

Table of Contents

Volume 1

CHAPTER 1. OVERVIEW

- § 1:1 Introduction
- § 1:2 Is a handbook a contract?
- § 1:3 Sexual harassment
- § 1:4 Americans with Disabilities Act
- § 1:5 Family and Medical Leave Act
- § 1:6 Equal employment opportunity
- § 1:7 Employee privacy
- § 1:8 Military leave/veterans
- § 1:9 Jury duty
- § 1:10 Substance abuse
- § 1:11 No-solicitation policies
- § 1:12 Employment references
- § 1:13 Severance pay
- § 1:14 E-mail and other technology
- § 1:15 Confidential information
- § 1:16 Legal and ethical conduct
- § 1:17 Citizenship and immigration status verification
- § 1:18 Workplace safety
- § 1:19 Environmental compliance
- § 1:20 Dress and appearance
- § 1:21 Off-duty conduct and moonlighting
- § 1:22 Arbitration of employment disputes
- § 1:23 Alternative dispute resolution
- § 1:24 Copyrights
- § 1:25 Posting notices
- § 1:26 Government investigations
- § 1:27 Telecommuting
- § 1:28 Workplace violence
- § 1:29 Employee discipline
- § 1:30 Racial harassment
- § 1:31 Sarbanes-Oxley considerations
- § 1:32 Practical advice and grievance procedures
- § 1:33 Other forms of harassment
- § 1:34 Public policy violations
- § 1:35 Fair Labor Standards Act
- § 1:36 Unlawful retaliation

EMPLOYEE HANDBOOKS AND POLICIES

- § 1:37 WARN Act
- § 1:38 FDA Food Safety Modernization Act
- § 1:39 Affordable Care Act retaliation and whistleblower protections

- Appendix 1-A. Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees
- Appendix 1-B. EEOC Questions and Answers: Enforcement Guidance on Retaliation and Related Issues
- Appendix 1-C. DOL Employer's Guide to Advance Notice of Closings and Layoffs
- Appendix 1-D. New York State WARN Act Fact Sheet
- Appendix 1-E. DOL Field Assistance Bulletin 2020-5: Employers' obligation to exercise reasonable diligence in tracking teleworking employees' hours of work
- Appendix 1-F. DOL Fact Sheet #15A: Tipped Employees under the Fair Labor Standards Act (FLSA) and Dual Jobs

CHAPTER 2. THE USE OF DISCLAIMERS IN EMPLOYEE HANDBOOKS

- § 2:1 Employment at-will
- § 2:2 Background and history: The *Toussaint* doctrine
- § 2:3 Sufficiency of the disclaimer
- § 2:4 —Location of the disclaimer
- § 2:5 —Emphasis
- § 2:6 —Content of the disclaimer
- § 2:7 —Means used to communicate disclaimer
- § 2:8 Employee acknowledgment of disclaimer
- § 2:9 Employer practices versus disclaimers
- § 2:10 Contractual items to exclude from disclaimers and handbooks
- § 2:11 Conclusion

- Appendix 2-A. Sample Disclaimers

CHAPTER 3. EFFECTIVE SEXUAL HARASSMENT POLICIES

- § 3:1 Introduction
- § 3:2 Basic elements of an effective sexual harassment policy
- § 3:3 Role of an effective policy in minimizing liability
- § 3:4 Same-sex sexual harassment
- § 3:5 EEOC guidelines

TABLE OF CONTENTS

- § 3:6 Considerations in drafting harassment policies—No policy is not good policy
- § 3:7 —What makes a policy effective?
- § 3:8 —What makes a policy ineffective?
- § 3:9 —Simply posting a policy is not enough
- § 3:10 —Policy must not force a complainant to report harassment to the harasser
- § 3:11 —Policy must be enforced according to its terms
- § 3:12 —Use of the policy's available grievance procedure
- § 3:13 Separate policies addressing conduct at employer-sponsored events
- § 3:14 Conclusion

Appendix 3-A. EEOC Guidelines Checklist

Appendix 3-B. Suggested Investigative Procedures

Appendix 3-C. Sample Sexual Harassment Policy #1

Appendix 3-D. Sample Sexual Harassment Policy #2

CHAPTER 4. POLICIES ON THE AMERICANS WITH DISABILITIES ACT

- § 4:1 Background
- § 4:2 Policy contents
- § 4:3 —Preemployment inquiries, testing, and medical examinations
- § 4:4 —Reasonable accommodations
- § 4:5 —Confidentiality
- § 4:6 Leave as a reasonable accommodation
- § 4:7 EEOC revised publications on the employment rights of people with specific disabilities

Appendix 4-A. Sample Policy on Preemployment Inquiries

Appendix 4-B. Questions & Answers about Cancer in the Workplace and the Americans with Disabilities Act (ADA)

Appendix 4-C. Questions & Answers about Diabetes in the Workplace and the Americans with Disabilities Act (ADA)

Appendix 4-D. Questions & Answers about Epilepsy in the Workplace and the Americans with Disabilities Act (ADA)

