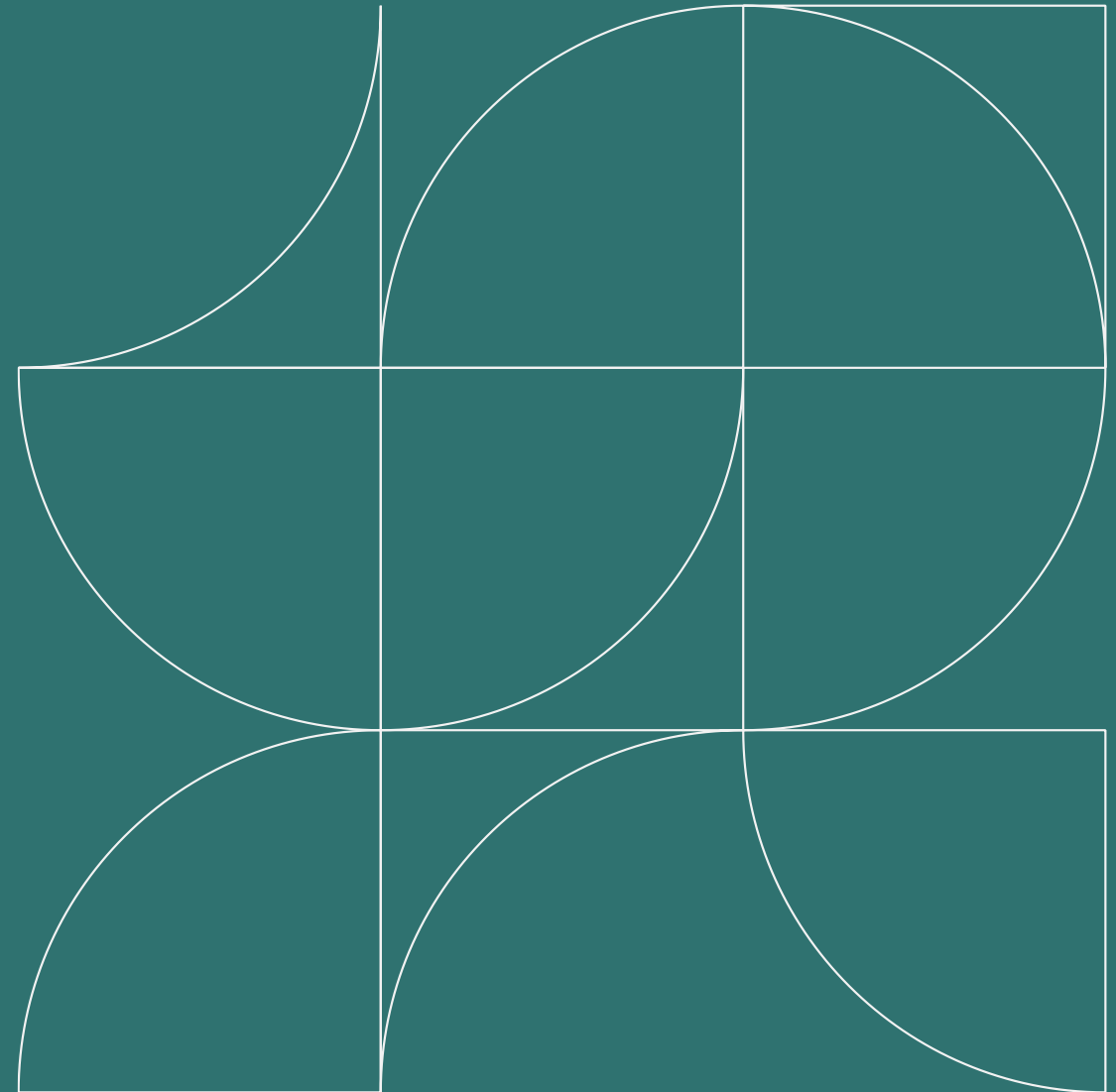


What We Will Cover Today

- 01** Introduction
- 02** 2023 state developments that impact handbooks and policies.
- 03** The importance of an excellent employee handbook and corresponding state addenda.
- 04** Best practices in developing employee handbooks and policies.
- 05** Trends in the law - what to expect going forward.
- 06** How Seyfarth's Handbook & Policy Team has helped employers.

2

2023 State Developments That Impact Handbooks and Policies



California

**A busy year from our most
employee-friendly state**

Bereavement Leave - AB 1949



- Amends Sections 12945.21 and 19859.3 of, and adds Section 12945.7 to, the Government Code to provide for up to five days of bereavement leave upon the death of a family member for employees working 30+ days
- Family Member: spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law
- Leave must be completed within three months of the date of death of the family member, does not need to be consecutive
- If the employer does not have a paid bereavement policy, the leave may be unpaid
- Employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee
- Requests for documentation are permitted

CFRA and Sick Leave

Designated Persons – AB 1041



- Amends CFRA and California’s Paid Sick Leave Law to include a “designated person” for whom an employee may take leave or days off
 - Designated person for CFRA: “any individual related by blood or whose association with the employee is the equivalent of a family relationship”
 - Designated person for PSL: Any person designated by the employee
- Employee may designate the person at the time taking of requesting leave or PSL
- Employer may limit an employee to one designated person per 12-month period
- Under CFRA, may require the employee to substitute any accrued vacation leave or PTO during leave, or any other paid or unpaid time off negotiated with the employer

