

**POMS**

# EMPLOYMENT POLICY MANUAL:

## Updates, Tips & Traps for 2022

**Steven G. Meilleur, Ph.D., SPHR**  
 Sr. VP Risk Services – HR & Employment  
 Faculty, UNM School of Public Administration  
[smeilleur@pomsassoc.com](mailto:smeilleur@pomsassoc.com)

1

### TODAY'S PRESENTER

**Steven G. Meilleur, Ph.D., SPHR**  
 Sr. Vice President, Risk Services – HR & Employment  
 Poms & Associates Risk Services  
 201 3rd Street NW, Suite 1400 | Albuquerque, New Mexico 87102  
 (505) 933-6291 • (800) 578-8802 • [smeilleur@pomsassoc.com](mailto:smeilleur@pomsassoc.com)

**Steven G. Meilleur, Ph.D.** is a Sr. Vice-President and Risk Services Consultant for Poms & Associates, specializing in human resources and employment matters. He has more than 40 years of experience in HR management, Risk Management, and Organizational Development in the public, private for-profit, and private non-profit sectors. Among other positions he has held, Dr. Meilleur has served as the HR Director for the City of Rio Rancho, NM.

His experience in HR management is in the public, private for-profit, and private non-profit sectors, having served in executive and other management positions. He received his BA in English Literature and Education at Bucknell University, and his EMBA & Ph.D. from the University of New Mexico. He is also a Lecturer on the faculty of the UNM Graduate School of Public Administration, teaching in the areas of human resource management, leadership, organizational behavior, strategy and change, and NPO management.

CA License #0814733 | Poms & Associates Insurance Brokers

2

### DISCLAIMERS

- The information presented herein is prepared and provided by a human resources professional, and not by an attorney licensed to practice law in New Mexico, or in any other federal, state, or local jurisdiction.
- While this presentation provides information on federal, state and other law, it is not a substitute for legal advice. If you have concerns about this subject matter, consult with your legal counsel prior to acting on or relying upon the recommendations in this presentation.
- The information presented is intended as educational and is for general purposes only.
- Applicability of the information presented may vary by state or other local jurisdiction, by industry, and/or by employer.

CA License #0814733 | Poms & Associates Insurance Brokers

3


## WHY SHOULD WE HAVE AN EMPLOYMENT POLICY MANUAL?

4

**AXIOM #1: VERY IMPORTANT**

If you and your managers, supervisors, and lead workers don't have the **ABILITY** or the **WILL** to enforce your policies ...

- Then don't include them in your Employment Policy Manual ...



... Unless it is a policy required by law. Be sure to train your management employees about their **legal duty to enforce and uphold policy** as written!

CA License #0814733 | Poms & Associates Insurance Brokers

5


**EMPLOYMENT POLICY MANUAL V. EMPLOYEE HANDBOOK**

**Nomenclature of Employment Policies That I Use:**

- **Employment Policy Manual (EPM)** is the official policy document that carries the force of law – it is the authoritative statement of policy.
- **On-Line Master EPM** managed by HR – accessible to all employees
- **“Control” Print Copies** - 3-Ring Binders that key managers have in their offices for reference and use by employees
  - “Controlled” by HR to ensure properly updated & current
  - Start each policy on a new page for easy replacement to update policies
- **Master EPM Archive** – Record of past policies with effective dates
- **Employee Handbook** is a SUMMARY of your employment policies, procedures, and work rules. That can be distributed in hard copy.
  - The Handbook can also include basic information that employees need to know about your organization

CA License #0814733 | Poms & Associates Insurance Brokers


6

**POLICY SELF-ASSESSMENT** 

1. Do your managers and supervisors all **consistently** follow employment policies and procedures?
  - The Doctrine of Agency
2. Are your organizational and management practices always consistent with your written employment policy?
3. Is your Employment Policy Manual **always** clear, so that there are no areas that cause you or your supervisors difficulty?
4. Does your anti-harassment policy prohibit all forms of illegal harassment, and not just sexual harassment?

CA License #0814733 | Poms & Associates Insurance Brokers


7

**POLICY SELF-ASSESSMENT** 

5. Can you say that 100% of your managers and supervisors understand and follow the Employment Policy Manual?
6. When you update your Employment Policies, do you ensure that ALL copies are properly updated, particularly those used by managers and supervisors?
7. Do you have safety policies and procedures?
8. Have you updated your policies at all during the past year?

CA License #0814733 | Poms & Associates Insurance Brokers

8




### POLICY SELF-ASSESSMENT

- If you answered “no” to any of these questions, your Employment Policy Manual needs attention.
- It is time to develop a policy when:
  - Legislation or regulations that expressly requires an organization has a policy in place
  - Legislation or regulations that do not expressly require an organization have a policy, but the regulations and steps to be followed are tightly defined and a policy will help to ensure the organization is in compliance
  - There is inconsistency in how employees behave, or managers make decisions that is negatively impacting the work environment or accomplishment of business
  - There is confusion about certain areas of the business or how things are to be done

*CA License #0814733 | Poms & Associates Insurance Brokers*

9



### POLICY SELF-ASSESSMENT

- Policies are developed for the many, not the few – when you bring a policy into force you are establishing a standard that will apply broadly across the organization - not just to a few individuals who may be causing problems.
- Policies are rules or standards to be followed consistently and reduce a managers’ flexibility to treat each situation as unique.
- It can be difficult to change policies once they have been implemented and become part of your organization’s culture and ways of working
- Be sure that any policies you implement, address a real need and are in line with what your company values and how work should be accomplished.
- You also need to ensure managers have the skills and resources to be able to implement and monitor the policy.

