

Developing and Maintaining an Employee Handbook and Addenda for Every State:

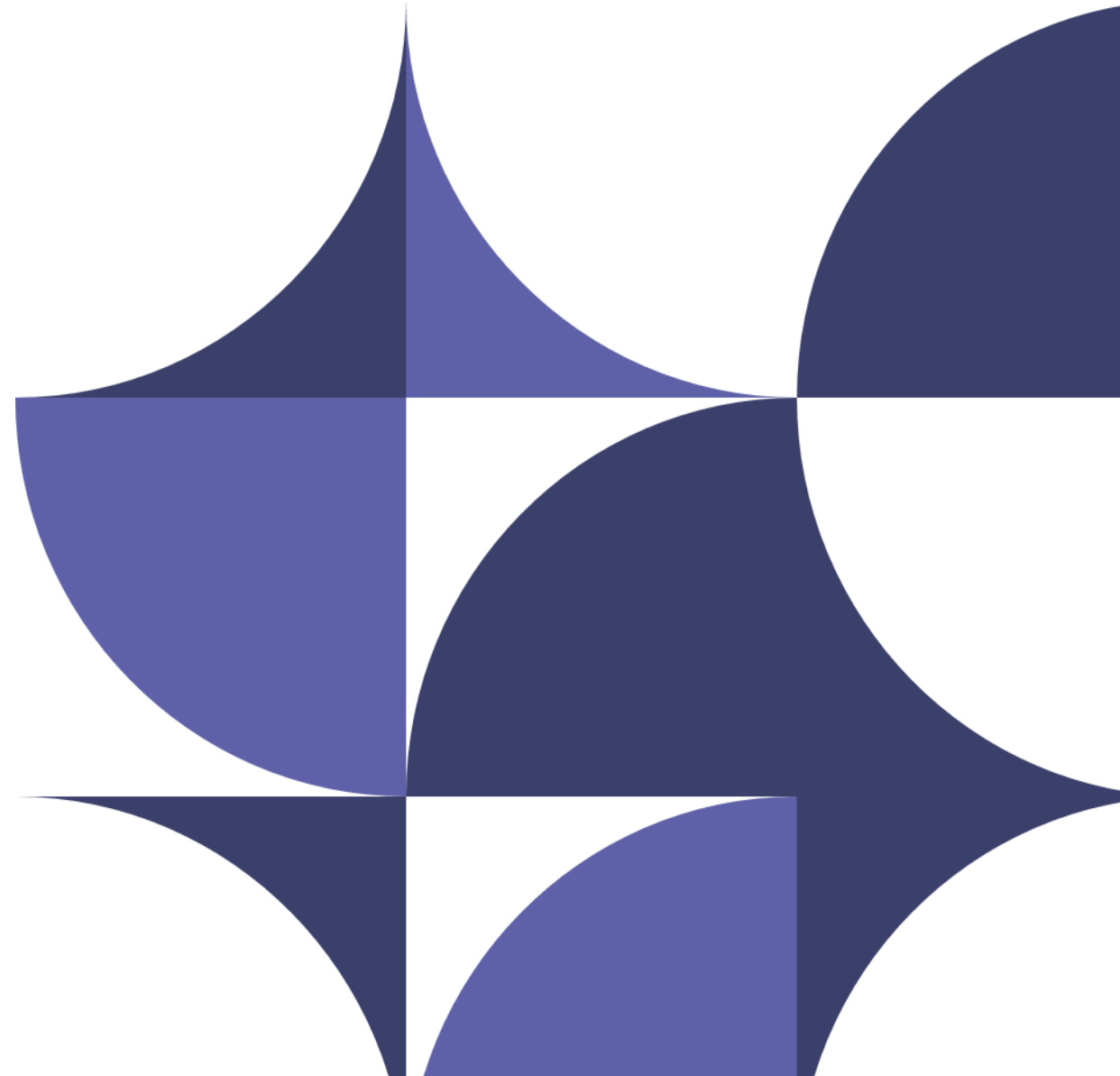
**How Seyfarth is Making it
Possible and Cost Efficient for
Employers**