West Hollywood

Compensated Time Off



- **In effect for all West Hollywood Employers as of July 1, 2022**
 - guidance from city is it does not apply to exempt employees
- **Compensated Time Off**
 - **Accrual Rate:** 96/52 hours of compensated time off each week in a calendar year.
 - Pro-rated for part-time employees
 - **Annual accrual cap:** 96 hours
 - **Point-In-Time accrual cap:** 192 hour max balance
- **Uncompensated Time Off**
 - **Accrual Rate:** 80/52 hours per each week in a calendar year
 - **Annual accrual cap:** 80 hours (for sick leave after exhaustion of compensated time off)

West Hollywood

Compensated Time Off



- Employers can comply with West Hollywood’s law if they provide combined leave of **no less than 96 hours for full-time workers**
- **No Monthly Cash Out:** The original law required monthly cash-out if employee balance exceeded 192 hours, but the law was amended to **eliminate** this cash-out requirement
- Employers can choose to comply via a **single bucket or multiple buckets** of compensated time off:
 - Option 1: Bucket of paid time off only, or
 - Option 2: Bucket of at least 50% to vacation or personal necessity, **and** bucket of 50% to paid sick leave as defined by California law
 - West Hollywood’s cites to California Labor Code
 - California Paid Sick Time and Vacation Time Law must be accounted for

San Francisco PHEL



- The ordinance will apply to larger employers with 100 or more employees worldwide (exempts certain non-profit organizations that do not engage in specific health care operations, and government entities other than the City of San Francisco)
- All employees who work for a covered employer in San Francisco are entitled to PHEL – no tenure or hours requirement
 - can be waived in a CBA
- Employers must provide PHEL to all employees for use beginning on January 1 of each of the following years
 - 80 hours or the number of hours an employee typically works in a two-week period
- Same pay (regular rate for non-exempts, for example) and pay stub notice requirements as paid sick

San Francisco PHEL

Reasons for Use



- *Order or Guidelines*
 - ✓ A federal, state, or local health ordinance has made a recommendation or requirement related to the public health emergency.
- *Advice from Health Care Provider*
 - ✓ A covered employee has been advised to isolate or quarantine by a health care provider.
- *Symptoms*
 - ✓ The employee is experiencing symptoms, seeking a medical diagnosis, or has received a positive medical diagnosis for a possibly infectious, contagious, or communicable disease associated with the public health emergency.
- *Caring for a Family Member*
 - ✓ The employee is caring for a family member who is subject to an order or has been advised to isolate or quarantine by a health care provider.
- *School Closure or Unavailable Care Provider*
 - ✓ The employee is caring for a family member whose school or place of care is closed or whose care provider is unavailable due to the public health emergency.
- *Air Quality Emergency*
 - ✓ The employee is diagnosed with heart or lung disease, has respiratory problems, is pregnant, or is at least 60 years old and primarily works outside, and the [Bay Area Air Quality Management District](#) has issued a Spare the Air Alert.

New England

**A number of small changes
and new obligations**

Connecticut



CT Family and Medical Leave Act & CT Paid Family and Medical Leave Act - Notice Required as of July 1, 2022

- Provide at hire and then annually
- Can satisfy obligation by providing relevant policies in handbook
- CT DOL has published a template combined notice: [CT Notice of Employee Rights](#)

EEO & Discrimination – October 1, 2022

- CT Human Rights & Opportunities Act now applies to employers with one CT employee (previously 3 or more CT employees)
- Status as a victim of domestic violence added as a protected class

Domestic Violence Leave – October 1, 2022

- Employers required to provide leave as reasonable accommodation
- Appears to be in addition to the 12 days of Family Violence Leave

Maine



Vacation Payout – January 1, 2023

- Applies to employers with 10 or more employees
- Employers required to pay out unused, accrued vacation time upon separation
- New law potentially conflicts with guidance related to Maine Earned Paid Leave (EPL) Law
 - Provides up to 40 hours of EPL per year (can be used for any reason including vacation)
 - Payout upon termination governed by employer policy

Equal Employment Opportunity – Aug. 7, 2022

- Crown Act - definition of race for purposes of the anti-discrimination law now includes traits associated with race, including hair texture, Afro hairstyles, and protective hairstyles

Vermont & Rhode Island



Vermont

- **Crime Victim Leave - May 24, 2022**

- Expanded crime victim leave and changed the terminology from victim to an “alleged victim of a crime or delinquent act”
- Employees now also entitled to take leave if their family member is an alleged victim and:
 - is a minor
 - has been found to be incompetent
 - was killed as a result of alleged crime
 - was hurt physically or emotionally as a direct result of a violent crime (e.g., domestic assault)

Rhode Island

- **Temporary Caregiver Insurance (TCI) – Jan. 1, 2023**

- Job-protected, caregiver leave and benefits increased from 5 weeks to 6 weeks
- Covers bonding with a new child and caring for family members with a serious health condition

New York and the Mid West

Important changes in 2023 from
the big apple to the heart of the
country (and a little beyond...)

