



ALBERT G. STOLL, JR. | A LAW CORPORATION

Good Employee Handbooks in California, From A to Z



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There is no fixed set of policies and procedures that employers include in employee handbooks. This is because every business has its own values, practices, and traditions. The following discussion addresses the more important inclusions, as an employee handbook should be as short as possible without excluding any essential parts.

At-will disclaimer. Most employers wish to reserve the right to terminate employees at will, or without cause, to insulate themselves from lawsuits by former employees claiming that their termination was without good cause. An employer should therefore state in a disclaimer that while all other policies in the handbook can be modified by the employer at any time without a written revision of the handbook, the at-will policy cannot be so modified. Courts will generally be receptive to employee arguments that they are not bound by changes to a policy if they did not receive any notice of the change, however, so employers should provide timely notice of any new or modified policies.

Benefits available to eligible employees. Employee handbooks should include short descriptions of available benefits. They should also identify sources for further information, such as information regarding who is an eligible employee. Finally, they should state that the policy in the handbook is general and the terms of the benefit plan outline the rights of eligible employees.

Current practices and procedures. An employee handbook should reflect current practices and procedures, because policies set forth in employee handbooks can create contractual obligations or legal liabilities. Deviations from the policies in the handbook may have to be explained to a jury if the employee brings a civil action, so the employer should make sure such policies are followed.

Discipline. The handbook should make explicit any standards regarding performance, discipline, or termination, as discussed further below. Yet the handbook should not provide for an escalation of discipline. Such a provision tends to undermine the at-will disclaimer discussed above, because it implies that the employer does not have the right to terminate an employee at will, but instead must wait until the employee reaches the termination stage in the discipline process stated in the handbook.

Employment relationship. In addition to an at-will disclaimer, many employers separately include a statement regarding employees' status (for example, at-will). Employers have employees acknowledge this status by signing a receipt when the employer gives them a copy of the employee handbook, which is discussed further below. The employer can later use this receipt to support its understanding of the employment relationship, and to limit the legal effect of the handbook.

FEHA requirements. The Fair Employment and Housing Act requires that employers train supervisory employees in California regarding sexual harassment every two years and within six months of promotion, if the entity regularly employs at least 50 employees or contractors.

Grooming standards. Reasonable requirements concerning employee dress and grooming are lawful, but courts have found some such policies to have a discriminatory effect. For example, requiring women to wear sexually provocative uniforms might be discriminatory, depending on the nature of the business. Employers also must allow employees to appear or dress consistently with their gender identity.



Harassment procedure. A harassment procedure in an employee handbook serves two functions. It outlines the process for handling sexual harassment and discrimination complaints, and provides an assurance to employees that they will not face retaliation for good faith complaints or participation in an investigation, proceeding, or hearing. This portion of the handbook should expressly prohibit all forms of offensive or degrading behavior in the workplace, regardless of whether it is sufficiently severe or pervasive to constitute unlawful harassment. It should also define sexual harassment under applicable law, describe sexual harassment using examples, identify the legal remedies and complaint process available through the Department of Fair Employment and Housing and Fair Employment and Housing Commission (including how to contact DFEH and FEHC), and state that sexual harassment is illegal.

Introductory statement. An introductory statement should inform employees that the employee handbook supersedes any previous written or unwritten policies or procedures.

Job abandonment provision. Employers should inform employees regarding when they will be deemed to have abandoned their jobs. For example, an employer may state that subject to federal and state law, the employer will consider employees to have resigned if they fail to report to work or report absence for three consecutive days.

Kin (or employment of relatives) policy. Employers may want to state in employment handbooks that relatives of current employees will not be hired or transferred into positions in which they would supervise, be supervised by, work with, or have access to sensitive information regarding a close family member.

Leave policies, paid and unpaid. Promises regarding leave made in employment handbooks may be enforceable under state contract law, so employers should make sure the stated policies are lawful and consistently followed. If an employer has eligible employees and written policies concerning employee benefits or leave rights (e.g., in an employee handbook), the employer must include information about California Family Rights Act rights and obligations. The same goes for the Family and Medical Leave Act, and the handbook should also describe the employer's policy on fitness-for-duty reports. Finally, if an employer publishes a handbook that describes temporary disability leaves or transfers available to employees, it must include a description of pregnancy disability leave or transfer.

Memberships. If the employer pays membership dues for employees, the process by which such dues are paid should be explained in the handbook. For example, some law firms pay bar association dues for all regular, full-time attorneys employed with the firm.

Notice-posting. Employers engaged in certain regulated activities that could involve hazards, use of specialized equipment, or exposure to hazardous substances must provide safety instructions to employees. This means information regarding the potential hazard and safety precautions applicable to the employees' work. Moreover, all employers should affirm their commitment to safety in an employee handbook and inform employees that they will post all notices required by law.



Pay policies. A good employee handbook describes different employee classifications (e.g., exempt and non-exempt), defines a workweek and workday, describes pay periods, timekeeping, overtime, meal and rest periods, bonuses, commissions, and travel pay, and explains expense reimbursements and payroll deductions. An employee handbook should also state that non-exempt employees must record their time and should not work overtime without express prior approval from a supervisor. (Though this in itself will not relieve the employer of the obligation to pay for overtime, it is still a good idea for inclusion in the handbook.)

Quit (or resignation) procedure. Employers may outline procedures that become applicable if an employee resigns. For example, employers may seek the return of company property upon an employee's resignation.