Appendix 4-E. Questions & Answers about Intellectual Disabilities in the Workplace and the Americans with Disabilities Act (ADA)

Appendix 4-F. Small Business Fact Sheet—Final Rule on Employer Wellness Programs and Title I of the Americans with Disabilities Act

EMPLOYEE HANDBOOKS AND POLICIES

Appendix 4-G. Q and A: EEOC's Final Rule on Employer Wellness Programs and Title I of the Americans with Disabilities Act

Appendix 4-H. EEOC Guidance on Use of Codeine, Oxycodone, and Other Opioids: Information for Employees

Appendix 4-I. EEOC Commission Opinion Letter: Individual Coverage Health Reimbursement Arrangements (ICHRA) under the ADEA (January 7, 2021)

Appendix 4-J. EEOC Guidance on The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees (May 12, 2022)

Appendix 4-K. EEOC Technical Assistance Document: Visual Disabilities in the Workplace and the Americans with Disabilities Act (July 26, 2023)

CHAPTER 5. THE FAMILY AND MEDICAL LEAVE ACT

- § 5:1 Introduction
- § 5:2 Military caretakers
- § 5:3 Covered employers
- § 5:4 Covered employers—Single employers
- § 5:5 Covered employers—Joint employers
- § 5:6 Covered employers—Successor employers
- § 5:7 Covered employers—Individuals
- § 5:8 Eligible employees
- § 5:9 Eligible employees—Twelve months of employment
- § 5:10 Eligible employees—At least 1,250 hours of service
- § 5:11 Eligible employees—Fifty employees at a work site within a seventy-five-mile radius
- § 5:12 Eligible employees—Other factors in determining employee eligibility
- § 5:13 Qualifying reasons for taking leave
- § 5:14 Employee's duty to give notice to employer
- § 5:15 Employer's duty to designate leave as FMLA-qualifying
- § 5:16 Paid versus unpaid leave
- § 5:17 Job restoration
- § 5:18 Benefit protection
- § 5:19 Nondiscrimination
- § 5:20 Designating the 12-month period
- § 5:21 Enforcement

TABLE OF CONTENTS

- § 5:22 Intersection of FMLA and ADA
- § 5:23 Providing employees with updates of their used and available FMLA leave
- § 5:24 Leaves of absence for employees who are not entitled to FMLA leave
- § 5:25 Paid days off for employees of federal contractors
- § 5:26 Definition of “spouse” under FMLA
- § 5:27 Conclusion
- Appendix 5-A. Sample Family and Medical Leave Policy
- Appendix 5-B. Sample Comprehensive Family and Medical Leave Policy
- Appendix 5-C. The Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964
- Appendix 5-D. DOL Frequently Asked Questions—Break Time for Nursing Mothers
- Appendix 5-E. DOL Letter re Telemedicine and Serious Health Conditions under the Family and Medical Leave Act (FMLA) (December 29, 2020)
- Appendix 5-F. DOL Opinion Letter addressing indefinite reduced workweek, FMLA2023-1-A, February 9, 2023
- Appendix 5-G. DOL Employer’s Guide to the Family and Medical Leave Act
- Appendix 5-H. Questions and Answers concerning the use of FMLA leave to care for a son or daughter age 18 or older
- Appendix 5-I. Maine Paid Family and Medical Leave (PFML) Frequently Asked Questions (FAQ’s)

CHAPTER 6. EQUAL EMPLOYMENT OPPORTUNITY POLICIES

- § 6:1 Equal employment opportunity policies generally
- § 6:2 Simple EEO policies or statements
- § 6:3 Comprehensive EEO policy
- § 6:4 Consumer products company equal employment opportunity
- § 6:5 Corporate equal employment opportunity policy
- § 6:6 Equal opportunity and affirmative action policy
- § 6:7 General information on policies for workers with care-giving responsibilities
- § 6:8 Avoiding “reverse discrimination” claims
- § 6:9 Sexual orientation and gender identity as a protected class

EMPLOYEE HANDBOOKS AND POLICIES

- § 6:10 Consideration of arrest and conviction records in employment decisions
- § 6:11 Pregnancy discrimination policies
- § 6:12 Religious accommodation policies
- § 6:13 EEOC Policy on DEI-Related Discrimination under Second Trump Administration
- Appendix 6-A. Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities
- Appendix 6-B. Questions and Answers about EEOC's Enforcement Guidance on Unlawful Disparate Treatment of Workers with Caregiving Responsibilities
- Appendix 6-C. EEOC Best Practices for Eradicating Religious Discrimination in the Workplace
- Appendix 6-D. EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues
- Appendix 6-E. EEOC Legal Rights for Pregnant Workers under Federal Law
- Appendix 6-F. EEOC Helping Patients Deal with Pregnancy-Related Limitations and Restrictions at Work
- Appendix 6-G. EEOC Questions and Answers for Employers: Responsibilities Concerning the Employment of Individuals who are, or are Perceived to be, Muslim or Middle Eastern
- Appendix 6-H. EEOC Guidance on Understanding Waivers of Discrimination Claims in Employee Severance Agreements
- Appendix 6-I. EEOC Commission Opinion Letter: Older Worker Benefit Protection Act (January 14, 2021)
- Appendix 6-J. October 19, 2022 updated EEOC "Know Your Rights" Poster (updates and replaces the previous "EEO is the Law" poster).
- Appendix 6-K. EEOC Frequently Asked Questions About the Revised "Know Your Rights" Poster
- Appendix 6-L. EEOC Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act (PWFA) (April 2024)
- Appendix 6-M. EEOC Enforcement Guidance on Harassment in the Workplace (April 29, 2024)
- Appendix 6-N. EEOC Promising Practices For Preventing Harassment In The Construction Industry (June 2024)