New York

(and Other PFML Updates)



New York

- Paid Family and Medical Leave
 - Added sibling to the definition of “covered family member”

Washington

- Paid Family and Medical Leave
 - Added time off for bereavement

Oregon

- Paid Family and Medical Leave
 - Contributions begin 1/1/23; Benefits Available 9/3/23

Colorado

- Paid Family and Medical Leave
 - Contributions begin 1/1/23; Benefits Available 1/1/24

Illinois & Michigan



Illinois

- Family Bereavement Leave
 - Same FMLA Eligibility/Coverage
 - Expanded reasons for use
 - Expanded covered family members
- One Day Rest in Seven Act (ODRISA) Amendments
 - Additional 20-minute meal break required for employees working 12-hour shifts and every 4.5 hours thereafter
 - 24-hour rest period in any seven consecutive day period
- Chicago Sexual Harassment Law
 - Policy requirements
 - Training requirements: 1 hour general; 1 hour bystander; 1-hour supervisors
- Illinois CROWN Act

Michigan

- Paid Sick Leave Litigation and Appeal

Other States

**A high-level overview for
some flyover states**

Alabama



Possession of Firearms (effective January 1, 2023)

- Concealed firearms may be carried without a permit.
- Employers may not restrict transportation or storage of a lawfully possessed firearm in a privately owned motor vehicle, so long as conditions are met.
- Employers can otherwise prohibit weapons on their property/while on duty.

Washington D.C.



Paid Family Leave Law (effective October 1, 2022)

- Maximum number weeks of medical, parental, and family care leave increased to 12 weeks
- Employers must post new notice by February 1, 2023: [DC Paid Family Leave Notice 10/2022](#)
- Recommend posting ASAP as changes reflected in the notice are currently effective.
- Employers must provide notice or compliant policy to employees:
 - At time of hire
 - Annually
 - When an employee asks for leave that could qualify for paid leave benefits

Tennessee



CROWN Act (effective July 1, 2022)

- Prohibits employer policies that do not permit employees to wear their hair in braids, locs, twists, or another manner that is part of the cultural identification of the employee's ethnic group or that is a physical characteristic of the employee's ethnic group.

Veterans' Day Leave (effective April 20, 2022)

- November 11th – unpaid holiday for veterans, so long as conditions are met.