November 18, 2021

Seyfarth Shaw LLP

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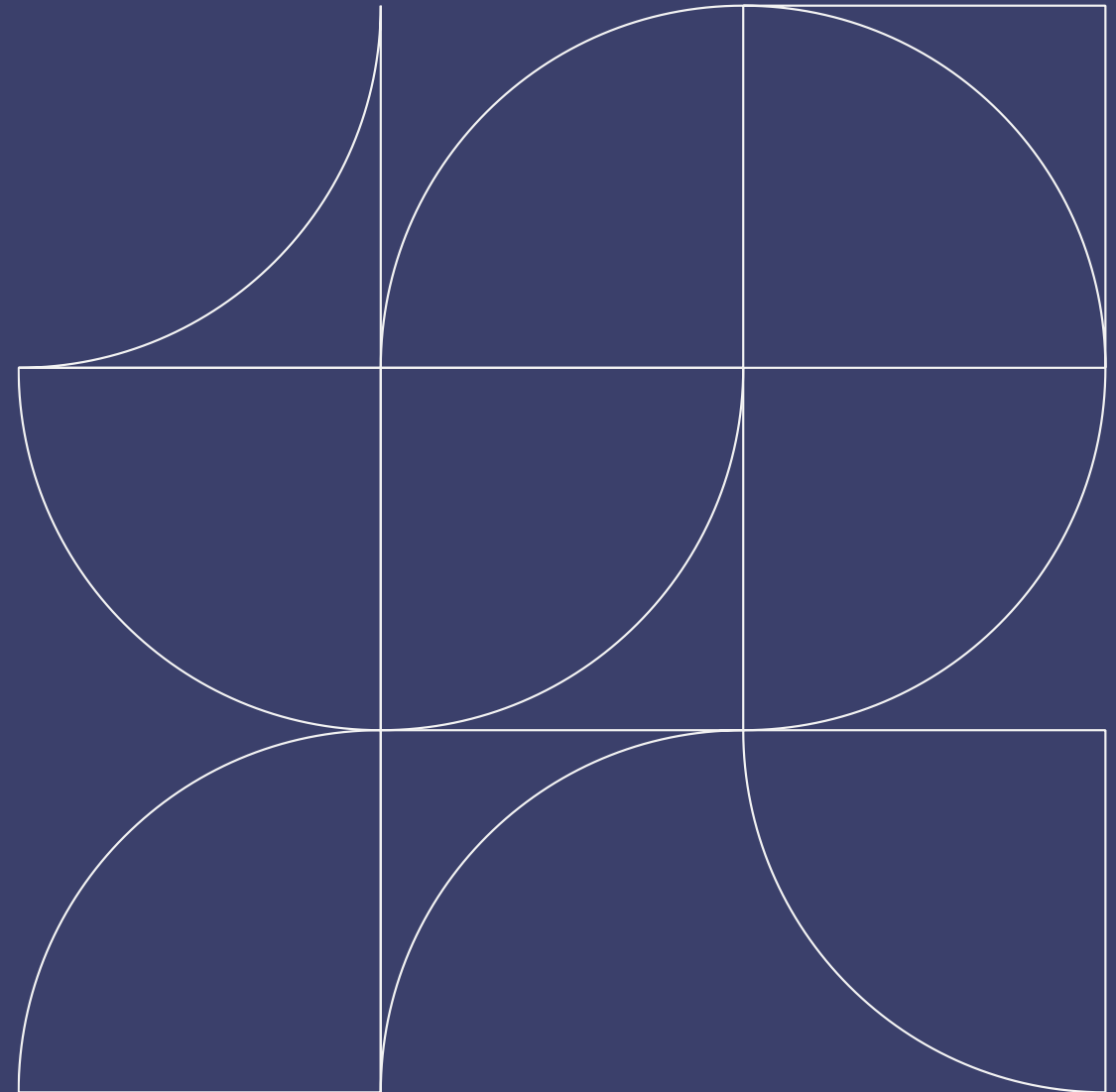


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What We Will Cover Today

- 01 Introduction
- 02 The Importance of an Excellent Employee Handbook and State Addenda
- 03 Best Practices in Developing Employee Handbooks and Policies
- 04 Handbook Trends
- 05 Developments to Watch for in 2022
- 06 Seyfarth's Handbook and Policy Team

Why Do We Need a Good Handbook?