TABLE OF CONTENTS

CHAPTER 7. EMPLOYEE PRIVACY POLICIES

- § 7:1 Introduction
- § 7:2 Workplace privacy issues—Preemployment inquiries
- § 7:3 —Employee and applicant testing
- § 7:4 —Employee background checks
- § 7:5 —Employee monitoring
- § 7:6 Personnel records
- § 7:7 —Personnel records generally
- § 7:8 ——Disclosure to third parties
- § 7:9 ——Disclosure to unions
- § 7:10 ——Other potential liability
- § 7:11 ——Defamation
- § 7:12 ——Interference with prospective economic advantage
- § 7:13 ——Public disclosure of private facts
- § 7:14 —Employee medical records—State laws
- § 7:15 ——Federal laws
- § 7:16 ——Efforts to enhance individuals' access to health information
- § 7:17 Genetic Information Nondiscrimination Act of 2008 (“GINA”) and state counterparts
- § 7:18 Personnel records—Conclusion

Appendix 7-A. Sample Personnel Records Policy

Appendix 7-B. EEOC Small Business Fact Sheet—Final Rule on Employer-Sponsored Wellness Programs and Title II of the Genetic Information Nondiscrimination Act

Appendix 7-C. EEOC's Final Rule on Employer Wellness Programs and the Genetic Information Nondiscrimination Act

Appendix 7-D. EEOC Guidance on Genetic Information Discrimination

Appendix 7-E. DOL FAQs Regarding the Genetic Information Nondiscrimination Act

CHAPTER 8. POLICIES ON MILITARY LEAVE AND REHIRING VETERANS—UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

- § 8:1 Introduction
- § 8:2 Background of the law on veterans' reemployment rights

- § 8:3 Overview of USERRA
- § 8:4 Conclusion

Appendix 8-A. Outline of Key USERRA Provisions

CHAPTER 9. POLICIES ON MILITARY LEAVE AND REHIRING VETERANS—“CALLED TO DUTY: MILITARY LEAVE AND THE LAW”

- § 9:1 Introduction
- § 9:2 USERRA covers all civilian employers
- § 9:3 State laws may apply in addition to USERRA
- § 9:4 Notice from departing employees
- § 9:5 Notice to departing employees
- § 9:6 Compensation during military leave
- § 9:7 Vacation time
- § 9:8 Health plan continuation
- § 9:9 Continuation in other benefit plans
- § 9:10 No discrimination
- § 9:11 Reemployment
- § 9:12 Retirement benefits upon reemployment
- § 9:13 Compensation, vacation, and other benefits upon reemployment
- § 9:14 Enforcement and penalties

Appendix 9-A. Sample Policies on Military Leave

CHAPTER 10. JURY DUTY POLICIES

- § 10:1 Overview
- § 10:2 Sample jury duty policies—Combined policies on jury duty and witness service
- § 10:3 —Jury duty only
- § 10:4 —Court appearances

CHAPTER 11. SUBSTANCE ABUSE POLICIES

- § 11:1 Introduction
- § 11:2 Constitutional issues
- § 11:3 The Americans with Disabilities Act
- § 11:4 Title VII of the Civil Rights Act of 1964
- § 11:5 National Labor Relations Act
- § 11:6 Government contractor issues/issues that apply to specific industries
- § 11:7 State and local statutes
- § 11:8 Common-law principles
- § 11:9 Common provisions of substance abuse policies

TABLE OF CONTENTS

Appendix 11-A. Sample Drug Policy Statement

CHAPTER 12. NO-SOLICITATION POLICIES

- § 12:1 Introduction
- § 12:2 The conflict
- § 12:3 —Differing policies on distribution and solicitation rules
- § 12:4 —Statutory basis
- § 12:5 —Factors used to balance rights of both employers and employees
- § 12:6 Place
- § 12:7 —Outside organizers off the employer's property
- § 12:8 —Outside organizers on the employer's property
- § 12:9 —Employee organizers on company property
- § 12:10 Time—Working time versus working hours
- § 12:11 —Employer must clarify ambiguous wording in no-solicitation rules
- § 12:12 —Lunch and break periods
- § 12:13 Persons doing the solicitation—Off-duty employees
- § 12:14 —Inactive employees and subcontracted employees
- § 12:15 Nature of the industry involved
- § 12:16 The existence of a union election campaign
- § 12:17 The employer's enforcement methods—Selective enforcement invalidates no-solicitation rule
- § 12:18 —Exceptions to the selective enforcement rule
- § 12:19 —Selective enforcement of bulletin board posting
- § 12:20 —Wearing union insignia as a form of solicitation
- § 12:21 Conclusion

