



# Developing and Maintaining a Multi-State Employee Handbook:

*Best Practices and Updates for 2024*

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**Seyfarth Shaw LLP**

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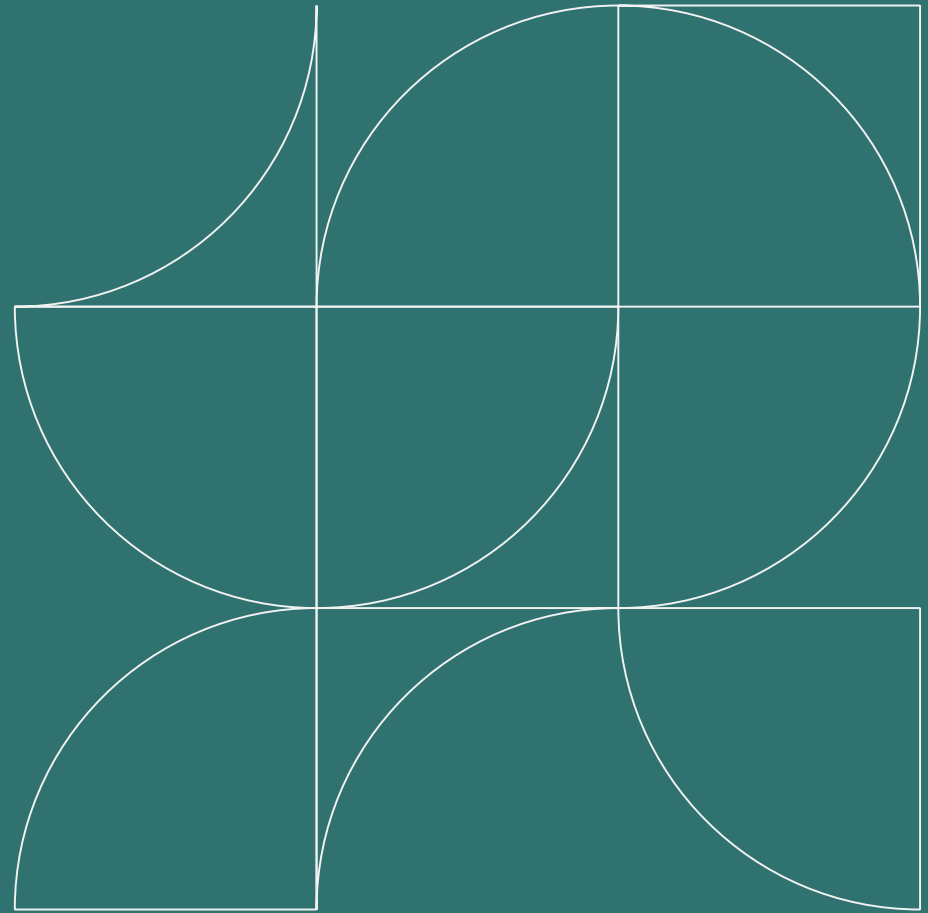
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# Introduction