*CA License #0814733 | Poms & Associates Insurance Brokers*

10

### WHY EMPLOYMENT POLICIES ARE IMPORTANT

- Sets clear expectations and guidelines for all employees
- Legal Compliance/Protections – Strengthens defense in litigation
  - Protects against discrimination and unfair treatment claims
  - Explains applicable laws
- Communicates values and expectations for how things are done at your organization
- Advises Employees of Benefits Available
- Advises Employees of Rights and Responsibilities
- Supports consistent treatment of staff, fairness and transparency
- Helps management to make decisions that are consistent, uniform and predictable
- Establishes basis for taking corrective action and disciplinary action
- Documents and communicates best practices appropriate to the organization

*CA License #0814733 | Poms & Associates Insurance Brokers*

11


### WHY EMPLOYMENT POLICIES ARE IMPORTANT

- Helps identify potential problems before they flair up, minimizing "crisis management"
- Reduces the number of emotional decisions and promotes a more businesslike atmosphere
- Defines authority and responsibility of employees
- Communicates and facilitates consistent, impartial, fair, and equitable administration of policies.
- Promotes continuity in management and supervision style throughout the organization.
- Helps Guide Your Managers, Supervisors, and Leads in their roles
  - *The Doctrine of Agency, Legal duty to enforce policies*
- Consistent personnel management and supervision practices build fairness and equitable treatment
  - Builds morale, productivity and employee engagement
  - Reduces exposure to discriminatory practices and impact

*CA License #0814733 | Poms & Associates Insurance Brokers*

12

### YOUR EMPLOYMENT POLICY MANUAL: SHIELD or SWORD?




- **SWORD:** An Employment Policy Manual that is poorly done, and not followed or enforced will do you more harm than good. It can become a Sword used by plaintiff’s attorneys to demonstrate a violation of law, policy, or employment contract.
- **SHIELD:** When done well, followed, and properly enforced, the Employment Policy Manual can become a Shield used by the employer to demonstrate fairness, and compliance with legal obligations.

CA License #0814733 | Poms & Associates Insurance Brokers

13

### DISADVANTAGES OF EMPLOYMENT POLICY MANUALS

- A bad handbook or one that is misapplied may do more harm than good
- If not strictly followed, may give rise to breach of express or implied contract, misrepresentation or promissory estoppel claims
- Failure to apply handbook policies uniformly may support claims of discrimination or retaliation
- Can create legal rights where none exist



CA License #0814733 | Poms & Associates Insurance Brokers

14

### LEGAL PITFALLS – BEWARE!

- Examine what is in writing vs. what actually happens “on the job” – In NM and many other jurisdictions, courts have said that “employment practice” over-rides your employment policy.
- Provide training to supervisors, and other members of management. If they are not properly trained, no policy will provide any protection and in fact may be the basis for upholding an employee’s claim against a company.
- Make sure that ALL copies of employment policy manuals are current – particularly ones that managers and supervisors have.
- Not keeping your employment policies current is an invitation to risk exposure, and litigation

CA License #0814733 | Poms & Associates Insurance Brokers

15

### LEGAL PITFALLS – BEWARE!


- In most jurisdictions within the US, employment is presumed to be “at will” – either the employer or employee can terminate the employment relationship “*at any time, for any reason or for no reason at all.*”
- Exceptions to “at will” provide “due process rights,” and include:
  - State of Montana
  - Public Sector employment – “at will” only for appointees
- Plaintiffs often try to find ways around the employment at will doctrine based on:
  - Public policy exception (most states have some form);
  - Implied covenant of good faith (minority view); and
  - Express or implied written or oral contract.

CA License #0814733 | Poms & Associates Insurance Brokers

16

### EMPLOYMENT POLICY MANUALS AS CONTRACTS – BEWARE!

- Most states have recognized that provisions in an employee handbook may give rise to implied assurances of continued employment and hence to an implied-in-fact contract.
- Contract terms are construed against the drafter of the document.
  - Thus, ambiguities are construed against the employer.
- Contracts are usually considered to be ambiguous if the language can reasonably be construed in more than one sense and the construction cannot be determined within the four corners of the document.




CA License #0814733 | Poms & Associates Insurance Brokers

17

### YOUR EMPLOYMENT POLICY HANDBOOK: The 7 “C”s

1. Contract ...NOT
2. Communicate policies
3. Clarity of writing – must be understandable
4. Comply with current applicable law
5. Consistent with your actual practices
6. Comprehensive – cover important policies
7. Commitment to enforce & update policies




CA License #0814733 | Poms & Associates Insurance Brokers

18

### PURPOSE OF EMPLOYMENT POLICY MANUAL

- Legal Compliance/Protections
- Communicate Operational Policies
- Policies As A Shield For Company And Not Sword For Employees
- Communicate Corporate Culture and Values
- Advise Employees Of Company Expectations
- Effective Reference Tool For Employees
- Ensuring Managers and Supervisors Understand Policies they are Legally Responsible for Enforcing



CA License #0814733 | Poms & Associates Insurance Brokers

19

### LEGAL COMPLIANCE

- Disclaimers
- Policies for Legal Compliance:
  - Harassment & Non-Discrimination Policies
  - EEO Policies
  - FMLA Policy (if Applicable)
- Leave Policies
  - Vacation Pay Policy
  - Sick/Personal Day Policies
- Benefits Policies
- Safety and Security




CA License #0814733 | Poms & Associates Insurance Brokers

20

### LEGAL PROTECTIONS

- Wage and Hour Policies
- Defend Against Wage And Hour Claims/Audits
- Compensable Work Time
- Paid vs. Unpaid Lunches
- General Policies/Rules
- Defend Administrative And Court Claims



CA License #0814733 | Poms & Associates Insurance Brokers

21

### OPERATIONAL POLICIES

- Rules And Regulations
  - Help Employees Manage Their Expectations And Help Managers Manage Employees
- Benefits
- Leaves of Absence
- Workplace Responsibilities
- Employee Conduct and Behavior