Appendix 12-A. Sample No-Solicitation Policies

CHAPTER 13. EMPLOYMENT REFERENCES: “STATE JOB REFERENCE IMMUNITY STATUTES”

- § 13:1 Introduction
- § 13:2 The employer: Who qualifies for protection?
- § 13:3 What information may an employer disclose to prospective employers?
- § 13:4 The qualified privilege for giving job references: When does it apply?
- § 13:5 —The presumption of good faith and how it can be lost
- § 13:6 —The burdens of proof: Protection for employers
- § 13:7 —Another protection for employers: An employee's “consent” to the release of information
- § 13:8 Procedural provisions governing the release of information

§ 13:9 Immunity under anti-blacklisting and service letter statutes

Appendix 13-A. Sample Employment Reference Policy

CHAPTER 14. SEVERANCE PAY PLANS

§ 14:1 Introduction

§ 14:2 Employee Retirement Income Security Act and the regulations

§ 14:3 Establishment of a plan—Absence of a written policy

§ 14:4 —Internal policy statements

§ 14:5 —Ongoing administrative scheme

§ 14:6 Termination or amendment of a severance plan before a reduction in force—Fiduciary duty

§ 14:7 —Employee Retirement Income Security Act notification and disclosure issues

§ 14:8 Interpreting plan language

§ 14:9 Conclusion

Appendix 14-A. Sample Severance Pay Policies

Appendix 14-B. DOL FAQs about Retirement Plans and ERISA

Appendix 14-C. DOL FAQs on the Cash Balance Pension Plans Compliance

CHAPTER 15. USE OF E-MAIL AND OTHER TECHNOLOGY IN THE WORKPLACE—MONITORING EMPLOYEES

§ 15:1 Introduction

§ 15:2 E-mail monitoring

§ 15:3 The Electronic Communications Privacy Act

§ 15:4 —The business use exception

§ 15:5 —The employee consent exception

§ 15:6 Other sources of privacy protection

§ 15:7 Computer monitoring and searches

§ 15:8 Telephone monitoring

§ 15:9 Video surveillance monitoring

§ 15:10 State law

§ 15:11 Conclusion

Appendix 15-A. Policy on Employee Use of and Access to the Internet

Appendix 15-B. Policy on Electronic Communications

Appendix 15-C. E-mail Ethics Policy

Appendix 15-D. Policy on E-mail Privacy

TABLE OF CONTENTS

CHAPTER 16. USE OF E-MAIL AND OTHER TECHNOLOGY IN THE WORKPLACE—DOES YOUR COMPANY POLICY NEED A MAKEOVER?

- § 16:1 Introduction
- § 16:2 The community norms of workplace e-mail
- § 16:3 Make sure you have a written e-mail usage policy
- § 16:4 Sign on the dotted line
- § 16:5 Keeping up with technology: And the law

CHAPTER 17. PROTECTING TRADE SECRETS AND CONFIDENTIAL INFORMATION THROUGH THE USE OF EFFECTIVE EMPLOYMENT POLICIES

- § 17:1 Introduction
- § 17:2 What is a trade secret?
- § 17:3 Measures to take for protecting against loss of trade secrets and confidential information
- § 17:4 Trade secrets, valuable information, e-mail, and social media
- § 17:5 Conclusion

Appendix 17-A. Employee Invention and Confidential Information Agreement

Appendix 17-B. Sample Employee Handbook Confidentiality Provision

Appendix 17-C. Sample Memorandum Explaining the Importance of the Company's Proprietary Information to Its Employees

Appendix 17-D. Sample Confidentiality Policy: Company Purchasers

CHAPTER 18. EMPLOYEE CODES OF CONDUCT

- § 18:1 Introduction
- § 18:2 Sarbanes-Oxley
- § 18:3 Effective compliance programs
- § 18:4 Foreign Corrupt Practices Act

Appendix 18-A. Checklist of Issues to Address in Preparing a Code of Legal and Ethical Conduct

Appendix 18-B. Lockheed Martin's *Setting the Standard*—Code of Ethics and Business Conduct

Appendix 18-C. United Technologies Corporation Corporate Policy on Business Practices

Appendix 18-D. SBS Technologies, Inc. Code of Ethics for
Directors and Principal Officers

