

ALERT

July 2009

EMPLOYEE HANDBOOKS: PROTECT YOUR COMPANY

The United States Equal Employment Opportunity Commission reported that in 2005, companies paid out about \$378 million dollars in discrimination non-litigated settlements. In 2008, the EEOC received a total of 95,402 discrimination charges filed against private businesses. How does a company protect itself against employee-driven lawsuits? An inexpensive place to start, for all companies, is an Employee Handbook

A Handbook is nothing more than a collection of policies distributed to employees. Its purpose is to put employees on notice of the Company's rules and Company's expectations of them. For smaller companies, there is an additional benefit. The small employer can use the process of putting together a Handbook to consider alternative approaches to everyday questions, such as overtime for non-exempt employees and how to maintain a workplace free of discrimination and harassment.

It should come as no surprise to learn that many Companies prepare handbooks because it is in their economic self interest to do so. The law of sexual harassment illustrates this point nicely. While legal formulations vary, sexual harassment generally occurs when an employee is subjected to unwelcome physical contact, offensive sexual comments or offensive sexual materials as a regular part of the work environment.

In 1998, the United States Supreme Court decided two cases that provided employers with a strong economic incentive to adopt sex harassment policies, Burlington v. Ellerth, 542 U.S. 742 and Faragher v. City of Boca Raton, Florida, 524 U.S. 775. The Court's powerful decisions in these cases allow an employer to avoid liability in certain circumstances where an employee has been sexually harassed by a supervisor or other superior in the company, but where the employer has among other things, exercised reasonable care to prevent and correct promptly any sexually harassing behavior. Faragher, 524 U.S. at 778.

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From an employer's perspective, it is important under Faragher to establish and maintain a good sex harassment policy and internal complaint procedure; for most employers, the Handbook is where these policies (among others) are maintained. Many employers adopt a "zero tolerance" policy, directing employees to report any type of harassment. To take advantage of Faragher, it is imperative that the employer follow-up. It is difficult to argue that an employee should have followed the employer's policy if that policy is "dead letter"; that is, if the employer does not follow up on complaints.

Sex harassment policies are just one example of the value of Handbooks. Writing a Handbook is only the first step. The employer must understand, follow-up, and apply its own rules.



We can assist you in preparing employee handbooks and in reviewing your existing handbooks to determine if they comply with new requirements. We can also discuss with you other provisions that can provide further protection for your company.