What Really is a Handbook?

- The very best place to start (for almost every employee question/issue)
- Collection of policies
- Outline of employee expectations
- First introduction of who you are as a Company
 - you only get one chance to make a first impression
 - set the tone for everything the employee will experience
- An opportunity to explain history and values
- A legal shield and a sword
 - protect the company
 - hold employees accountable
 - communicate rights, responsibilities, basic terms and conditions
 - employee's acknowledgment

What is the Purpose of a Good Handbook?

- Establish uniform expectations
 - Demonstrate understanding/acceptance of them
- Sell employees on 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
- Act as a companion piece to other onboarding paperwork
- Explain where things do not apply to certain employees
- Not to be a contract, but a reliable guidepost



Why exactly do we need a written policy here?

- Required by law
- Recommended best practice
- New/different practice
- Something went wrong
- Shield and sword (“Exhibit A” and accountability)



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Before You Start Drafting

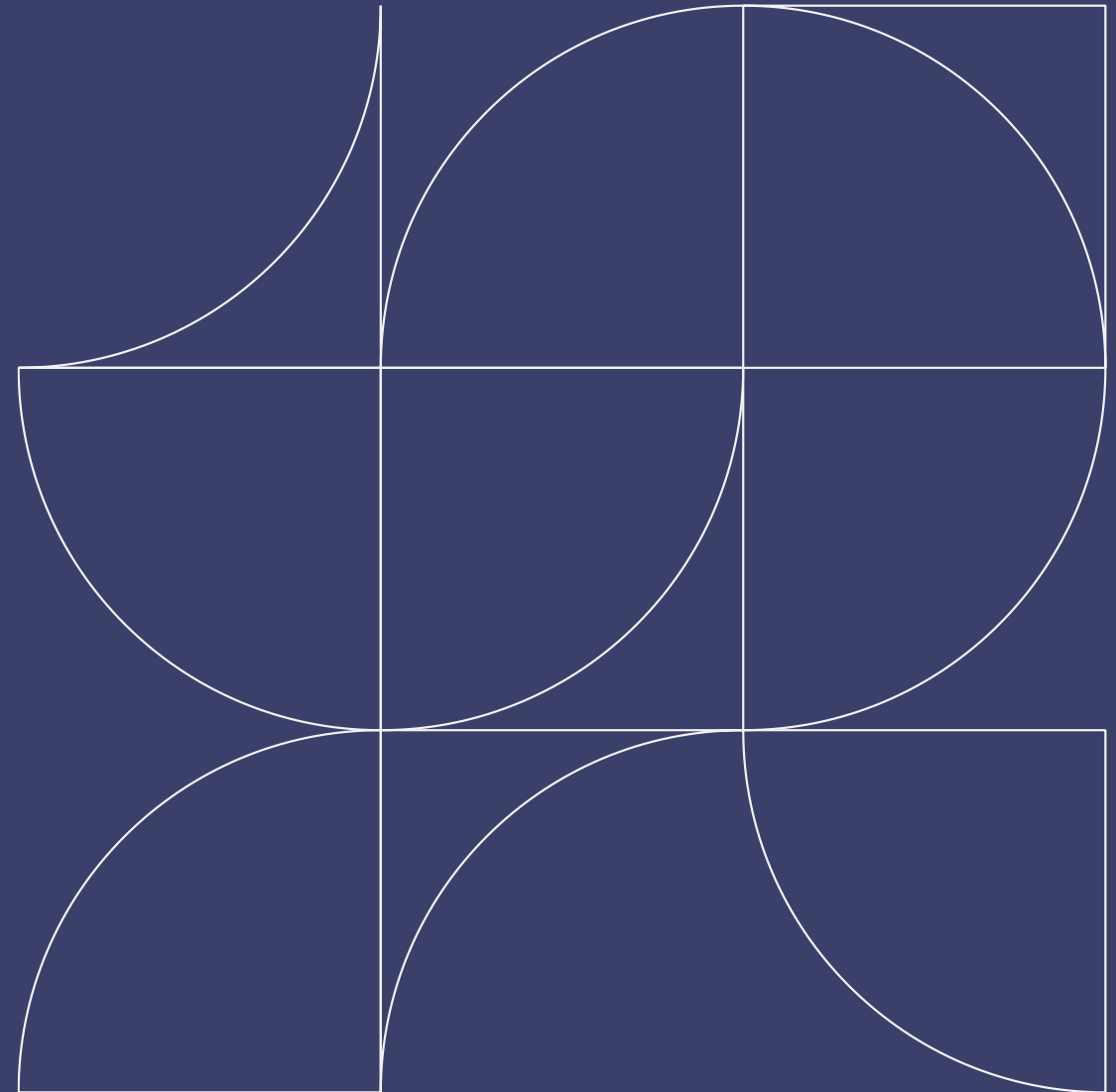
- Do the behind the scenes work for the purpose of the policy
- A little light reading:
 - the law/laws
 - regulations
 - FAQs
 - legislative history
 - NLRB memos
 - opinion letters
 - enforcement guide
 - case law
- Consider whether template or VOC