CHAPTER 19. CITIZENSHIP AND IMMIGRATION STATUS VERIFICATION

- § 19:1 Background
- § 19:2 Hiring or recruiting unauthorized aliens
- § 19:3 —Who is covered?
- § 19:4 —Can “contracting” for employment avoid the law?
- § 19:5 —Who is an “unauthorized” alien?
- § 19:6 —What about illegal aliens on an employer’s payroll before IRCA’s enactment?
- § 19:7 Employment verification system
- § 19:8 —The documentation provisions
- § 19:9 —Forged documents
- § 19:10 Antidiscrimination rules
- § 19:11 —Document abuse
- § 19:12 —Retaliation and coercion
- § 19:13 Penalties for violations
- § 19:14 —Unlawful employment practices
- § 19:15 —Document abuse penalties
- § 19:16 —Document fraud
- § 19:17 RICO liability
- § 19:18 U.S. Citizenship and Immigration Services (USCIS)
Validation Instrument for Business Enterprises
(VIBE)

Appendix 19-A. Sample Employment Documentation Policy

Appendix 19-B. Sample Employment Eligibility and
Verification Policy

Appendix 19-C. U.S. Citizenship and Immigration Services
(USCIS) Guidance Document: I am an
employer. How do I hire a foreign national
for short-term employment in the United
States?

Volume 2

CHAPTER 20. OSHA/SAFETY POLICIES

- § 20:1 Safety policies in general
- § 20:2 Sample safety policies
- § 20:3 Code of safe practices
- § 20:4 Workplace safety incentive programs and post-incident
drug testing

CHAPTER 21. ENVIRONMENTAL POLICY STATEMENTS

- § 21:1 Environmental management systems

TABLE OF CONTENTS

- § 21:2 Objectives for an EMS
- § 21:3 Sample environment compliance clauses
- § 21:4 Other considerations
- Appendix 21-A. Consumer Products Company Environmental Policy
- Appendix 21-B. Research and Development Company Environmental, Safety, and Health Policy
- Appendix 21-C. Chemical Company Policy on Regulatory, Environmental, Health, and Safety Affairs
- Appendix 21-D. U.S. EPA Sample Environmental, Health, and Safety Policy

CHAPTER 22. LEGAL ASPECTS OF REGULATING EMPLOYEE ATTIRE

- § 22:1 Introduction
- § 22:2 Title VII
- § 22:3 —Disparate treatment
- § 22:4 —Disparate impact
- § 22:5 —Retaliation claims
- § 22:6 —Remedies under Title VII
- § 22:7 —Defending a Title VII claim
- § 22:8 —Race discrimination claims
- § 22:9 —Gender-based discrimination claims
- § 22:10 —Sex-specific requirements
- § 22:11 —Offensive stereotypes
- § 22:12 —Provocative dress—Requiring provocative attire
- § 22:13 —Prohibiting provocative dress
- § 22:14 —Religious discrimination claims
- § 22:15 Americans with Disabilities Act
- § 22:16 Disability discrimination claims
- § 22:17 —Obesity
- § 22:18 —Disfigurement
- § 22:19 —Cross-dressing
- § 22:20 Constitutional issues
- § 22:21 Unemployment compensation claims
- § 22:22 National Labor Relations Act
- § 22:23 Relaxed dress codes
- § 22:24 Conclusion

- Appendix 22-A. Sample Employee Attire Policies

CHAPTER 23. POLICIES ON MOONLIGHTING AND OFF-DUTY BEHAVIOR

- § 23:1 Moonlighting

- § 23:2 —Competition
- § 23:3 —Conflicts of interest
- § 23:4 —Absences
- § 23:5 —Dishonesty
- § 23:6 —Rules
- § 23:7 —Standards
- § 23:8 —Restrictive covenants
- § 23:9 —Preventative measures
- § 23:10 Off-duty behavior
- § 23:11 —Collective bargaining agreements and arbitration
- § 23:12 —Just cause
- § 23:13 —Relationship
- § 23:14 ——Carryover events
- § 23:15 ——Business-sponsored event
- § 23:16 ——Retaliation event
- § 23:17 ——Co-worker event
- § 23:18 ——Unconnected event
- § 23:19 ——“Nexus” test
- § 23:20 Regulating off-duty smoking
- § 23:21 Employee blogs and personal Web sites

Appendix 23-A. Sample Policy on Moonlighting

Appendix 23-B. Sample Policy: Requirements to Be Met
When Holding a Second Job

Appendix 23-C. Sample Policy: Restrictions on Outside Work
of Professionals

Appendix 23-D. Sample Policy on Off-Duty Behavior

CHAPTER 24. ENFORCEABILITY OF ARBITRATION CLAUSES IN EMPLOYMENT DOCUMENTS

- § 24:1 Introduction
- § 24:2 Notice, acceptance, and agreement to terms
- § 24:3 Consideration
- § 24:4 Ambiguous provisions
- § 24:5 Optional agreements
- § 24:6 Unfairness, inducement, and adhesion contracts
- § 24:7 Scope of agreement; claims covered
- § 24:8 Fees and costs
- § 24:9 Waiver and estoppel
- § 24:10 Mandatory Arbitration Clauses: An analysis of the
Supreme Court decision in the *Wright* case
- § 24:11 Claims that may not be arbitrated
- § 24:12 The Ending Forced Arbitration of Sexual Assault and
Sexual Harassment Act of 2021
- § 24:13 Conclusion