Receipt. The acknowledgement of receipt of the handbook is briefly discussed above under "employment relationship." It should be drafted as a contract, in which the employee agrees to the employment relationship and how the terms and conditions of employment can be modified. For example, the employer may draft the receipt such that the terms and conditions of employment can only be modified by a writing signed by the employee and a designated company officer.

Standards of performance, discipline, and termination. The handbook should make explicit all standards regarding job performance, discipline, and termination. For example, the handbook should identify whom employees should report to when they will be absent or late, and the consequences of failure to comply with such standards.

Table of contents. A table of contents and/or index will make the information in an employee handbook easier for employees to locate.

Unemployment compensation entitlement. Employers should inform employees that unemployment insurance provides benefits for persons unemployed through no fault of their own. As a result, employees will generally be eligible to receive benefits only if they are laid off due to lack of work, terminated for reasons other than work-related misconduct, or if they quit for reasons amounting to good cause under the law (and after taking reasonable steps to solve the problem).

Violence prevention. Employers are unanimously committed to workplaces free of violence, so they should consider defining "workplace violence" in employee handbooks and outlining procedures for employees to report such violence. This should include the person whom employees may contact with any concerns. Employers should also assure employees that all reports will be investigated, no retaliation will occur, and corrective action will be imposed for potentially violent or threatening activities.

Workers' compensation claims. Employers should notify employees that workers' compensation in California is a no-fault system designed to compensate employees who are injured on the job. Thus, injured workers should notify their employers immediately. Employers should also encourage employees to report any health and safety hazard, or accident or injury, to a supervisor or other appropriate company official as soon as possible.



X. The signature, or a mark serving as the signature (e.g., 'X'), should appear on the acknowledgement of receipt after the employee has had a chance to review his or her copy of the handbook.

Year and date. Each page of an employee handbook should be dated.

Zero-tolerance policy. Employers may prohibit the use or possession of drugs and alcohol, and being under the influence of drugs or alcohol, on work premises. But employers should explain that the legal use of prescribed drugs in a safe manner, as instructed, is permitted as long as it does not impair the employee's ability to perform the essential functions of the job. In addition, employers must not discriminate against alcoholics or recovering drug addicts; so employers should offer reasonable accommodations for such individuals.

In conclusion, employers should draft employee handbooks carefully, and consider retaining an attorney as a consultant on their handbook or employment practices more generally. Tim Phillips, an employment attorney with Albert G. Stoll, Jr. | A Law Corporation, is available to consult with employers and draft employee handbooks. He may be reached directly at (415) 762-0025 or tim@stoll-law.com.





Tim Phillips

Tim Phillips represents employees who have experienced unlawful discrimination, harassment, or retaliation, or whose employers have improperly denied them overtime, commissions, or minimum wages. He also assists businesses to ensure their compliance with the laws and regulations that apply to employment practices, so they can avoid expensive litigation and administrative penalties. According to a former client:

My association with Tim Phillips was very positive. He listened to what I had to say, always responded quickly to my phone calls and emails, and grasped the facts and logistics of my case immediately. The fact that Tim remained cool and unrattled during trying and heated situations is testimony to his confidence and ability as a lawyer.

Tim grew up in Minneapolis and attended undergraduate school at the University of Minnesota Morris, where he studied political science and philosophy. He started law school at William Mitchell College of Law in St. Paul and subsequently transferred to Hastings in San Francisco, where he studied public interest law. Since passing the California Bar Exam, he has spent the majority of his practice handling employment disputes.

In addition to employment law, Tim dedicates his time and energy to the Executive Board of the San Francisco Bay Area Chapter of the National Lawyers Guild. He is also a bicycle commuter and member of the San Francisco Bicycle Coalition. In his free time, Tim enjoys playing the guitar and cello.





Albert G. Stoll, Jr.

Al dedicates his career to standing up for the rights of individuals in catastrophic personal injury, product liability, dangerous road and highway cases, insurance bad faith, nursing home neglect, medical malpractice and dangerous pharmaceutical drug cases.

In his more than 15 years of practice, Al has handled more than 40 jury trials. This experience, combined with a commitment to ethics and integrity, has earned Al an excellent reputation throughout the San Francisco Bay Area legal community. He is the recipient of Martindale-Hubbell's "AV" peer rating, which signifies preeminent legal ability and ethical standards, and has been named a Northern California Super Lawyer every year since 2006. In 2009, Al was awarded the prestigious 2009 Civil Justice Award by the San Francisco Trial Lawyers Association, given to attorneys who show integrity, grit, tenacity, ethics, and great advocacy skills, and who contribute to the betterment of consumers and/or injured victims and their families.

Al is often invited to speak to other attorneys on a variety of topics. He has been asked to share his ideas on personal injury cases by the National Institute for Trial Advocacy, Lorman Education, National Business Institute, the San Francisco Trial Lawyers Association, Consumer Attorneys of California, and the Bar Association of San Francisco. His book, *Plaintiffs' Lawyers Guide to Minor Impact Cervical and Lumbar Injury* (Thomson West 2008-2009), now in its fourth edition, is a strategic guide used by lawyers throughout America to fight back against the automobile insurance company tactics of deny, delay, and defend.

In addition to representing injury victims, Al is committed to informing people about accident prevention and safety. Outside his practice, he enjoys spending time with his family, golfing, exercise, travel, and the outdoors.





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