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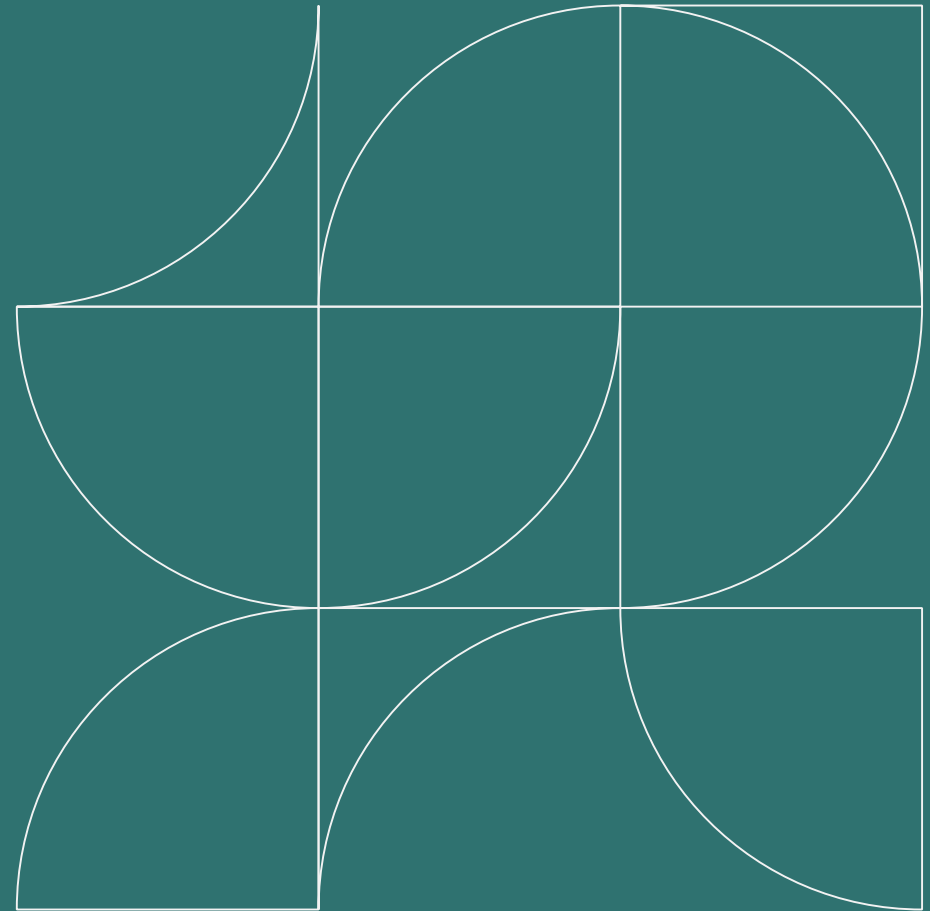


## What We Will Cover Today

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

# 2

## Federal and State Developments That Impact Handbooks and Policies



# Federal Updates

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**Pregnancy & Lactation  
Protections and NLRB Updates**

# 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 always in flux because the makeup is determined by the current administration.



# NLRB Decisions



## ***Stericycle***

- In *Stericycle, Inc. Inc.*, the NLRB held that a facially neutral work rule is presumptively unlawful if an employee who is subject to the rule and “economically dependent on his employer,” and who “contemplates engaging in protected concerted activity” could interpret the rule to have a “coercive meaning.”
- Assuming the NLRB General Counsel makes this modest showing, the employer may rebut this presumption by proving that the rule “advances legitimate and substantial business interests that cannot be achieved by a more narrowly tailored rule.”
- The highlights of this decision include:
  - A facially neutral work rule is presumed to be unlawful where the General Counsel makes a showing that it has a “reasonable tendency” to chill employees’ exercise of their Section 7 rights to engage in protected concerted activity.
- Whether the rule has a “tendency” to chill will be viewed from the perspective of a “reasonable employee,” and not a lawyer, who:
  - Is subject to the rule, and
  - Is economically dependent on the employer, and
  - Contemplates engaging in protected concerted activity.



## **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

# Take A Hard Look At Your Policies

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- What are you trying to protect?
- Is it really necessary?
- Can you justify the policy or rule?
- Is that justification anywhere in writing?
- What about “illustrative examples”?
- Consider a “savings clause” or disclaimer language
  - Be wary, though, of the GC’s invitation to use “prophylactic language”



# Pregnancy & Lactation



## **Pregnant Workers Fairness Act – June 27, 2023**

- Applies to employers with 15 or more employees
- Employers are required to provide reasonable accommodations to pregnant employees & applicants, unless doing so would create an undue hardship
- Uses ADA's interactive process framework
- Cannot require leave if another accommodation can be provided
- Temporarily excuses pregnant workers from essential functions of their jobs in certain circumstances

## **PUMP Act – December 29, 2022**

- Requires reasonable break time to express milk for up to one year following birth of a child
- Employers must provide a place, other than a bathroom, that is shielded from view and free from intrusion of coworkers and the public
- Some state laws provide greater protection