TABLE OF CONTENTS

Appendix 24-A. EEOC Recission of Mandatory Binding
Arbitration of Employment Discrimination
Disputes as a Condition of Employment

CHAPTER 25. ALTERNATIVE DISPUTE RESOLUTION POLICIES AND PROCEDURES

§ 25:1 Introduction
§ 25:2 Some common ADR techniques
§ 25:3 Conclusion

Appendix 25-A. Sample Employee Dispute Resolution
Procedure

Appendix 25-B. American Arbitration Association Summary of
Changes, Employment Arbitration Rules
and Mediation Procedures, Amended and
Effective November 1, 2009

Appendix 25-C. NLRB Memorandum GC 23-05: Guidance in
Response to Inquiries about the McLaren
Macomb Decision

CHAPTER 26. AVOIDING COPYRIGHT INFRINGEMENT THROUGH EFFECTIVE EMPLOYMENT POLICIES

§ 26:1 Introduction
§ 26:2 Common software copyright problems—External
software audits
§ 26:3 —Fines and penalties
§ 26:4 —Downloading internet materials
§ 26:5 —Internet piracy
§ 26:6 Records retention
§ 26:7 —Internal software audits
§ 26:8 —Example of an audit
§ 26:9 Conclusion
§ 26:10 Online resources

Appendix 26-A. Software Code of Ethics

Appendix 26-B. Software Policies for an Organization and Its
Employees

CHAPTER 27. POSTING REQUIREMENTS

§ 27:1 Introduction
§ 27:2 Equal employment opportunity laws—Title VII and
the Americans with Disabilities Act
§ 27:3 —Age Discrimination in Employment Act
§ 27:4 —Equal Pay Act

EMPLOYEE HANDBOOKS AND POLICIES

- § 27:5 Wage and hour laws—Fair Labor Standards Act
- § 27:6 —Federal contractors
- § 27:7 —Employment of disabled workers under special certificates
- § 27:8 —Migrant and seasonal agricultural workers
- § 27:9 Family and Medical Leave Act
- § 27:10 Occupational Safety and Health Administration
- § 27:11 Employee Polygraph Protection Act

Appendix 27-A. Table of Key Posting Provisions

CHAPTER 28. POLICIES AND PROCEDURES FOR HANDLING GOVERNMENT INVESTIGATIONS

- § 28:1 Introduction
- § 28:2 The initial steps in handling a government investigation
 - § 28:3 —Retaining outside criminal counsel
 - § 28:4 —Retaining separate counsel for the employees
 - § 28:5 —The attorney-client privilege
- § 28:6 The actual investigation
 - § 28:7 —The company's right to indemnify employees
 - § 28:8 —Insurance
 - § 28:9 —The government investigators
 - § 28:10 —The grand jury investigation
 - § 28:11 —Subpoenas and discovery
 - § 28:12 —Search warrants for corporate records
 - § 28:13 —White-collar crime statutes
 - § 28:14 Parallel civil and criminal investigations
 - § 28:15 —The negotiations
 - § 28:16 —Dealing with specific agencies
 - § 28:17 —Who goes to jail?
 - § 28:18 —Press relations
 - § 28:19 Some procedures/policies to consider

Appendix 28-A. General Policy Statement on Compliance with Serious Government Investigations

CHAPTER 29. TELECOMMUTING POLICIES AND PROCEDURES

- § 29:1 Introduction
- § 29:2 Benefits of offering the telecommuting option
- § 29:3 The telecommuting policy
- § 29:4 The telecommuting agreement
- § 29:5 Legal implications of telecommuting
- § 29:6 —Americans with Disabilities Act
- § 29:7 —Wage and hour issues

TABLE OF CONTENTS

- § 29:8 —Safety issues
- § 29:9 —Workers' compensation concerns
- § 29:10 —Worker classification
- § 29:11 —Protection of confidential information
- § 29:12 —Insurance and liability issues
- § 29:13 —“Normal” exposure to liability for the employee’s unlawful acts
- § 29:14 —Selection criteria and procedures
- § 29:15 —Statutory coverage issues
- § 29:16 —Union issues
- § 29:17 Conclusion

Appendix 29-A. A Checklist for Telecommuting Program Implementation

Appendix 29-B. Sample Telecommuting Policy

Appendix 29-C. Sample Telecommuter’s Agreement

Appendix 29-D. Telecommuter’s Acknowledgment Form

Appendix 29-E. DOL Field Assistance Bulletin No. 2023-1, Telework Under the Fair Labor Standards Act and Family and Medical Leave Act (February 9, 2023)