CA License #0814733 | Poms & Associates Insurance Brokers

22

### COMMUNICATE COMPANY POLICY AND CULTURE

- Both Handbook Format And Language Should Be Consistent With Company's Culture
- Communicate Values and Behaviors Expected
- Maximize Management Discretion
- Policies that Reflect Your Values
- Avoidance of Promises you Cannot Enforce
  - Axiom: Don't ever write a policy that your managers and supervisors don't have the ability, or the will to enforce



CA License #0814733 | Poms & Associates Insurance Brokers

23



## MODEL POLICY MANUAL LAYOUT

24

### SAMPLE POLICY MANUAL LAYOUT

<p><b>1. General Information</b></p> <ul style="list-style-type: none"> <li>DISCLAIMER(s)</li> <li>About the Company</li> <li>Employment At Will</li> <li>Right To Interpret and Change Policies</li> </ul> <p><b>2. Commitment to Diversity</b></p> <ul style="list-style-type: none"> <li>Diversity and Inclusion</li> <li>EEO &amp; Non-Discrimination</li> <li>Civility and Respect in the Workplace</li> <li>ADAAA Disability Accommodation</li> </ul> <p><b>3. General Employment Practices</b></p> <ul style="list-style-type: none"> <li>Promotions, Transfers, &amp; Demotions</li> <li>Training &amp; Introductory Period</li> <li>Performance Management</li> </ul> <p><b>4. Workplace Conduct &amp; Behavior</b></p> <ul style="list-style-type: none"> <li>Code of Conduct (Including Off-Duty)</li> <li>Standards of Conduct &amp; Behavior</li> <li>Corrective and Disciplinary Action</li> <li>Personal Appearance, Grooming &amp; Hygiene</li> <li>Attendance &amp; Punctuality</li> </ul>	<p><b>5. Organizational Property &amp; Information Technology</b></p> <ul style="list-style-type: none"> <li>Non-Disclosure of Confidential Information</li> <li>Care of Organizational Property &amp; Equipment</li> <li>Electronic Communications</li> <li>Computer Use</li> <li>Theft, Misappropriation, Fraud</li> </ul> <p><b>6. Time Off and Leaves of Absence</b></p> <ul style="list-style-type: none"> <li>Holidays</li> <li>Paid Leave</li> <li>FMLA</li> <li>Personal Leave Without Pay</li> <li>Military Leave</li> <li>Jury Duty or Witness Service Leave</li> <li>Bereavement</li> <li>Victims of Domestic Abuse Leave</li> <li>Volunteer Emergency Responder Leave</li> <li>Religious Observances Leave</li> <li>Parental School or Childcare Activities Leave</li> </ul>
---	--

CA License #0814733 | Poms & Associates Insurance Brokers 25

25

### SAMPLE POLICY MANUAL LAYOUT – Sample Contents


<p><b>7. Wage &amp; Salary Administration &amp; Pay Practices</b></p> <ul style="list-style-type: none"> <li>Payment of Wages</li> <li>Employee Classifications</li> <li>Work Schedules</li> <li>Flexible Work Arrangements</li> <li>Overtime</li> <li>On-Call and Call-Back Pay</li> <li>Business Travel &amp; Reimbursement</li> </ul> <p><b>8. Employee Benefits</b></p> <ul style="list-style-type: none"> <li>Benefits Overview                     <ul style="list-style-type: none"> <li>Don't Include Details of Benefits</li> <li>Refer to HR for Current Benefits Info</li> </ul> </li> <li>Workers Compensation</li> <li>Employee Training &amp; Prof Development</li> <li>Educational Assistance Program</li> <li>Employee Discounts</li> <li>Service Animals, Pets, Companion Animals</li> </ul> <p><b>9. Safety and Security</b></p> <ul style="list-style-type: none"> <li>General Safety Rules</li> <li>Workplace Violence Prohibited</li> <li>Weapons in the Workplace</li> <li>Continued next column</li> </ul>	<ul style="list-style-type: none"> <li>Workplace Bullying and Abusive Conduct</li> <li>Accident or Near Miss Reporting</li> <li>Tobacco and Smoke-Free Workplace</li> <li>Fitness for Duty</li> <li>Return-to-Work/Transitional Employment</li> <li>Drug-Free Workplace</li> <li>Inspections, Searches &amp; Surveillance</li> <li>Security of Electronic Resources</li> <li>Driving Policies</li> <li>Infectious Disease/Pandemic Outbreak</li> </ul> <p><b>10. Separation from Employment</b></p> <ul style="list-style-type: none"> <li>Separation from Employment (Types)                     <ul style="list-style-type: none"> <li>Voluntary Termination</li> <li>Involuntary Termination</li> <li>Job Abandonment</li> </ul> </li> <li>Return of Company Property</li> <li>References/Verifications of Employment</li> <li>Layoffs, Reductions in Force</li> <li>Furloughs</li> </ul> <p><b>11. Receipt / Acknowledgments</b></p>
---	--

CA License #0814733 | Poms & Associates Insurance Brokers 26

26

### DISSEMINATION OF HANDBOOK TO EMPLOYEES

- Provide Employees With A Verbal Summary Of Major Policies/changes Upon Distribution
- Provide Employees With An Opportunity To Ask Questions
- Let them know it is their responsibility to become familiar with the policy manual
- Let them know who to ask if they have questions
- Current Employees
- New Hires