# New England

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## New Obligations in the Northeast

# New Hampshire



- **Nursing Mothers – July 1, 2025**

- Law requires employers to have a policy
- Provide policy to employees upon hire
- Must allow reasonable break periods
  - Approximately 30 minutes for every 3 hours of work
  - Can be unpaid
- Suitable private, non-bathroom space
  - Chair and electrical outlet
  - Close walking distance to employee work area
- Employee can elect to use meal periods or breaks already offered
- Cannot require employee to make up time spent on breaks
- Penalty provision not effective until July 1, 2026

## Connecticut



### Sick Time – October 1, 2023

- Expanded reasons a service worker can use sick time to include
  - a mental health wellness day and
  - If employee’s child is victim of family violence or sexual assault
- Mental health day is defined as a day during which a service worker attends to their emotional and psychological well-being in lieu of attending a regularly scheduled shift

# Massachusetts



## **Paid Family & Medical Leave – Nov. 1, 2023**

- Original PFML Act prohibited employees from using accrued paid leave (e.g., vacation, sick time, personal time, floating holidays) to top off their PFML benefit if using public option
- Amendment eliminates that restriction
- Employers must allow use of accrued paid leave but cannot require it
- Not clear whether employers can limit employee's use of accrued paid leave (e.g., paid sick time may only be used to top up an employee's PFML benefit if PFML taken for a reason covered by the employer's sick time policy)

## **Holidays – January 1, 2023**

- No longer need to provide premium pay for holiday work



# 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

## **Paid Family & Medical Leave – May 1, 2026**

- Contributions begin Jan. 1, 2025
- Funded through employer & employee contributions
- Applies to most employers (employers with fewer than 15 employees, do not have to contribute)
- Provides 12 weeks max of family and medical leave

# Vermont



## **Paid Family & Medical Leave**

- **Voluntary** plan offered through the Hartford
- State worker access began July 2023
- **Private employers – benefits available beginning July 2024**
- Provides 60% wage replacement for 6 weeks (up to SS cap)
- Same reasons as under FMLA

## **Harassment**

- Standard for unlawful harassment changed; no longer need to demonstrate that conduct is severe or pervasive
- Trend we are seeing in other jurisdictions (e.g., NY & CO)

# New York

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## Big Changes in the Big Apple

## New York State



### **Sexual Harassment – April 11, 2023**

- Adopted updated model sexual harassment policy and training materials.
- The NY Policy includes a number of provisions that we typically don't see in nationwide policies

### **Lactation Accommodation – June 7, 2023**

- Provide 20-minute breaks at least every 3 hours for up to 3 years
- In addition to existing meal periods/breaks
- Unpaid – but must allow employee to make up time if they want
- Respond within 5 days of request

## New York City



### **Sick Time – October 15, 2023**

- Rules released that require certain information to be included in sick time policy (e.g., documentation requirements/process, notice requirements when calling in, etc.)

### **Discrimination – November 22, 2023**

- Added height and weight as protected characteristics

# California

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**A Few Updates from Our Most  
Employee-Friendly State**

# Bereavement Leave



- Provides employees with up to 5 days of unpaid leave for death of covered family members
- Applies to employers with 5 or more employees and employees who have been employed for 30 days
- Spouse, child, parent, sibling, grandchild, grandparent, or parent-in-law
- Per death, not per year – 5 days per event, max of 20 days within 12-month period
- Includes reproductive loss as covered reason
- Can be used intermittently

# Sick Leave



- Changes effective January 1, 2024
- Current law – 24 hours/3 days per year
- Provide thru grant or accrual at a rate of 1 hour per 30 hours worked, with a rolling point in time cap of 48 hours/6 days
- New law increases the annual allotment to 40 hours/5 days
- Same accrual rate, but up to a max rolling cap of 80 hours/10 days
- This impacts local ordinances as well if the point in time cap was originally 72 hours (or lower)
- Requires new wage theft act notice (Note – sick time must be on paystub (or provided in another writing each pay day)