CHAPTER 30. THE LEGAL RAMIFICATIONS OF WORKPLACE VIOLENCE

- § 30:1 Introduction
- § 30:2 Nature of the problem
- § 30:3 Warning signs
- § 30:4 OSH Act
- § 30:5 Negligent hiring and retention
- § 30:6 Workers’ compensation
- § 30:7 Liability to the perpetrator
- § 30:8 Preventive measures
- § 30:9 —Develop a prevention program
- § 30:10 —Hiring and termination procedures
- § 30:11 —Maintain a healthy organization
- § 30:12 Online resources
- § 30:13 Conclusion

Appendix 30-A. Dealing with Workplace Violence: Prevention

Appendix 30-B. Dealing with Workplace Violence: Development of a Written Policy Statement

CHAPTER 31. DISCIPLINARY POLICIES

- § 31:1 Overview
- § 31:2 Basics of a disciplinary policy

§ 31:3 National Labor Relations Board developments

Appendix 31-A. Sample Disciplinary Policy

Appendix 31-B. Sample Disciplinary Policy with Extensive
Progressive Discipline Provisions

Appendix 31-C. Sample Health Care Employer Disciplinary
Policy

CHAPTER 32. RACIAL HARASSMENT POLICIES

§ 32:1 Introduction

§ 32:2 Statutory bases

§ 32:3 —Title VII

§ 32:4 —Section 1981

§ 32:5 Racial harassment defined

§ 32:6 The framework of a racial harassment claim

§ 32:7 —*Harris* approach

§ 32:8 —Multifactor approach

§ 32:9 —Employer liability

§ 32:10 Retaliation

§ 32:11 Individual liability

§ 32:12 The basics of an antiharassment policy

Appendix 32-A. Sample Racial and Ethnic Harassment Policy

CHAPTER 33. DEMYSTIFYING SARBANES- OXLEY: SUGGESTIONS FOR PUBLIC AND PRIVATE COMPANY PREPAREDNESS AND COMPLIANCE WITH EMPLOYMENT AND WHISTLEBLOWER PROVISIONS

§ 33:1 Introduction

§ 33:2 Civil whistleblower protections affecting publicly
traded companies

§ 33:3 Criminal sanctions applicable to disclosures by
employees: Without regard to publicly traded
securities

§ 33:4 Criminal sanctions for tampering with a record or
otherwise impeding an official proceeding: Without
regard to publicly traded securities

§ 33:5 Required reporting by attorneys appearing and
practicing before the SEC

§ 33:6 Code of ethics for senior financial officers of publicly
traded companies

§ 33:7 Preparedness and compliance advice

TABLE OF CONTENTS

**CHAPTER 34. RECOMMENDATIONS FOR
AUDIT COMMITTEE CONCERN
REPORTING POLICIES AND PROCEDURES
UNDER SARBANES-OXLEY**

- § 34:1 Introduction
- § 34:2 Concern reporting—Objectives
- § 34:3 —Policies and procedures
- § 34:4 —Program framework
- § 34:5 —Who may use the procedure?
- § 34:6 —Subject matter of covered concerns
- § 34:7 —Mechanics of reporting a concern
- § 34:8 —Provisions regarding confidentiality/anonymity
- § 34:9 —Concern resolution mechanisms
- § 34:10 —Record keeping
- § 34:11 —Timeliness
- § 34:12 —Feedback
- § 34:13 —Terminology
- § 34:14 —Antiretaliation provisions

**CHAPTER 35. CREATING THE
PERSONNEL PAPER TRAIL: PERSONNEL
MANUALS AND GRIEVANCE PROCEDURES**

- § 35:1 Panken's first principle of personnel relations: "No good deed goes unpunished"
- § 35:2 Drafting the personnel manual: Public relations and employee benefits—Overview—What the parties want
- § 35:3 Drafting the personnel manual: Public relations and employee benefits—Overview—Dealing with different grades of employees
- § 35:4 —A little PR
- § 35:5 —Multistate employers
- § 35:6 —Letting employees know how they are paid
- § 35:7 ——Payroll week
- § 35:8 ——Deductions
- § 35:9 ——Overtime
- § 35:10 —Employee benefit plans—Details do not belong in a personnel manual
- § 35:11 ——Employee Retirement Income Security Act
- § 35:12 ——Eligibility timing
- § 35:13 —Time off (paid and unpaid)—Vacations
- § 35:14 ——When vacations are earned
- § 35:15 ——Vacation pay
- § 35:16 ——Vacation pay upon termination
- § 35:17 ——Holidays