What Should We Tell People?

- What do employees need to know to be able to take advantage of this benefit, follow this rule, not get in trouble...
- Eligibility – who needs to care about this?
- Rights – what’s in it for me?
 - Limitations on those rights – 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?
- Example

Handbook Best Practices



Let's Start at the Very Beginning...

- Start with clear and understandable language
- Know your audience and avoid excess legalese
- Clarify all potential ambiguities
- Consider recommending multi-lingual formats
- Consider recommending electronic/on-line documents only
- Discuss process to update handbook without creating a new edition
- Avoid temptation toward over-comprehensiveness
- Recommend against combining with operations/procedure manuals



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 recommending addenda for multiple states/jurisdictions



Organization

- Most important policies go at the very front
 - At-Will
 - EEO
 - Sexual Harassment/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 an excuse for not reading or understanding them



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**
 - code of conduct, property, internet, social media
- **Time Off**
 - vacations, holidays, FMLA/CFRA, PDL, sick time, state protected time off
- **Health and Welfare**
 - benefits, state-mandated benefits (WC, SDI, PFL), drugs, violence and safety
- **Acknowledgment**
 - make this an at-will agreement
- **Arbitration**
 - discuss whether to make this a separate agreement or part of the acknowledgment
- **Confidentiality**
 - also may be addressed in separate agreement

Common Handbook Mistakes

- Not including or insufficient “at-will” language
- Promising “permanent” employment or raises
- Incomplete EEO policy
- Promising progressive discipline or lock-stepped grievance policy
- Ineffective no harassment or retaliation policy
- Unlawful leave policies
- Incomplete drug & alcohol policy
- Blanket “not a contract” language
- Non-compliant vacation or sick time policies
- Insufficient meal and rest break policy

Common Handbook Mistakes

- Not tailoring to your business
- 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 reissuance of the handbook
 - meet with employees to cover relevant changes
 - track meeting attendance
 - ensure all employees receive a copy or specific instructions on how to access on-line
 - address bi-lingual workforce