# Workplace Violence Plans



- Nearly all California employers must create, adopt, and implement written Workplace Violence Prevention Plans
  - Plans must include certain required elements
  - Annual workplace violence prevention training
  - Violent incident logs
  - Creation & retention of records
- Separate from employee handbooks
- Must comply by July 1, 2024

# Western States

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**The Final Frontier of Updates**

# Colorado



## **Paid Sick Leave Updates**

- Public Health Emergency Leave no longer available for COVID-related reasons after June 8, 2023
- Additional general paid sick leave covered reasons effective August 7, 2023

## **Paid Family & Medical Leave**

- Benefits available effective January 1, 2024

## **Discrimination and Harassment – August 7, 2023**

- Marital status is a protected category
- Elimination of severe or pervasive standard

# Washington



## Inspections – July 23, 2023

- New limits on inspecting employees' personal vehicles on Company premises
  - Includes garages, parking lots, and roads leading to these areas
- Allowable Searches:
  - Lawful searches by a law enforcement officer.
  - When it is reasonable to believe that accessing the vehicle is necessary to prevent an immediate threat to human health, life, or safety.
  - When the Company allows or requires the employee to use their vehicle for Company business and the inspection is to ensure the vehicle's suitability for work.
  - When the employee consents to the search immediately prior to the start, the employee is given the option to select a witness, and the search is based on probable cause that the employee unlawfully possesses Company property or controlled substances in violation of federal law and the Company policy (only if employer's policy prohibits possession of federal controlled substances).

## Seattle Banned Caste Discrimination – March 25, 2023

# Oregon



## **Paid Leave Oregon**

- Benefits available effective September 3, 2023

## **Paid Sick Leave**

- Definition of “family member” aligned with Paid Leave Oregon, effective September 3, 2023

## **Oregon Family Leave Act**

- Definition of “family member” aligned with Paid Leave Oregon
- Definition of benefit year changing effective July 1, 2024

Utah

Nevada



## Utah

- Effective May 3, 2023, 5 years of leave for active duty, or other military service are no longer available.

## Nevada

- Effective July 1, 2023, SB 147 requires **immediate** payment of employee wages after temporary layoff.
- Effective Jan 1, 2024, AB 163 extends protections to sexual assault victims leave
  - Covers victims and their family members under existing law that covers only domestic violence victims
  - Job-protected leave up to 160 hours of leave
  - Reasonable accommodations including a transfer or reassignment, modified schedule, new phone number, etc

# Midwest

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## Paid Leave Updates and More

# Illinois



## **Paid Leave for All Workers – January 1, 2024**

- 40 hours/year of PTO
- Can use leave for any reason

## **VESSA – July 28, 2023**

- Additional covered reasons:
  - to attend the funeral or alternative to funeral or wake of a family or household member who is killed in a crime of violence;
  - to make arrangements necessitated by the death of a family or household member who is killed in a crime of violence; and
  - to grieve the death of a family or household member who is killed in a crime of violence.

## **Extended Child Bereavement Leave – January 1, 2024**

- Unpaid leave for loss of child by homicide or suicide
  - 6 weeks for small employers (50-250 FT employees in Illinois)
  - 12 weeks for large employers (more than 250 FT employees in Illinois)

## **Organ Donation Leave – January 1, 2024**

- Applies to employers with 51+ employees
- 10 days of leave in a 12-month period



# Minnesota



## **Earned Sick and Safe Time – January 1, 2024**

- One hour of ESST for every 30 hours worked
- Accrual cap of 48 hours per year & 80 hours point-in-time
- No usage cap
- Model notice must be included in employee handbooks
- Kin care leave law repealed effective January 1, 2024

## **Paid Family & Medical Leave**

- Applies to employers with one or more employees
- Contributions begin and benefits will be available January 1, 2026