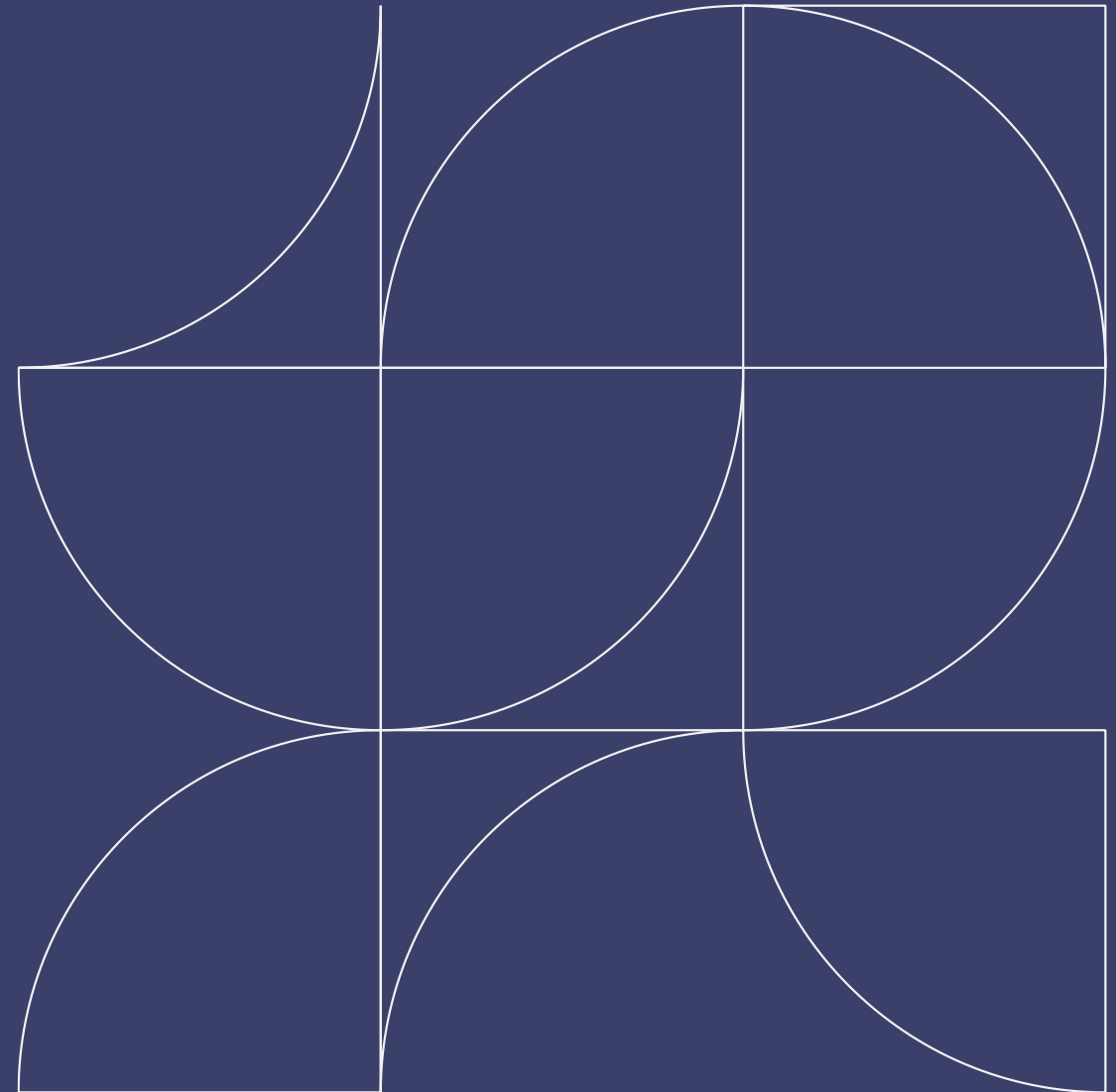
New Mexico & Minnesota



- New Mexico
 - New Paid Sick Leave law effective July 1, 2022
- Bloomington, Minnesota
 - New Paid Sick Leave law effective July 1, 2023

3

The Importance of an Excellent Employee Handbook and Corresponding State Addenda



What is the Purpose of a Good Handbook?



- Establish uniform expectations
- Obtain acknowledgment of understanding of these expectations from employees
- Showcase workplace benefits
- Give employees something to rely on
- Achieve organizational consistency
- Reduce excessive supervisory discretion
- Deliver notice of legal rights and obligations such as at-will and arbitration
- Communicate required written policies (legal compliance!)
- Not to be a contract, but a reliable guidepost

Why exactly do we need written policies?



- Required by law
- Recommended best practice
- New/different practice
- Something went wrong or consistent problem needs to be corrected

Before You Start Drafting



- Establish the purpose of the policy
- A little light reading:
 - the law/laws
 - regulations
 - FAQs
 - legislative history
 - NLRB memos
 - opinion letters
 - enforcement guide
 - case law
- Consider whether template is needed or unique tone

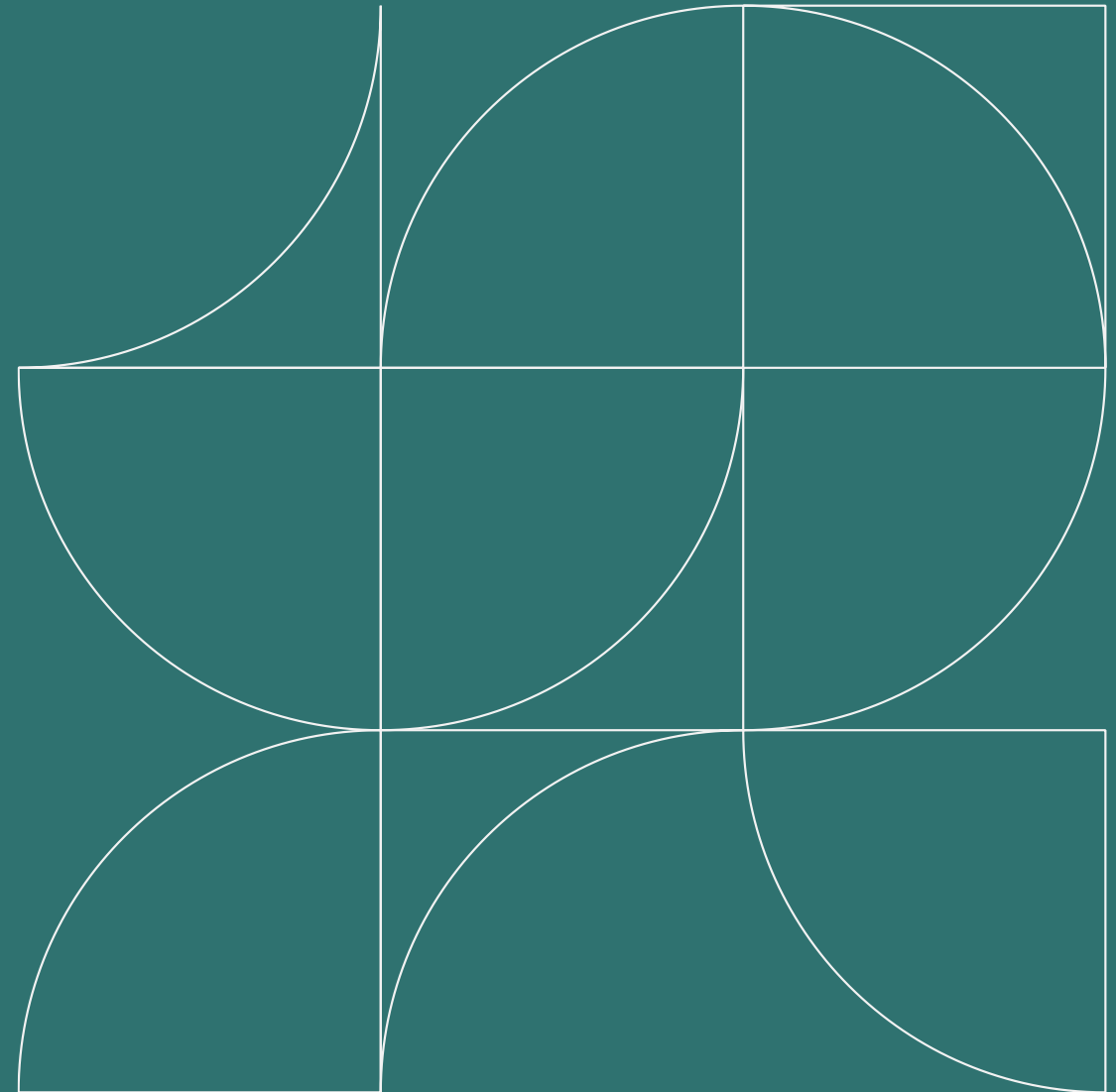
What Should We Tell Employees?