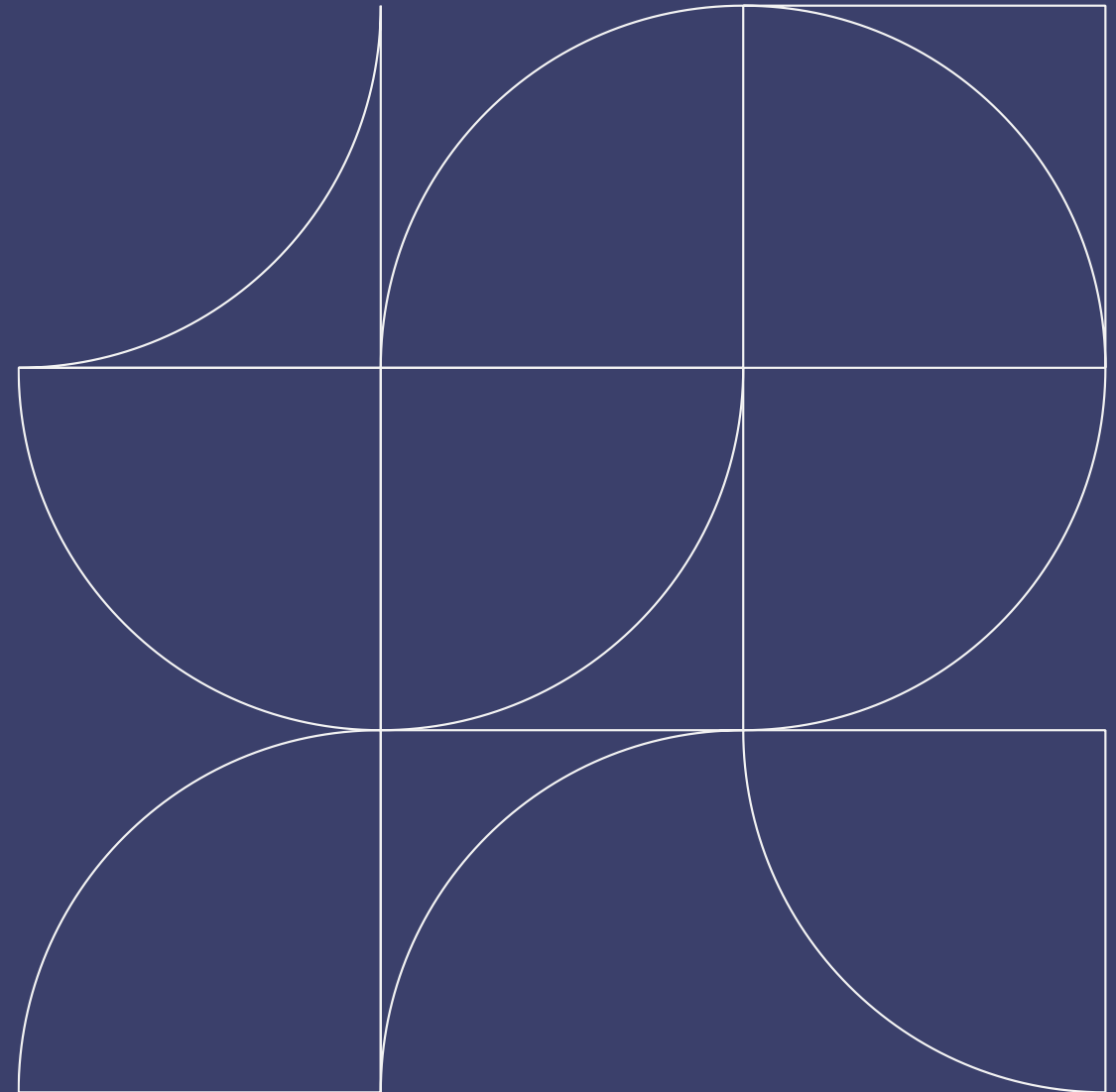
Implementation

- 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

Common Implementation Mistakes

- Not finalizing and comprehensively implementing the handbook
- Reliance on a “policy” when there isn’t one
- Not updating the handbook
- Using a handbook as a procedure manual for managers
- Lack of coordination
 - within handbook
 - with other documents