## **Pregnancy & Parenting Leave – July 1, 2023**

- 12 weeks of unpaid leave
- Birth or adoption placement, or incapacity due to pregnancy, childbirth, and related health conditions, and prenatal care

## **Employer-Sponsored Meetings or Communication – August 1, 2023**

- Prohibits employers from taking or threatening adverse employment action against employees who decline to attend employer-sponsored meetings concerning religious or political matters

**Michigan**



## **Anti-Discrimination – June 14, 2023**

- Amended Elliott Larsen Civil Rights Act
- Protections for sexual orientation, gender identity, & gender expression

# Southern States

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**Some Things to Know About  
the South**

# Arkansas



## **CROWN Act – August 1, 2023**

- Amendments to Arkansas Civil Rights Act
  - “Because of national origin,” “because of race,” “racial animosity,” and “ethnic animosity” include, without limitation, on account of a natural, protective, or cultural hairstyle
  - “Natural, protective, or cultural hairstyle” includes, without limitation, afros, dreadlocks, twists, locs, braids, cornrow braids, Bantu knots, curls, and hair styled to protect hair texture or for cultural significance

## Louisiana



### **Genetic Testing & Cancer Screening Leave – August 1, 2023**

- One day of unpaid leave to obtain medically necessary genetic testing or preventive cancer screening
- Employees must provide 15 days' notice and schedule so as not to disrupt operations
- Posting requirement

**Texas**

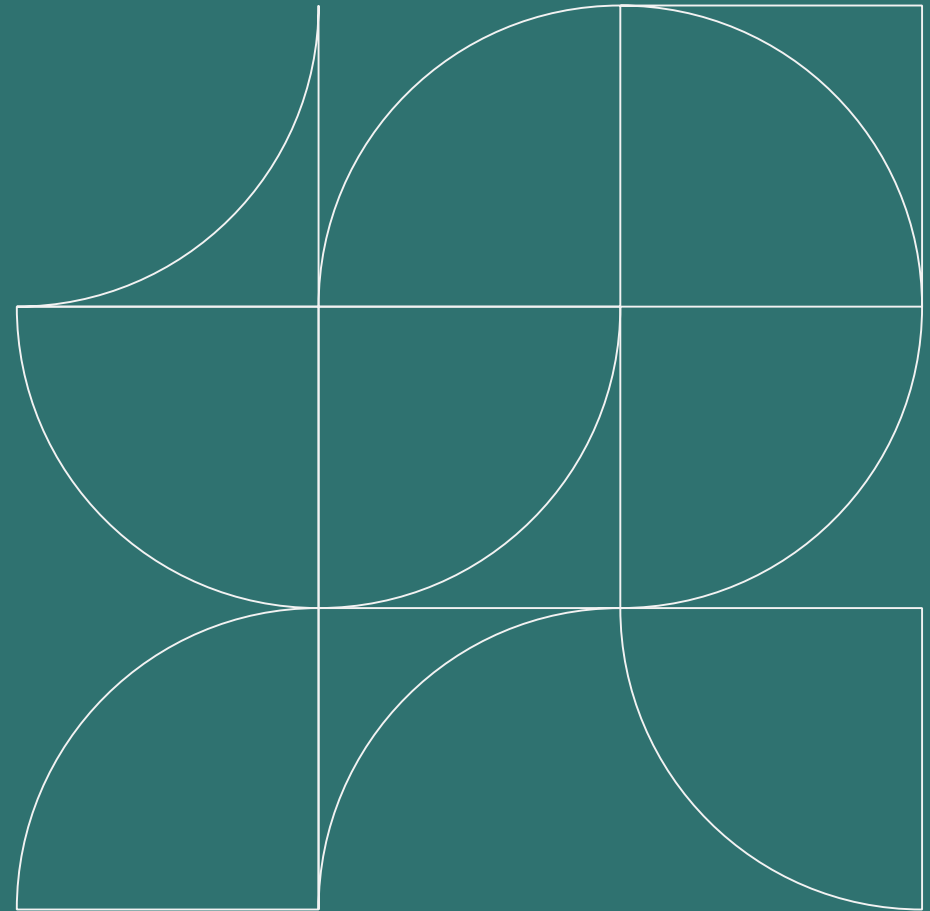


## **CROWN Act – September 1, 2023**

- Bans discrimination based on hair texture or protective hairstyles commonly or historically associated with race, such as braids, locks, and twists