CA License #0814733 | Poms & Associates Insurance Brokers

27

### SUPERVISORY TRAINING

- It is vital to train managers, supervisors, and leads on the policy manual
  - The affirmative legal duty to enforce policy as written
- To Avoid legal problems, the company must enforce provisions as written, unless management provides different instructions
- Managers, supervisors, and leads should refer all benefits and leave issues to HR (ADAAA, FMLA)
- Supervisors fully put on notice of obligations
- Supervisors develop a better understanding of purpose of company's policies
  - Also provides opportunity to provide input

CA License #0814733 | Poms & Associates Insurance Brokers

28



29

**DON'T LET YOUR POLICIES BE EXHIBIT "A" IN COURT**

Too often, handbooks are inconsistent with the way business is actually conducted, or they mistakenly imply that workers have certain rights. Examples:

- Poorly written progressive discipline policies that suggest an employee will be fired only for good cause. Such language can erase a worker's employment at will status and the employer's right to fire the person for any reason.
- Even a statement about an initial "probationary period" can suggest that workers are virtually guaranteed continued employment after a certain period of time.
  - The term, "probationary period" should ONLY be used in the public sector; NEVER use it for private for-profits or non-profits

CA License #0814733 | Poms & Associates Insurance Brokers

30

**DON'T LET YOUR POLICIES BE EXHIBIT "A" IN COURT**

Other problems we often see with our clients' policies:

- Not regularly adding, changing, and updating policies.
- Including details that are likely to change frequently.
- Policies that are inconsistent with other company documents.
- Not including disclaimers and other statements to preserve management rights, e.g. right to bypass progressive discipline.

CA License #0814733 | Poms & Associates Insurance Brokers

31

**DON'T LET YOUR POLICIES BE EXHIBIT "A" IN COURT**

Other problems we often see with our clients' policies:

- Not communicating changes effectively to all employees – including getting proper employee sign-offs on new or revised policies.
- Overly long and legalistic policies that are not distinct from procedures and guidelines.
- Not adapting the policies for each state's laws. You may need more than one version of the handbook if you have employees in several states.
- Having Employment Policy Manuals with unlawful policy statements
  - **Example:** won't pay for unauthorized overtime, deductions from pay for lost/damaged property not allowed by law, compensatory time in private sector, prohibiting discussion of pay, non-payment of paid leave if required by state law, etc.

CA License #0814733 | Poms & Associates Insurance Brokers

32



### DON'T LET YOUR POLICIES BE EXHIBIT "A" IN COURT

Other problems we often see with our clients' policies:

- **Wage and hour issues** - Misclassification (exempt, non-exempt, independent contractor), failure to define workweek, meal and rest periods (state law especially). This is much more than just a Handbook problem. Majority of employers have technical violations of wage/hour laws - DOL estimates 75%-80%.
- Not having essential or legally required provisions (EEO statement, reasonable accommodation statements (disability, religion) anti-harassment (of any kind), anti-retaliation, FMLA notice if covered employer, authorized to work in United States, at-will employment).
- Having leave policies that don't allow the flexibility needed to comply with ADA reasonable accommodation obligations.

CA License #0814733 | Poms & Associates Insurance Brokers

33

### DON'T LET YOUR POLICIES BE EXHIBIT "A" IN COURT

Other problems we often see with our clients' policies:

- Not having a statement about disciplinary action for making false charges.
- Creating obligations the company does not comply with (e.g. performance reviews, disciplinary procedures, attendance policies, pay increases and promotions).
- Overly restrictive social media, non-solicitation, confidentiality policies. These areas are frequently the source of charges to the NLRB alleging violations of the NLRA (section 7 - protected concerted activity rights of employees).
- Sexual Harassment policy - not have a broad policy prohibiting harassment for other protected classes, and retaliation.

CA License #0814733 | Poms & Associates Insurance Brokers

34

### DON'T LET YOUR POLICIES BE EXHIBIT "A" IN COURT

Other problems we often see with our clients' policies:

- Not having an internal process for reporting harassment, retaliation or discrimination of any kind and/or not following the process laid out.
- Not providing sufficient flexibility for similar conduct but different context or severity. This is essentially over restrictive or overly detailed disciplinary processes or rules of employment.
- Using a policy manual template that does not fit the company. Manual/handbook templates are useful but must be used with care.
- Having contradictory provisions (e.g. multi-step discipline vs. immediate termination provisions)
- Overly long and legalistic policies that are not distinct from procedures and guidelines.

CA License #0814733 | Poms & Associates Insurance Brokers

35

### DON'T LET YOUR POLICIES BE EXHIBIT "A" IN COURT

Other problems we often see with our clients' policies:

- Not controlling meal and rest periods, and unauthorized overtime; or policies that violate law (e.g. *unpaid rest breaks, standards for meal breaks, no pay for unauthorized OT*).
- Improper pay deductions (e.g. final paycheck) and lack of a "safe harbor" policy addressing deductions for exempt employees
- Putting a cap on medical leaves and overly restrictive return-to-work policies.
- "Use it or lose it" vacation policies in some jurisdictions (e.g. CA – maximum accrual cap is okay).
  - New interpretation of NM Wage & Hour Law for final payout of unused PTO or Vacation
- Public sector policies in private employer EPHs


CA License #0814733 | Poms & Associates Insurance Brokers

36

**DON'T LET YOUR POLICIES BE EXHIBIT "A" IN COURT**

Other problems we often see with our clients' policies:

- Not communicating changes effectively to all employees – including getting proper employee sign-offs.
- Negative, punitive or written in such a way that it demonstrates the company does not trust or respect employees - culture.
- Not adapting the handbook for each state's laws. You may need more than one version of the handbook if you have employees in several states.