- The Anatomy of a Good Employment Policy Includes:
 - Eligibility – who needs to care about this?
 - Rights – what’s in it for me?
 - Limitations – waiting periods, effective date, reasons for use, etc.
 - Responsibilities – and what do I have to do?
 - Consequences – and what happens if I don’t?
 - Resources – who can I ask if I don’t understand this legalese?
 - Examples if complicated topic (but proceed with caution)

4

Best Practices in Developing Employee Handbooks and Policies





Let's Start at the Very Beginning...

- Clear and understandable language
 - Know your audience and avoid excess legalese
 - Clarify potential ambiguities
- Consider multi-lingual formats
- Discuss process to update handbook without creating a new edition
- Consider recommending electronic/on-line documents only
- Avoid temptation toward over-comprehensiveness (less is more!)
 - Recommend against combining with operations/procedure manuals or code of ethics

One Size Does Not Fit All



- Customize to fit culture and operational needs of your organization
- Look for educational opportunities for managers and human resources
- Tailor to include your "go to" people where appropriate
- Consider addenda for multiple states/jurisdictions

Organization



- Most important policies go at the very front
 - At-will
 - EEO
 - Harassment/Discrimination/Retaliation
- These are the policies most likely to come up in litigation
 - the closer they are to the front, the more likely they are to be read
 - the harder it is for an employee to argue they did not read or understand

Sections of the Handbook

Introductory Policies

- at-will, EEO, harassment, retaliation, whistleblowing, conflicts, open door

Wage and Hour Issues

- classifications, scheduling, pay, timekeeping, breaks, overtime, reimbursement

Conduct Policies

- employee conduct, property, technology/internet, social media

Time Off

- vacation, holidays, sick time, FMLA, state FMLA/PFML laws, other state protected time off

Health and Welfare

- benefits, workers' comp, drugs & alcohol, violence and safety

Acknowledgment

- of at-will arrangement
- right to change policies

Arbitration

- discuss whether to make this a separate agreement or part of the acknowledgment

Confidentiality

- generally recommend also addressing topic in separate agreement

Common Handbook Mistakes



- Not including or insufficient “at-will” language
- Promising “permanent” employment or raises
- Promising progressive discipline or lock-stepped grievance policy
- Incomplete or ineffective EEO/harassment/retaliation policies
- Non-compliant leave, vacation, or sick policies
- Insufficient meal and rest break policy
- Conferring excessive “rights”
 - unintentional overpromising of a benefit when a law addresses basic entitlement
- Trying to address all issues (and not including catch-all language for things you left out)
- Missing state law, municipal ordinance, or multi-jurisdictional issues

Implementation



Recommendations

- provide written notice announcing issuance or reissuance of the handbook
- meet with employees to cover relevant changes
- ensure all employees receive a copy or specific instructions on how to access handbook on-line
- address bi-lingual workforce

Process for updating handbook

- changes to the law or company policy
- employees in new jurisdictions
- increase in headcount in particular jurisdictions
- electronic handbook allows for mid-cycle changes

Implementation (Acknowledgment)