# 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

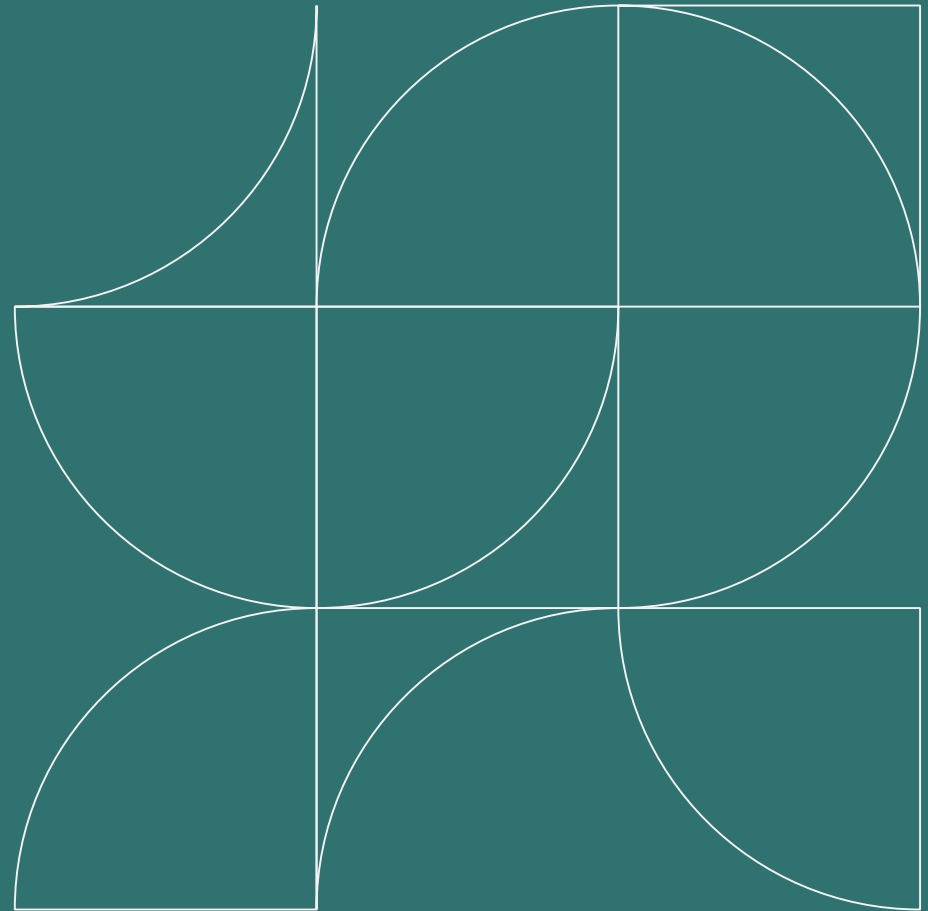
# What Should We Tell Employees?



- 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

## 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 updatable 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.

