

Reviewed your employee manual lately?



By Bob Goldberg,
RSPA General
Counsel

Many states have laws and regulations that take effect on January 1. In some instances, such as minimum wage, even cities have instituted new requirements. Often forgotten among the tasks to be accomplished in time for the new year is updating your Employee Policy and Procedure Manual to reflect these changes.

ACCOUNT FOR STATE-SPECIFIC LAWS

As our businesses grow, many resellers have employees in more than one state and thus rules will vary based upon an individual's location. A manual that does not distinguish among states can be problematic.

Federal law requires that employers refrain from discrimination based upon an individual's race, color, religion, sex, national origin or age. Many states have gone beyond the federal requirements and prohibit discrimination based upon political affiliation, sexual orientation or even attending a political or religious meeting. Check your state requirements.

If your dealership operates in California and an additional state, it is important to distinguish California's rule requiring overtime after eight hours in a day rather than 40 hours in a week. A Nevada employee could sue based upon a manual statement that overtime is paid after eight hours even if Nevada law requires 40 hours.

KNOW WHAT NOT TO INCLUDE

Often, a manual is too inclusive. A well-prepared manual should clearly indicate that the manual is not a contract of employment and may be modified at any time. Important employment requirements should be contained in separate documents to assure enforceability. A provision in a manual setting forth a confidentiality provision was found not to be enforceable because it could be changed at the employer's will. The RSPA web site has examples of stand-alone confidentiality, non-solicitation and non-competition agreements.

MAINTAIN MANUAL-RELATED RECORDS IN PERSONNEL FILES

All employee personnel files should contain a signed acknowledgment that they have received, reviewed, understand and agree to comply with the policies and procedures in the manual. This should be an item on your New Employee Checklist. Give the individual a few days to review the document before signing. Review your current

employee files to verify each has a signed acknowledgment. Agreement to the manual can be given at any time during employment.

A frequent question to the Legal Hotline is whether policies must be enforced uniformly. Exceptions should be rare and documented with an explanation of the reasoning. A note in the employee's personnel file justifying an exception will be beneficial if a future claim is made regarding favoritism. Failure to uniformly enforce employment policies may lead to a charge of discrimination or a ruling that the policy is invalid.

STAY UP TO DATE

The recent election likely means changes to employment laws and regulations. Newly elected officials will seek to implement the promises made to voters. Regularly review your manual to assure compliance. Many resellers assign an administrative individual to be responsible for gathering acknowledgments, monitoring state and federal laws for changes and providing proper notification of policy changes.

RSPA is here to help: The templates available to members are regularly updated, and we are always available to answer your questions. Employment issues are the number one topic the Legal Hotline receives. **C**