Handbook Trends



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 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

Sick Time and Family/Medical Leave

- Recent years significant increase in jurisdictions (both state and local level) requiring paid sick time
- Increase in number of states that require some type of leave related to:
 - welcoming a new child
 - employee's own illness
 - care for an ill family member
 - military obligations
- Current landscape
 - 9 states, DC, and San Francisco have paid family/medical leave laws
 - a number of other states have unpaid family/medical leave laws
- Potential for **paid** federal family leave dwindling

Family & Medical Leave Laws

- Depending on governing law, leave may be paid or unpaid
 - paid leave typically provided through the state
 - may allow employer to adopt private plan
- Typically requires employer to adopt policy specific to jurisdiction – almost impossible to craft “one-size fits most” policy
- Often requires adjustments to:
 - accrued time off policies (sick, vacation, personal); and
 - other leave policies (FMLA, employer-provided parental/disability leave)

Social Media

- Most employers have a social media policy
- More employers responding to issues that arise on social media but are not directly connected to employment
 - complaints from other employees or customers regarding posts that are offensive
- Seeing a change to the scope of these policies
 - hold employees accountable for postings that are made
 - outside of work
 - on private social media accounts
 - that impact the workplace
 - adding statement to policy that makes clear that employees may be subject to discipline, including termination, for posts made outside of the workplace
- Need to be cautious about policies that restrict ability of employees to engage in concerted, protected activity

National Labor Relations Board

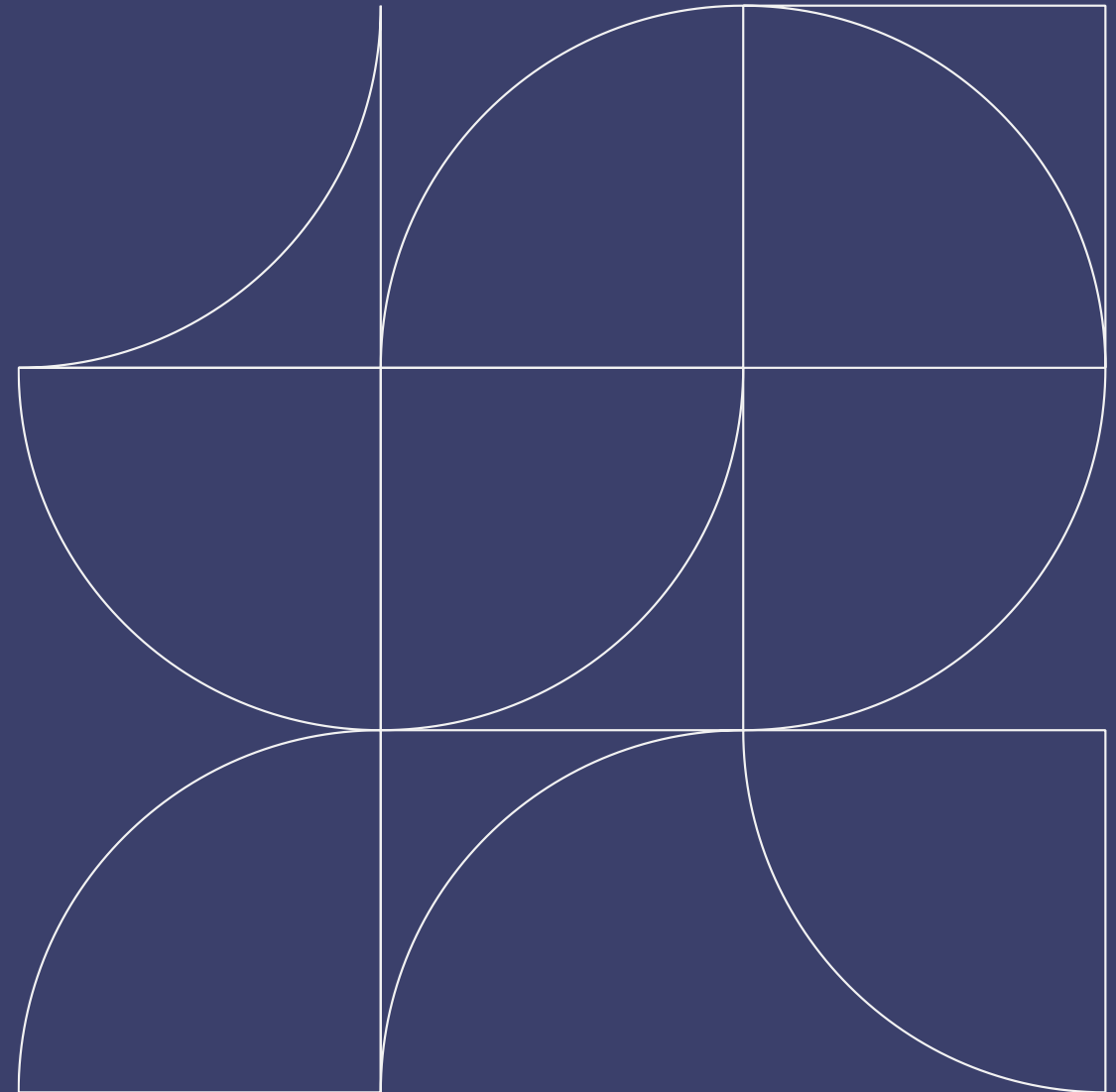
- Change in administration likely to result in renewed scrutiny to handbook policies that affect an employee's ability to freely discuss wages and other terms and conditions of employment
 - applicable to both union and non-union employers
- Section 7 of the NLRA prohibits employers from enacting policies that stifle or prevent employees from engaging in "concerted activity" for "mutual aid and protection."
- According to the NLRB, there are two main points to consider:
 - Employer policies should not be so sweeping that they chill the kinds of activity protected by federal labor law, such as the discussion of wages or working conditions among employees.
 - An employee's comments on social media are generally not protected if they are mere gripes not made in relation to group activity among employees or working terms and conditions.
- Use disclaimers but recognize that may not shield company from liability