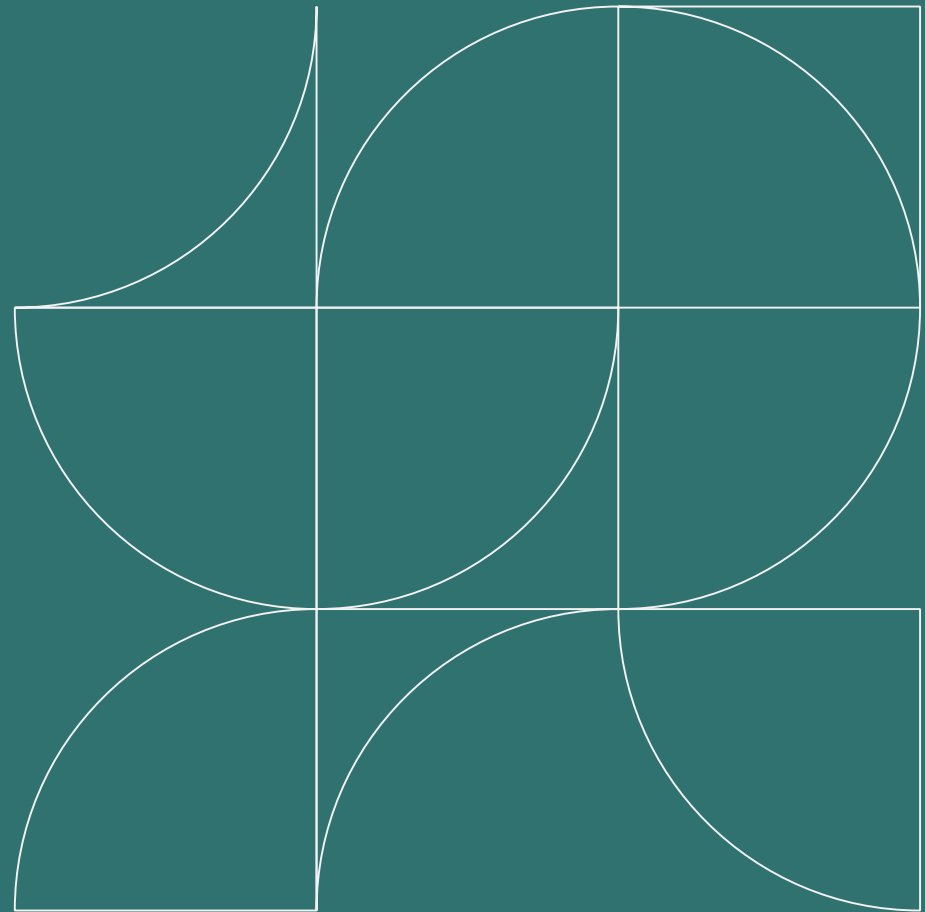
## What Can It Do and How Can We Help?



- 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

# 5

## **Trends in the Law** What To Expect Going Forward





# Introduction – What is Driving Trends?



- **Priorities and policies of current administration**
  - NLRB
  - PWFA
  - PUMP Act
- **Social and political issues**
  - Union organizing (solicitation/distribution, social media, recording)
  - Inequality (discrimination and harassment, DEI&B, pay transparency)
  - Reproductive rights (time off, travel stipends)
- **Shift in geographical location** of where employees performing work
  - State Addenda
  - Wage & Hour
- **Technology**
  - Artificial Intelligence



## Where are your employees working?

- During and after pandemic found that employers had allowed employees to move to other cities/states
- Increased hiring of fully remote workers
- Desire to attract and retain the best talent regardless of location
- Requires employers to be aware of and address local and state employment law requirements where they have employees
  - Discrimination/Harassment
  - Paid Sick Time/Paid Time Off
  - Paid and Unpaid Family and Medical Leave
  - Other Leave Laws
  - Required Policies in Some States
- Also implicates remote work and hybrid policies



## 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)
  - Reimbursement of home office expenses, cell phone, internet
  - 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
  - Consider whether want to have signed agreement

## Paid Family & Medical Leave (PFML)

- Continue to see passage of paid family and medical leave legislation – expect that trend to continue
  - Currently have **11 mandatory PFML laws**
    - Nine states: CA, CO, CT, MA, NJ, NY, OR, RI, WA
    - District of Columbia
    - San Francisco
  - **One voluntary PFML law** – NH
  - **Five additional states have passed legislation**
    - DE - 1/1/25 contributions; 1/1/26 benefits
    - MD - 10/1/24 contributions; 1/1/26 benefits
    - ME - 10/1/25 contributions; 5/1/26 benefits
    - MN - 1/1/26 contributions and benefits
    - VT - 7/1/24 benefits available - voluntary
- Most apply to employers with one employee in the jurisdiction
- Likelihood of federal legislation not high