CA License #0814733 | Poms & Associates Insurance Brokers

37



**POLICY FORMAT AND ADMINISTRATIVE ISSUES**

38

**TERMINOLOGY AND STRUCTURE**

- A formal **EMPLOYMENT POLICY MANUAL** is the official policy document that carries the force of law – it is the authoritative statement of policy.
  - Policies should be distinct from procedures – very often, they are conflated, which can provide some legal and administrative risk exposure.
- In general, **THE EMPLOYEE HANDBOOK** is a *summary* of your company's employment policies, procedures, and work rules.
  - The Handbook includes basic information that employees need to know about your organization
- A **PERSONNEL ORDINANCE** is a public regulatory law which applies in a certain area, such as Personnel.
  - **Personnel Ordinances** in a municipality provides broad structure for personnel operations, establishing a standard legal framework for a personnel system; and,
  - A **Personnel Ordinance** can promulgate **Rules and Regulations** for a more uniform personnel administration in the municipality.

CA License #0814733 | Poms & Associates Insurance Brokers

39

**TERMINOLOGY AND STRUCTURE**

<b>PUBLIC SECTOR</b>	<b>PRIVATE SECTOR</b>
• Federal and State Laws	• Federal, State, and Local Laws/Ordinances
• Local Ordinance ( <i>Local Govt</i> )	• Federal, State, and Local Regulations
• Federal, State, and Local Regulations	• Organizational Policies
• Organizational Policies	• Organizational Work Rules
• Organizational Work Rules	• Administrative Rules or Guidelines
• Administrative Rules or Guidelines	• Standard Operating Procedures
• Standard Operating Procedures	• Procedures
• Procedures	

CA License #0814733 | Poms & Associates Insurance Brokers

40

**POLICIES, PROCEDURES, SOPs, AND JOB AIDS**

- **What is a Policy? The Rules.**
  - Policies are “The Rules” that govern the operation of your organization and those who work for it.
  - They are designed to tell you the rules that need to be followed, and that shows the intention to do some thing.
  - Policies often will allow for some “management prerogative” in enforcement.
  - An employment policy is a business rule that includes things like no smoking, no drinking, and other business practices like dress codes, vacation policy, or your company’s codes of conduct.
  - Policies evolve as the business, and legal environment grows and changes.
  - Organizations need to be more regimented about how often employment policies are revisited and updated.
    - **Example:** A company might have a policy that mandates preventative maintenance be performed on all manufacturing equipment so that workers are not at risk and downtime is avoided.
- A common problem we see is that sections of the personnel policies become so detailed and specific that they virtually outline the procedures, especially for disciplinary actions, grievances and appeals of adverse actions.


CA License #0814733 | Poms & Associates Insurance Brokers

41

**POLICIES, PROCEDURES, SOPs, AND JOB AIDS**

**Different “levels of Policies” you may need:**

- Organization-wide
- Department / Team
- Program-specific
- Labor-Management Relations



- **Work rules** are specific applications of policies that typically apply to department, job classification, or program-specific matters related to conduct, or behavior.
- Write work rules for a specific job category or location such as service, clerical, front desk, grounds.
  - **Example:** Proper Notice for Absence or Tardiness: Employees must call their immediate supervisor or designated contact within <X> minutes of their beginning work time (may be different times for different departments).

CA License #0814733 | Poms & Associates Insurance Brokers

42

**POLICIES, PROCEDURES, SOPs, AND JOB AIDS**

- **What are Procedures? The Steps.**
  - A **Procedure** is a written document detailing all inter-related activities of specific system - such as system of document control, or a system of procurement,
    - **Example:** A procurement procedure would have detail of related activities like supplier evaluation & approval activities, purchasing activities, supplier monitoring activities etc.
  - Procedures are established or official way of doing something, in order to comply with a policy.
  - Procedures explain how to fulfill a company’s policies in more specific detail, often dictating “what” must be done and “who” is responsible.
    - **Example:** If it was policy that all employees must receive 20 hours of safety training annually, a procedure would provide detail about how those hours are to be allocated and attained.

CA License #0814733 | Poms & Associates Insurance Brokers

43

**POLICIES, PROCEDURES, SOPs, AND JOB AIDS**

- **Differences Between Policy and Procedure**
  - Procedures are established or official way of doing something, in order to comply with a policy. A series of steps taken to accomplish an end.
  - Procedures explain how to fulfill a company’s policies in more specific detail, often dictating “what” must be done and “who” is responsible.
    - **Example:** If it was policy that all employees must receive 20 hours of safety training annually, a procedure would provide detail about how those hours are to be allocated and attained.

Policies	Procedures
Have widespread application	Have a narrower focus
Are non-negotiable, change infrequently	Are subject to change and continuous improvement
Are expressed in broad terms	Are a more detailed description of activities
Are statements of what and/or why	Are statements of how, when and/or who & sometimes what
Answer major operational issues	Detail a process

CA License #0814733 | Poms & Associates Insurance Brokers

44

**POLICIES, PROCEDURES, SOPs, AND JOB AIDS**

- **What is an SOP? The Regulation.**
  - **Standard operating procedures** get down to specifics of how a task is to be accomplished, by strictly following specific steps.
  - SOPs provide directions and instructions as to how teams and members within an organization **must** go about completing certain processes.
  - Note that SOP documentation is much more involved than a simple procedural document.
  - The SOP provides standardization and control over business processes and operations, to ensure consistency in how a policy is being followed.
  - The SOP allows employees to function with little supervision and increases accountability since all employees have access to the SOP and should be similarly well-informed.
    - **Example:** A maintenance SOP would give step-by-step instructions explaining the weekly, monthly, and annual checks and maintenance for equipment;
    - **Example:** A in a clinical SOP, nurses in an operating theater have SOPs for the forceps and swabs that they hand over to the operating surgeons

CA License #0814733 | Poms & Associates Insurance Brokers

45

**POLICIES, PROCEDURES, SOPs, AND JOB AIDS**

- **What are Job Aids?**
  - A **Job Aid** is a specific piece of material intended to help someone execute a task more effectively. *(Sometimes referred to as a work instruction)*
  - It provides **task guidance** and support, **at the moment of need.**
  - Job aids allow workers to quickly remember or access the information they need to perform their jobs.
  - Job aids are designed to remind workers of information they have already been taught and know, not teach them new information on the spur of the moment.
  - In general, good job aids have a strong visual component to them and may include pictures, diagrams or flowcharts.
    - **Example:** A hammer would not be a job aid, but a laminated card that advises what type of hammer to use for a particular job, would be.
    - **Examples** include checklists, labeled photographs of equipment parts, company directories, flyers, diagram of a piece of equipment, instructional cards, charts or posters, and any other supplemental material that assists in successfully accomplishing a task.