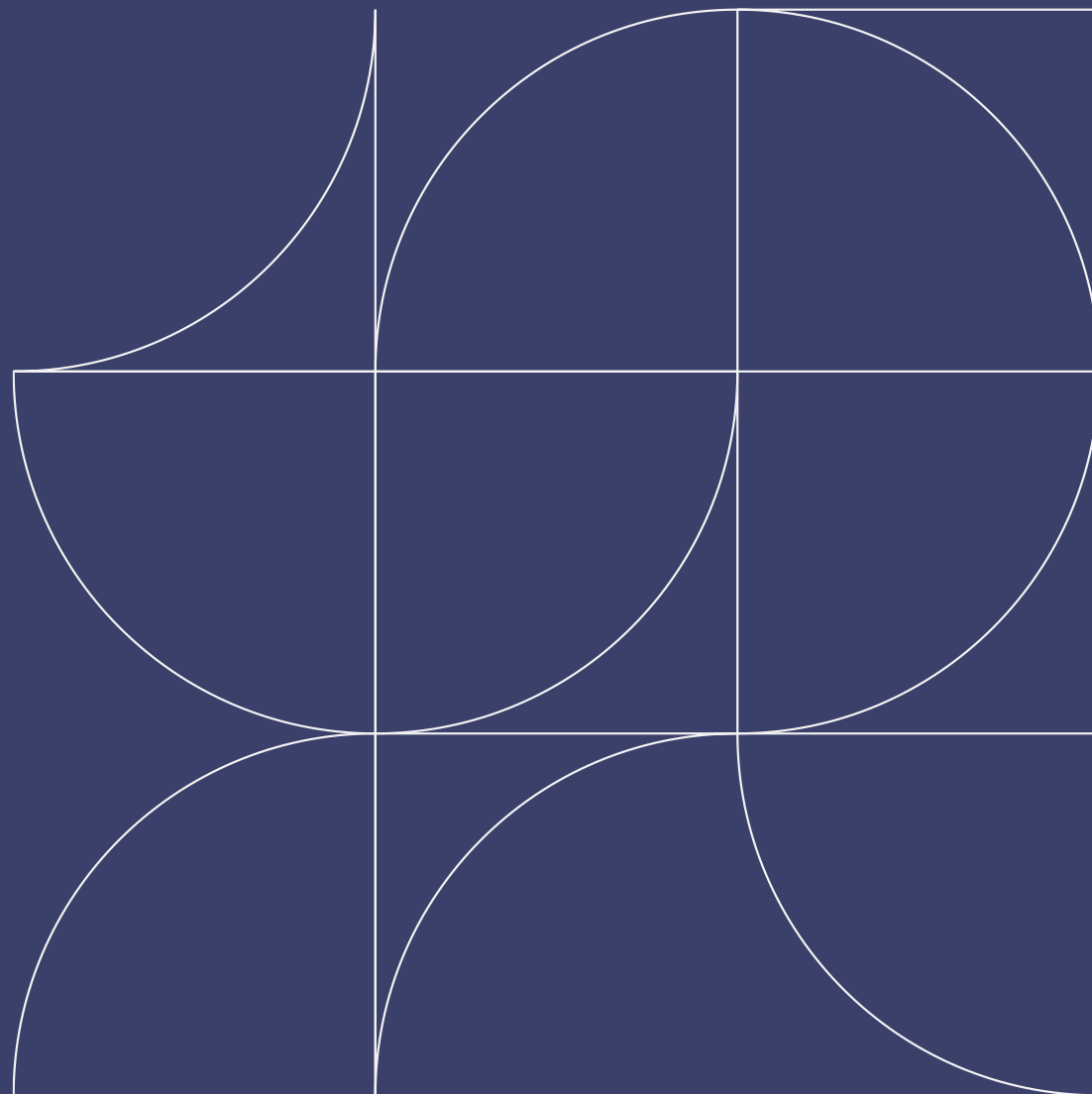


- Even the best handbook falls short if you can't "prove" receipt
- Draft strong and clear acknowledgment
- Recommend keeping copy of signed acknowledgment in employee's personnel file, even when new handbooks are issued and you obtain new acknowledgments
 - commonly, the acknowledgment is "Exhibit A" in any claim regarding company policy and whether an employee contributed to the alleged improper conduct by not using the reporting mechanisms in the handbook
 - harassment, discrimination, retaliation, meal and rest break issues

5

Trends in the Law

- What To Expect Going Forward



Introduction – What is Driving Trends?



- Change in administration
- Social and political issues
- Changes to the law
- How we work – effect of the pandemic



Diversity, Equity, Inclusion & Belonging

- Increased focus in this area
- Employees want to work for an organization that shares their values
- Issues can be important in attracting and retaining talent
- More employers including a statement that reflects the organization's commitment to DEI&B issues in their handbook
- Recommendation for DEI&B handbook policies
 - Keep it brief
 - Ensure that your actions match up with your words
 - Revise other policies to be consistent with commitment (e.g., use of gender neutral language, dress code, strong discrimination/harassment/accommodation policies)



Where and How We Work

- Remote work is here to stay
- Review and revise flexible work/remote work policies – do they reflect current practice/expectations
- Review other policies affected by remote work
 - Work hours – ensure that policies address expectations for non-exempt employees
 - Timekeeping – important to stress that non-exempt employees must record all time worked - may not work off-the-clock
 - Meal periods and breaks – employees must still take this time when working remotely where required by state law
 - Reimbursement of expenses (e.g., internet, mobile phone, office supplies, etc.) – detailed policies typically maintained outside of main handbook



Hybrid / Remote Work Policies

- Clearly set expectations
- Components of these policies
 - Time spent on site v. remote (flexible, set days)
 - Core hours
 - Responsiveness and mode of communication (e.g., email, instant messaging, phone, video conferences)
 - Wage and hour considerations
 - Hybrid schedules subject to change so that company can meet business needs, address performance issues, strengthen company culture, increase collaboration, etc.
 - provide notice of any change

Focus on Employee Health and Wellness



- Employers recognizing importance of prioritizing employee health and wellness, both for enhanced work performance and productivity as well as talent attraction and retention.
- New cutting-edge, employee-friendly policies not just a thing for big-tech.
- Examples
 - Enhanced Bereavement Leave (more time, more covered reasons, more covered individuals)
 - Flexible Time Off (but is it really “employee-friendly?”)
 - Caregiver Leave
- What unique policies has your organization implemented or are you considering?