# Discrimination and Harassment

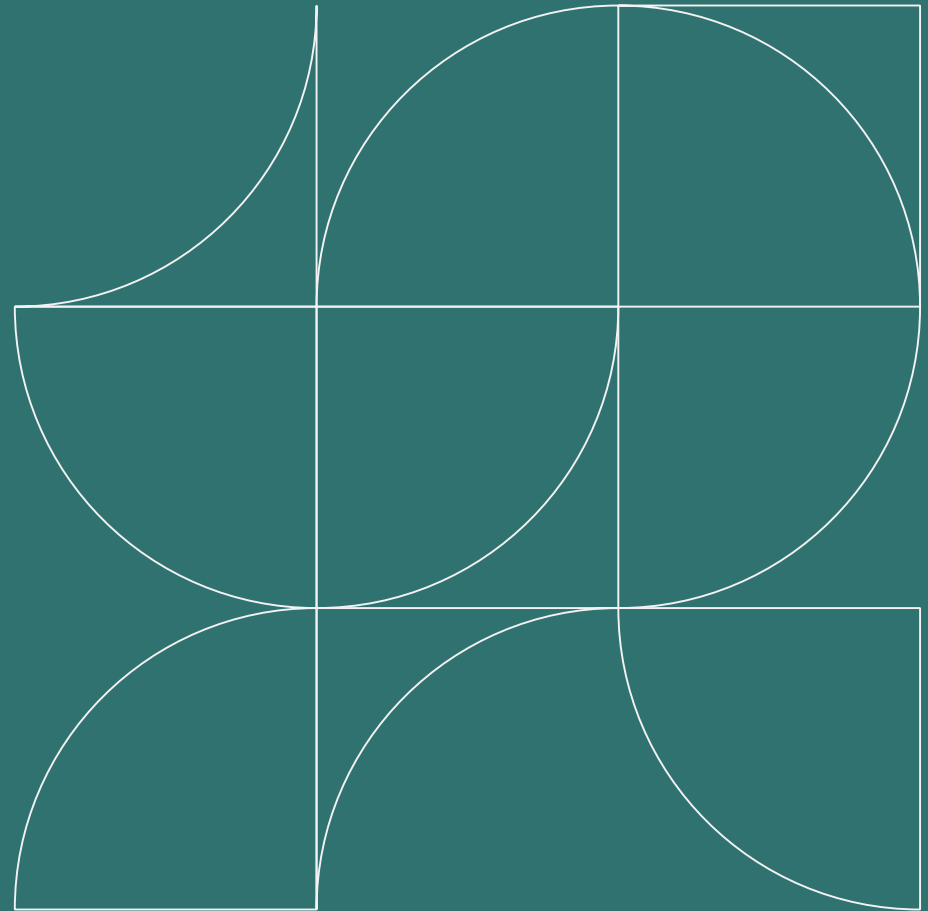
- **Expansion of protected classes**
  - Explicitly cover sexual orientation, gender expression, and gender identity
  - CROWN Acts (23 states; 50+ municipalities) - Create a Respectful and Open World for Natural Hair
  - Caste (Seattle, Fresno) - discrimination based on social hierarchy determined by a person's birth
  - Reproductive decision-making
  - Height and weight (NYC)
- Eliminating requirement that harassment must be severe and pervasive to be unlawful
- Review policies to ensure aligned with expansion
- Account for state specific requirements



## Diversity, Equity, Inclusion & Belonging

- Continued area of focus for organization
- Decision by Supreme Court regarding affirmative action in higher education space has had some trickle effect – closer scrutiny of these policies
- Current social and political polarization affects this space
- Some employers looking for policies banning or curtailing political speech or speech about controversial topics
  - Need to proceed with caution in developing policy – both NLRB and in some jurisdictions, state law restrictions on these types of policies

# CLE Code



thank  
you

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