Policies Subject to Scrutiny/Challenge

- Confidentiality
 - Wages, discipline, investigations
- Electronic communications
- Complaint policies
- Class action waivers
- Dress codes
- Access rules – solicitation & distribution
- At-will disclaimers
- Social media policies



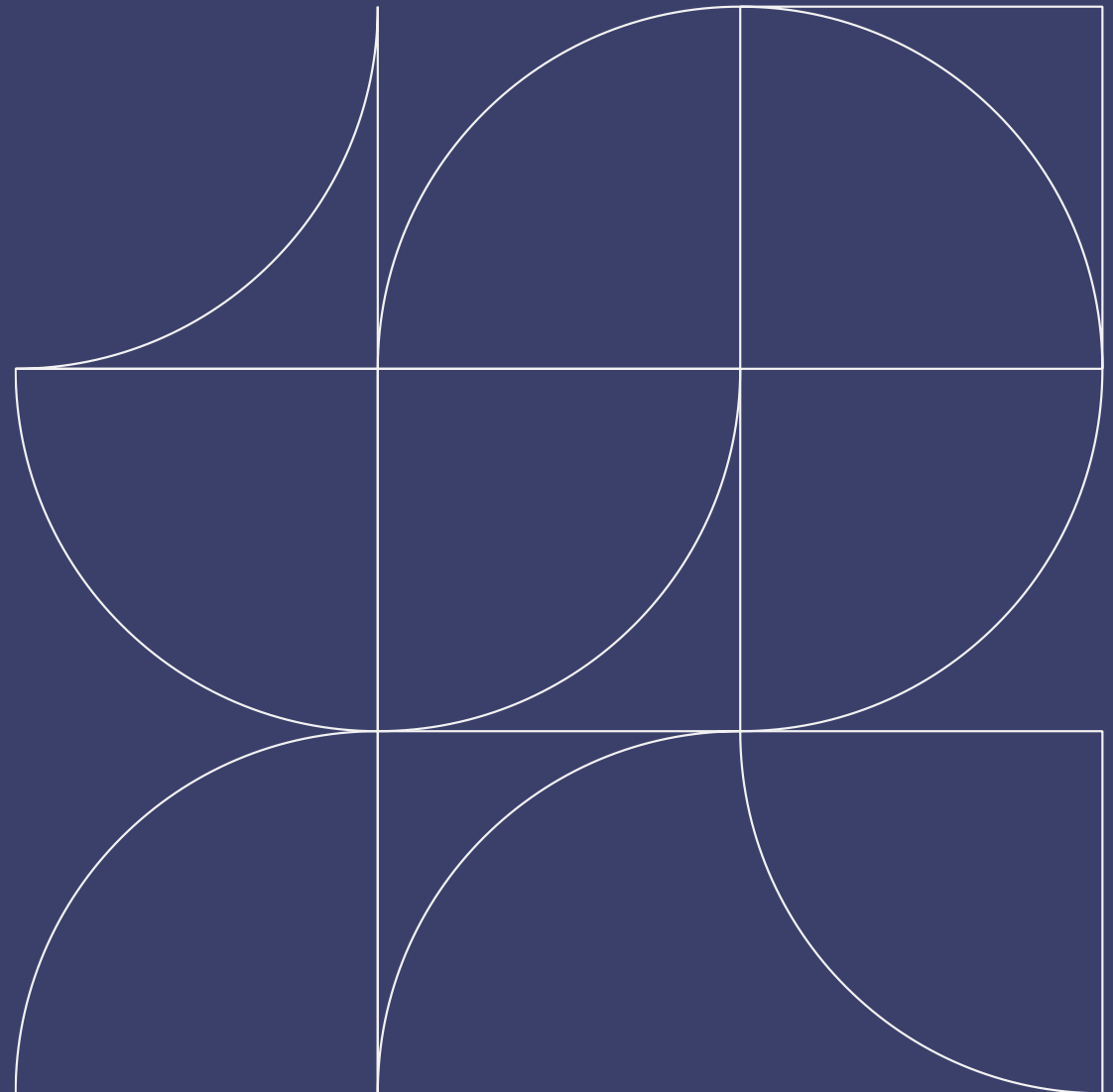
Developments to Watch for in 2022



Some of the States With Recent Legal Updates 2021/2022

California	California Family Rights Act (CFRA)
Colorado	Paid Sick Leave; Public Health Emergency Leave; New Protected Classes
Connecticut	Connecticut Paid Family and Medical Leave
Illinois	Chicago/Cook County Sick Leave; New Protected Classes; Kin Care Law; VESSA Act
Missouri	MO Victims Economic Safety and Security Act (VESSA)
New York	NY HERO Act
Oregon	CROWN Act; Oregon Paid Family Leave; Oregon Family Leave Act (OFLA)

Seyfarth's Handbook Team and How We Can Help



Who are we?

- 35+ attorneys
- Every level from junior associates through equity partners (and everything in between)
- Spanning every office (including licensures in most states)
- Handbook and policy experts
- Used as both an internal Seyfarth training (not billed to clients) and an external resource building project
- Hundreds of hours spent

What are we doing?

- Our team of attorneys is divided into sub-teams, ranging from 1 to 8 states each, divided by region, with members representing that region in each team
- Took existing templates and revised and modernized for compliance through the end of 2021
- Formatted to ensure consistency
- Built around a template national book that was also updated for consistency and compliance
- Companion chart with updates, written policy requirements and at a baseline, a determination as to whether a client needs or does not need an addendum for a particular state depending on its individual circumstances
- 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?

- A completely customizable tool – with the ability to provide as little or as much as a client needs that particular year (everything from the whole handbook to one new addendum as the company expands)
- 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)
 - we worked with a team of internal experts to determine the state pricing estimates
- 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

What it's 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

thank you

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