CA License #0814733 | Poms & Associates Insurance Brokers

46

**EXAMPLE: ATTENDANCE AND NOTIFICATION OF ABSENCE OR TARDINESS**

- **Policy:** It is the policy of <COMPANY NAME> to require employees to report for work punctually, start work promptly at the beginning of their work shift, and to work all scheduled hours and any required overtime. Excessive tardiness and poor attendance disrupt work flow and customer service will be cause for disciplinary action, up to and including possible termination of employment.
- **Work Rule:** Whenever they are unable to report for work, know they will be late, or must leave early, employees must provide notice to their manager or supervisor, of absence or tardiness at least thirty (30) minutes prior to their normally scheduled starting time. Individual departments may establish work rules requiring employees to call in with more than thirty (30) minutes' notice, based on business necessity.

CA License #0814733 | Poms & Associates Insurance Brokers

47

**EXAMPLE: ATTENDANCE AND NOTIFICATION OF ABSENCE OR TARDINESS**

- **Guideline:** Because proper staffing is vital to the work and operation of <COMPANY NAME>, punctuality and a record of regular, reliable and consistent attendance is a condition of employment for all employees. We expect employees to strive for perfect attendance, to arrive and report to work on time, be at their designated work area on time, and to be ready to work for the duration of their scheduled hours.
- **Procedure:** The notice must include a reason for the absence and an indication of when the employee can be expected to report for work. If the manager or supervisor is unavailable, notification should be made to <TITLE>. Leaving a message with a co-worker is not acceptable. Voice mail, texting, e-mail messages etc. are not acceptable methods of notification. If the employee is incapacitated, or otherwise cannot contact their manager or supervisor themselves, they must have another responsible adult contact their manager or supervisor on their behalf.

CA License #0814733 | Poms & Associates Insurance Brokers

48

## EMPLOYMENT POLICY MANUAL / WORK RULES HANDBOOK

- **Work Rules** are more about the rules of the work and not the employment relationship. This type of document will generally change more frequently than employment relationship information. **Work rules** are often incorporated into collective bargaining agreements.
- **The major purpose of the Work Rules document** is to provide detailed information to employees about everything they need to do/know to perform the work of the organization without harm to themselves or others.
- The **Work Rules** document is generally a good idea - its content varies a lot with the specific business. For example, a healthcare organization probably needs an OSHA infection control set of policies and procedures. A retail store not at all.

CA License #0814733 | Poms & Associates Insurance Brokers

49

## EMPLOYMENT POLICY MANUAL / WORK RULES HANDBOOK

- An **Employee Handbook** should be a short concise booklet that an employee can use to know the basic “rules of the road.” Primarily **guidelines** about the employment relationship but may need to have some safety/work rules information.
- Because an **Employee Handbook** is necessarily shorter and more general, the use of the word “policy” in the Employee Handbook can cause a contradiction when there is another document (e.g. a Policy Manual) that covers the same topic and also uses the word “policy.”
- The **Employee Handbook** states that it contains only guidelines and the Employment Policy Manual is the official statement of Policy. It refers the employee to a supervisor, manager and the EPM for specific details. *e.g. FMLA*

CA License #0814733 | Poms & Associates Insurance Brokers

50

## SAMPLE FORMAT

EMPLOYMENT POLICY MANUAL – Section 3: Wage and Salary Administration

THE <COMPANY NAME> EMPLOYMENT POLICY MANUAL			
Original Issue:	Current Revision:	Current Approval By:	Page 1 of 1

### 3.XX SAFE HARBOR POLICY – IMPROPER OR UNLAWFUL DEDUCTIONS FROM PAY

**POLICY:**

Every effort is made to ensure that compensation and paychecks are properly computed and calculated. It is against <COMPANY NAME> policy for any FLSA exempt employee’s wages to have improper or unlawful deductions. If the Employee believes their pay is incorrect or that an improper or unlawful deduction was made to their wages or salary, they must immediately contact Accounting or the <TOP HR OFFICIAL>.

**SCOPE:**

This policy applies to all FLSA exempt employees of <COMPANY NAME>.

**DISCUSSION: STANDARDS, GUIDELINES, PROCEDURES, AND WORK RULES:**


- The salaries of employees exempt under the Fair Labor Standards Act, 29 CFR Part 541, may be reduced or be subject to deduction for the following conditions ONLY:
  - For a day or more full days for absence for personal reasons other than sickness or disability and the employee has no leave to cover the absence.
  - For a day or more full days for sickness, of disability (including work place injury) if the employee has not qualified for our leave benefit, has not earned sufficient leave to cover the absence, or has exhausted all leave and has no earned leave remaining to cover the absence. Such deductions will be in full day increments, not on an hourly basis, with the exception of unpaid Family and Medical Leave Act leave. If the employee has exhausted all leave benefit that would cover an FMLA absence, the employee’s salary may be reduced in hourly increments while on FMLA leave.
  - Deductions for penalties imposed for violations of safety rules of major significance, including those relating to the

CA License #0814733 | Poms & Associates Insurance Brokers

51

## POLICY SELF-ASSESSMENT

- Do your managers and supervisors all **consistently** follow employment policies and procedures?
  - The Doctrine of Agency
- Are your organizational and management practices always consistent with your written employment policy?
- Is your Employment Policy Manual **always** clear, so that there are no areas that cause you or your supervisory staff difficulty?
- Does your anti-harassment policy prohibit all forms of illegal harassment, and not just sexual harassment?