National Labor Relations Board



- Under the NLRA, an employer is generally prohibited from maintaining and applying policies that interfere with the rights of employees to engage in union or other concerted activities.
 - Applies to both union and non-union employees.
- The state of the Board law is in flux.
 - It is almost certain that the current Board will abandon the pro-employer rulings of the Trump Board.
 - We do not yet know what exact standards the Board will adopt – but we have an idea!
 - Employers should review their policies and procedures to see whether they would comply with the standards adopted by the Obama Board.
- Use disclaimers but recognize that may not shield company from liability.

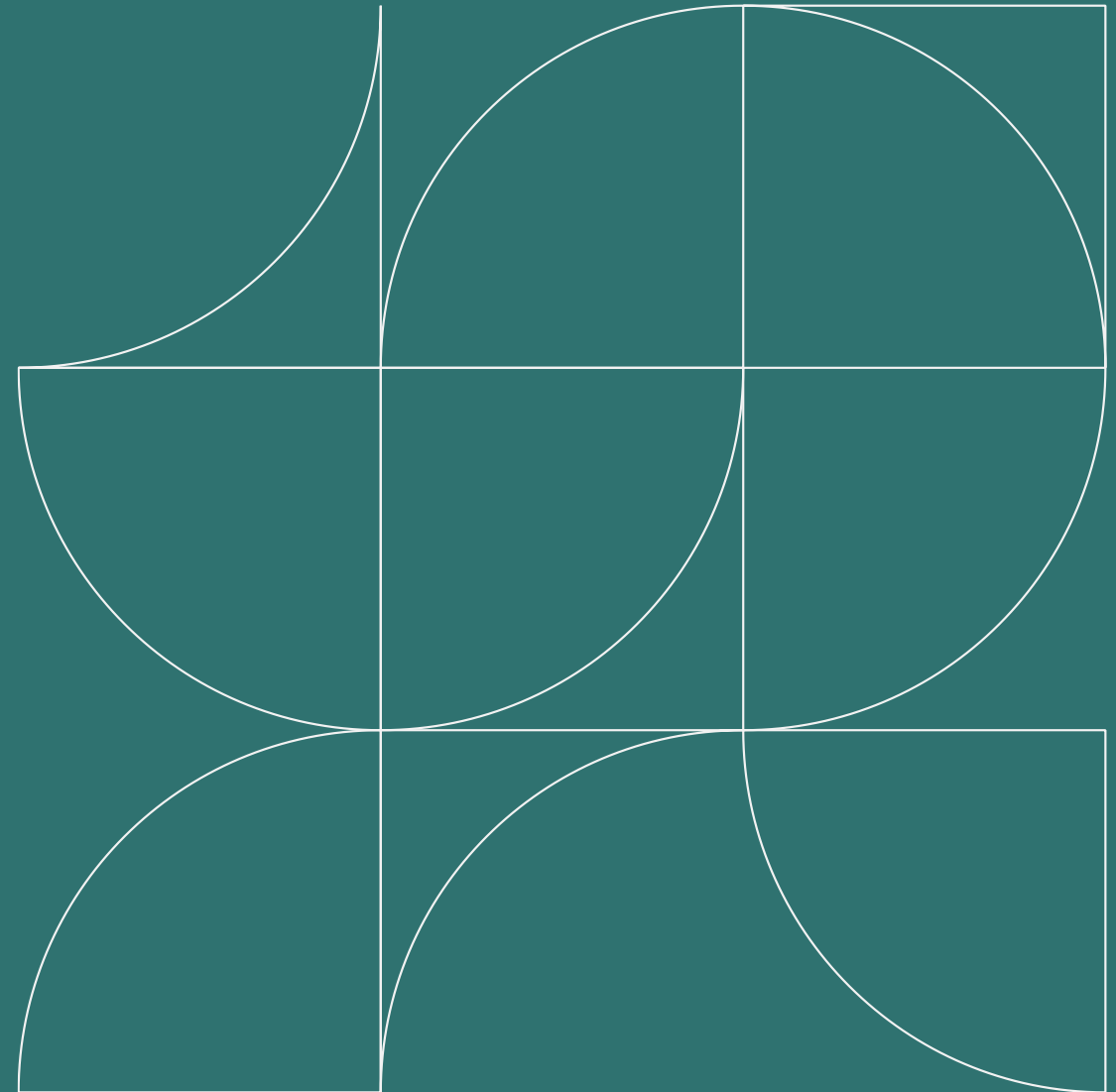


Policies Likely Subject to Scrutiny/Challenge

- Preview from the Biden Board's General Counsel
 - Confidentiality (e.g., wages, discipline, investigations)
 - Electronic communications (e.g., email, Slack, text, etc.)
 - Complaint policies
 - Class action waivers
 - Dress code and uniform policies
 - Third-party access rules
 - Solicitation & distribution policies
 - At-will disclaimers
 - Social media, recording or talking to the media policies

6

How Seyfarth's Handbook & Policy Team Has Helped Employers



Who are we and what are we doing?



- 35+ attorneys of every level and office
 - trained handbook and policy experts
- Used as both an internal Seyfarth training (not billed to clients) and an external resource building project
- Built an easily update and customizable national template and a state addendum for every state (even those that might not need one, just in case you want one)
- Updated questionnaire for employers to tailor handbooks and state addenda
- Partnering with our paid sick leave and paid family leave teams to assist in efficiently managing national resources in those spaces as well

What it is and is not?