EMPLOYEE HANDBOOKS AND POLICIES

- § 35:18 — — —Selection of holidays
- § 35:19 — — —Antistretching
- § 35:20 — — Personal days
- § 35:21 — — Jury duty
- § 35:22 — — Bereavement leave
- § 35:23 — — Illness
- § 35:24 — — Family and medical leave
- § 35:25 — — Military leave
- § 35:26 — — Other personal leave
- § 35:27 — — Wage increases and salary reviews
- § 35:28 The equal opportunity provisions of the personnel manual
 - § 35:29 — — The general antidiscrimination policy
 - § 35:30 — — Sexual (and other) harassment
 - § 35:31 — — Antiretaliation policy
 - § 35:32 Employee obligations—General work rules
 - § 35:33 — — Drug and alcohol policy
 - § 35:34 — — No smoking policy
 - § 35:35 — — No-solicitation rules
 - § 35:36 — — Employee privacy expectations
 - § 35:37 — — Employee information
 - § 35:38 Term of employment
 - § 35:39 Miscellaneous provisions—Right to alter
 - § 35:40 — — Receipt
 - § 35:41 Grievance procedures—Aren't grievance procedures limited to union organized operations?
 - § 35:42 — — What is a grievance procedure and why should a nonunion company want one?
 - § 35:43 — — The purposes of a grievance procedure
 - § 35:44 — — The grievance procedure as a communications link—Communication from the employee to the company
 - § 35:45 — — —Communication from the company to the employee
 - § 35:46 — — —The grievance procedure as an arena for catharsis
 - § 35:47 — — —The grievance procedure as a medium for the crystallization of problems
 - § 35:48 — — —The grievance procedure as a tool for conflict resolution
 - § 35:49 — — Structuring the grievance procedure: The open-door policy
 - § 35:50 — — The structured grievance procedure—What should be a grievance?
 - § 35:51 — — Individual or group grievances?
 - § 35:52 — — What kind of individual grievance should the company encourage?

TABLE OF CONTENTS

- § 35:53 — —Formulating the grievance steps
- § 35:54 — — —Step one: Communication between the employee and the supervisor
- § 35:55 — — —Step two: Crystallization and catharsis and a check on communication
- § 35:56 — — —Step three: Conflict resolution
- § 35:57 —When and where to handle the problems
- § 35:58 —Time limits
- § 35:59 —Preserving the integrity of the system
- § 35:60 A suggested grievance procedure
- § 35:61 Break periods for working mothers

CHAPTER 36. POLICIES ON CLASSIFYING WORKERS: EMPLOYEE OR INDEPENDENT CONTRACTOR?

- § 36:1 Introduction
- § 36:2 Control test
- § 36:3 I.R.S 20 Factors test and recent guidance
- § 36:4 Economic realities test for FLSA
- § 36:5 Entrepreneurial opportunity test for N.L.R.B
- § 36:6 EEOC joint employer test
- § 36:7 Penalties for misclassifying employees and independent contractors
- § 36:8 Interns

Appendix 36-A. DOL Wage and Hour Division Administrator's Interpretation No. 2015-1—The Application of the Fair Labor Standards Act's "Suffer or Permit" Standard in the Identification of Employees Who Are Misclassified as Independent Contractors

Appendix 36-B. DOL Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA)

CHAPTER 37. CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA) HEALTH INSURANCE CONTINUATION

- § 37:1 Overview
- § 37:2 Remedies for noncompliance
- § 37:3 Health insurance continuation for reservists called to active duty

CHAPTER 38. COVID-19 AND EMPLOYEE POLICIES

- § 38:1 Introduction

EMPLOYEE HANDBOOKS AND POLICIES

- § 38:2 Families First Coronavirus Response Act (FFCRA)
- § 38:3 Intersection of FMLA, ADA, and FFCRA for employees with COVID-19 and/or underlying health conditions or disabilities
- § 38:4 COVID-19 and workers' compensation
- § 38:5 Off duty behavior and COVID-19
- § 38:6 DOL issues "COVID-19 and the Fair Labor Standards Act—Questions and Answers"
- § 38:7 DOL issues "COVID-19 and the Family and Medical Leave Act—Questions and Answers"
- § 38:8 DOL issues "COVID-19 and the Service Contract Act: Questions and Answers"
- § 38:9 COVID-19 Employee vaccination requirements
- Appendix 38-A. Joint DOL and CDC Guidance on Preparing Workplaces for COVID-19
- Appendix 38-B. COVID-19 & Workers' Compensation Q&A for New York
- Appendix 38-C. Ohio Workers' Compensation Coronavirus (COVID-19) Frequently Asked Questions (updated 8-6-20)
- Appendix 38-D. What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (July 12, 2022)
- Appendix 38-E. California Department of Public Health issues COVID-19 Employer Playbook Supporting a Safer Environment for Workers and Customers
- Appendix 38-F. IRS COVID-19-Related Tax Credits for Paid Leave Provided by Small and Midsize Businesses FAQs
- Appendix 38-G. IRS Guidance: Under the American Rescue Plan, employers are entitled to tax credits for providing paid leave to employees who take time off related to COVID-19 vaccinations
- Appendix 38-H. DOL Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace
- Appendix 38-I. EEOC Guidance: The COVID-19 Pandemic and Caregiver Discrimination Under Federal Employment Discrimination Laws (March 14, 2022)
- Appendix 38-J. Safer Federal Workforce Task Force - COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors (Issued September 24, 2021)

TABLE OF CONTENTS

Bibliography

Table of Laws and Rules

Table of Cases

Index