CA License #0814733 | Poms & Associates Insurance Brokers

52

**POLICY SELF-ASSESSMENT**

5. Can you say that 100% of your managers and supervisors understand and follow the Employment Policy Manual?
6. When you update your Employment Policies, do you ensure that ALL copies are properly updated, particularly those used by managers and supervisors?
7. Do you have safety policies and procedures?
8. Have you updated your policies at all during the past year?




CA License #0814733 | Poms & Associates Insurance Brokers

53

**POLICY SELF-ASSESSMENT**


- If you answered “no” to any of these questions, your Employment Policy Manual needs attention.
- It is time to develop a policy when:
  - Legislation or regulations that expressly requires an organization has a policy in place
  - Legislation or regulations that do not expressly require an organization have a policy, but the regulations and steps to be followed are tightly defined and a policy will help to ensure the organization is in compliance
  - There is inconsistency in how employees behave, or managers make decisions that is negatively impacting the work environment or accomplishment of business
  - There is confusion about certain areas of the business or how things are to be done



CA License #0814733 | Poms & Associates Insurance Brokers

54

**POLICY SELF-ASSESSMENT**



- Policies are developed for the many, not the few – when you bring a policy into force you are establishing a standard that will apply broadly across the organization - not just to a few individuals who may be causing problems.
- Policies are rules or standards to be followed consistently and reduce a managers’ flexibility to treat each situation as unique.
- It can be difficult to change policies once they have been implemented and become part of your organization’s culture and ways of working
- Be sure that any policies you implement, address a real need and are in line with what your company values and how work should be accomplished.
- You also need to ensure managers have the skills and resources to be able to implement and monitor the policy.

CA License #0814733 | Poms & Associates Insurance Brokers

55




**COMMON POLICY MISTAKES AND PROBLEMS**

56

**COMMON MISTAKES AND PROBLEMS WE SEE**

1. Not regularly changing and updating policies – i.e. reaching up onto a dusty shelf to hand out and refer to the same old Employment Manual someone wrote years ago.
2. Including details that are likely to change frequently.
3. Using a Manual template that does not fit the company. Manual templates are useful but must be used with care.
4. Not including disclaimers and other statements to preserve management rights, e.g. right to bypass progressive discipline.



CA License #0814733 | Poms & Associates Insurance Brokers

57

**COMMON MISTAKES AND PROBLEMS WE SEE**

5. Not communicating changes effectively to all employees – including getting proper employee sign-offs.
6. Overly long and legalistic policies that are not distinct from procedures and guidelines.
7. Not adapting the Manual for each state’s or other jurisdiction’s laws. You may need more than one version of the Manual if you have employees in several states.
8. Having Manual with unlawful statements (e.g. won’t pay for unauthorized overtime, deductions from pay for lost/damaged property not allowed by law, compensatory time, prohibiting discussion of pay, non-payment of paid leave if required by state law, etc.).

CA License #0814733 | Poms & Associates Insurance Brokers

58

**COMMON MISTAKES AND PROBLEMS WE SEE**

9. **Wage and hour issues** - Misclassification (exempt, non-exempt, independent contractor), failure to define workweek, meal and rest periods (state law especially). This is much more than just a Manual problem. Majority of employers have technical violations of wage/hour laws - DOL estimates 75%-80%.
10. Not having essential or legally required provisions (EEO statement, reasonable accommodation statements (disability, religion) anti-harassment (of any kind), anti-retaliation, FMLA notice if covered employer, authorized to work in United States, at-will employment).
11. Having leave policies that don’t allow the flexibility needed to comply with ADA reasonable accommodation obligations.

CA License #0814733 | Poms & Associates Insurance Brokers

59

**COMMON MISTAKES AND PROBLEMS WE SEE**

12. Not having a statement about disciplinary action for making false charges.
13. Creating obligations the company does not comply with (e.g. performance reviews, disciplinary procedures, attendance policies, pay increases and promotions).
14. Overly restrictive social media, non-solicitation, confidentiality policies. These areas are frequently the source of charges to the NLRB alleging violations of the NLRA (section 7 - protected concerted activity rights of employees).
15. Sexual Harassment policy - not have a broad policy prohibiting harassment for other protected classes, and retaliation.

CA License #0814733 | Poms & Associates Insurance Brokers

60

### COMMON MISTAKES AND PROBLEMS WE SEE

16. Not having an internal process for reporting harassment, retaliation or discrimination of any kind and/or not following the process laid out.
17. Not providing sufficient flexibility for similar conduct but different context or severity. This is essentially over restrictive or overly detailed disciplinary processes or rules of employment.
18. Having contradictory provisions (e.g. multi-step discipline vs. immediate termination provisions)
19. Putting a cap on medical leaves and overly restrictive return-to-work policies.
20. Not controlling Meal and Rest Periods, and Overtime

CA License #0814733 | Poms & Associates Insurance Brokers

61

### COMMON MISTAKES AND PROBLEMS WE SEE

21. "Use it or lose it" vacation policies in some jurisdictions (e.g. CA – maximum accrual cap is okay).
22. Public sector policies in private employer EPMs (e.g. compensatory time)
23. Negative, punitive or written in such a way that it demonstrates the company does not trust or respect employees - culture.
24. Not including policies that may be specific to your organization or industry (e.g. Medicaid Fraud)
25. An overly detailed, step-driven corrective action/disciplinary policy or procedure.
26. Problematic terminology (e.g. "permanent" vs. "regular" employee, "probationary period" vs. "Introductory" or "Training and Orientation" period)