IT IS:

- A completely customizable tool
- For clients looking for a new product, we can build from a starting price and add per state based on a sliding scale of complexity of each state's laws (ranging from a few hundred to a few thousand per state)
- Most states can be done for a few hundred dollars each (or can be rendered unnecessary)
- For clients looking for a review of an existing book and state addenda, the documents we already have in place provide current resources for more efficient and cost-effective revisions

IT IS NOT:

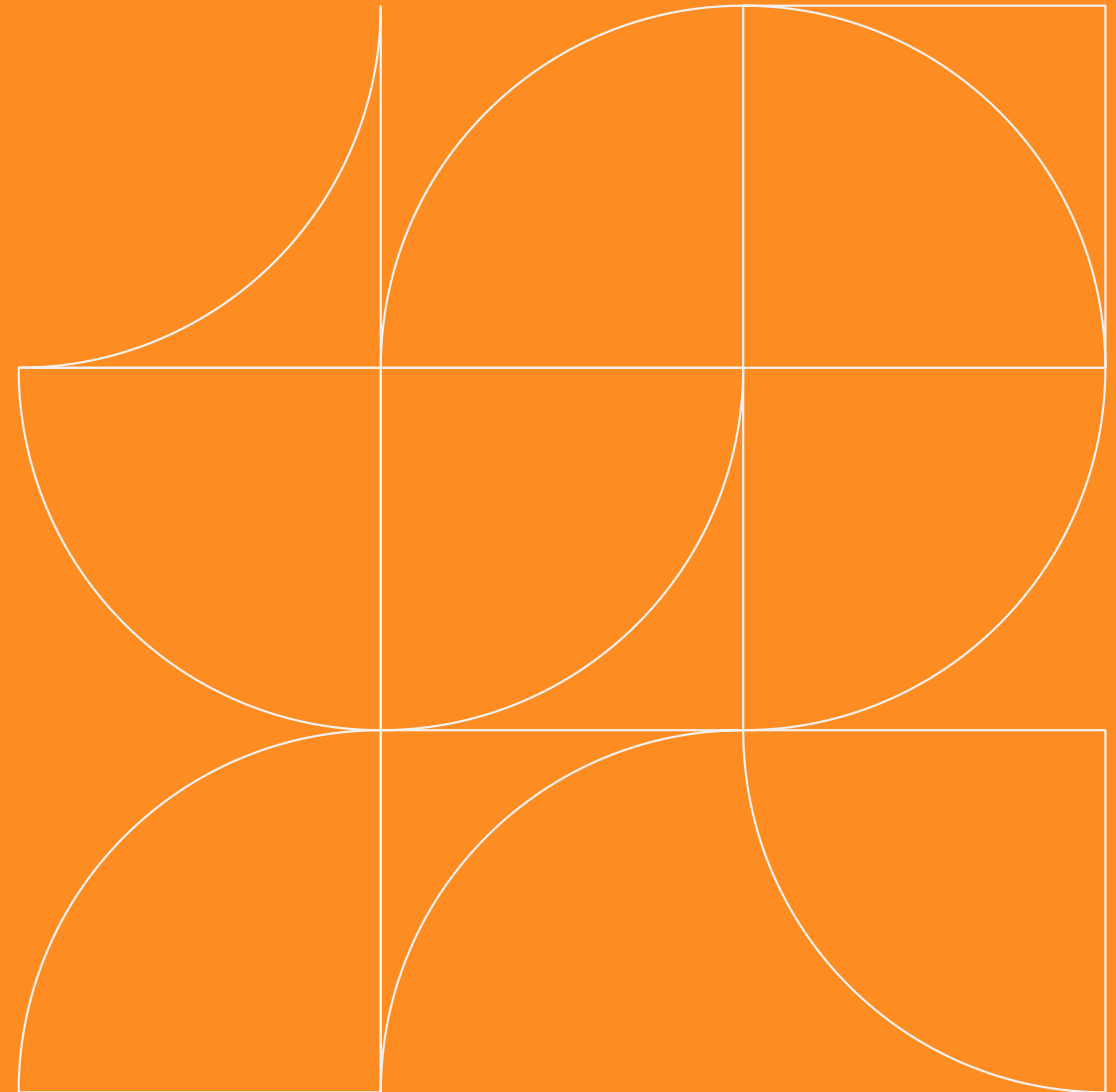
- An off the shelf product to give or even sell
- A one size fits all version
- Although not a document that can simply be sold to an employer for use without editing, it requires far less time and customization compared to others and previous projects.

What it can do and how can we help?



- Provide comprehensive handbook requirements and information for each state at the outset to help employers stay on top of new and changing laws across the nation
- Greatly increase predictability of cost and timing
- Greatly reduce time spent/fees on these projects without compromising the quality and depth of the work
- Similarly, reduce time spent in updating in future years, as the tools continue to be updated by our team
- Contact one of us or our other experts to map out what a project would look like for you

CLE CODE
SS7873



thank
you

Please reach out to us with any questions:

Chelsea Mesa: cmesa@Seyfarth.com

Meg Toth: mtoth@Seyfarth.com

Jean Wilson: jwilson@Seyfarth.com

Renate Walker: rewalker@seyfarth.com