CA License #0814733 | Poms & Associates Insurance Brokers

62

### COMMON MISTAKES AND PROBLEMS WE SEE

27. Clearly define how vacation time/PTO/sick leave is earned or accrued, and how it is paid out upon separation.
28. Having a policy that says, "Do not discuss your wages with any other person ..." – Right to discuss terms and conditions of employment.
29. "Guarantee" language such as "will," "shall," etc. Becomes promissory and can be interpreted as contractual.
  - e.g. "Employees performance shall be reviewed on the anniversary date of hire."
30. Detailed information about employee benefits, that are subject to change on a regular basis.
31. Improperly Limit Medical Leaves (FMLA, WC, etc.) - ADA/AA
32. Conflating policy with procedures and work rules – except where required (e.g. unlawful harassment)

CA License #0814733 | Poms & Associates Insurance Brokers

63

### COMMON MISTAKES AND PROBLEMS WE SEE

33. Clearly define how vacation time/PTO/sick leave is earned or accrued, and how it is paid out upon separation.
34. Having an Overly Restrictive Disciplinary Policy.
  - list the type of conduct that may result in employee discipline and potential penalties for infractions up to and including termination of employment - should not include a rigid "step" disciplinary system from which the organization cannot deviate, leaving you ill-equipped to handle serious incidents if it is the employee's first infraction.
35. Applying Policies Inconsistently.
  - *Managers' & supervisors' legal duty to uphold and enforce policy.*
36. Failing to Expressly Reserve the Right to Change and Modify the Handbook With or Without Notice
37. Forget Safety Policies
  - Employers have the obligation to provide a safe and healthful workplace to their employees, who in turn are obligated to follow policy.

CA License #0814733 | Poms & Associates Insurance Brokers

64



### COMMON MISTAKES AND PROBLEMS WE SEE

- 38. Consider union contract conflict.
  - If certain employees are covered by a union contract, there are limitations as to the degree that the employee manual can apply to those employees. Many times, an introductory section of the manual will make clear that the manual does not apply to these employees. If any aspects of the manual are intended to apply to such employees, application of the manual may require bargaining obligations.
- 39. Not Including a Detailed Computer/Technology Policy, and an annual renewal agreement signed separately.
- 40. Copying Policies from the Internet or Other Organizations.
- 41. Setting unrealistic policies. If managers and supervisors won't enforce it, don't put it in the handbook.
- 42. "Pretaliating"
  - If your policies require that whistleblowers address their concerns to the company first, you could be guilty of illegal "pretaliation."

CA License #0814733 | Poms & Associates Insurance Brokers

65

### COMMON LANGUAGE LANDMINES

- "Any violation of the following rules will be considered just cause for discharge."
- "Employees are eligible for a weekly \$100 bonus if they meet their production goal for the week."
- "We have a no-fault attendance policy. Every time you are absent, you will be assessed one occurrence regardless of the reason for your absence. When you incur nine occurrences, you will be discharged."
- "Your wages are confidential and employees who are found to have discussed their wages with their co-workers will be disciplined up to or including discharge."
- "We promote from within."
- "Employees may not wear baseball caps except for the Company's baseball caps worn with the bill facing forward."
- "Employees who volunteer for extra military duties requiring leave will not be granted a leave of absence."
- "Our employees are our most important asset. Therefore, as long as you do a good job, this company will be here for you."

CA License #0814733 | Poms & Associates Insurance Brokers

66

### COMMON LANGUAGE LANDMINES

- "Performance reviews will be conducted annually on your anniversary date of employment."
- "If you have a work-related complaint, concern, or problem of any kind, it is essential that you bring it to the attention of the Center Director immediately or use the company problem solving procedures in this handbook."
- "Once employees have completed the 90-day probationary period, they will be given permanent status."
- "Applicants for employment will be required to complete a physical examination."
- "The Company rounds time on a quarter-hour basis. If you clock in at 7:05 a.m., your time will be rounded to 7:15 a.m. If you clock out at 5:05 p.m., your time will be rounded to 5:00 p.m."
- "You must receive advance authorization before working overtime. We will not pay for unauthorized overtime hours worked."
- "Employees should not contact or comment to any media about the Company unless preauthorized by public relations."

CA License #0814733 | Poms & Associates Insurance Brokers

67

### COMMON LANGUAGE LANDMINES


- "Employees are eligible for a medical leave of absence after one year of employment."
- "The following disciplinary steps will be taken in all cases of discipline: verbal warning, written warning, suspension and discharge."
- "The Company believes in supporting its community. We strongly encourage employees to volunteer for Habitat for Humanity."
- "Employees may not discuss discipline and ongoing workplace investigations with co-workers."
- "Timecards must be turned in every Monday before payday. Employees who fail to turn in a timecard on Monday will not be paid on that payday. They will be paid on the next regular payday provided their timecard is submitted."
- "If the Company goes 90 days without any employee suffering a work-related injury, all employees will receive a \$100 bonus."
- "Thank you for reading our employee handbook. Please sign the acknowledgment form on the next page and return it to HR. Employees refusing to sign the acknowledgment form will be terminated."

CA License #0814733 | Poms & Associates Insurance Brokers

68

### TIPS AND CONSIDERATIONS

1. Consistent personnel management and supervision practices build fairness and equitable treatment
  - Builds morale, productivity and employee engagement
  - Reduces exposure to discriminatory practices and impact
2. Examine what is in writing vs. what actually happens “on the job” – In New Mexico and many other jurisdictions, courts have said that “employment practice” becomes your de facto employment policy.
3. Provide training to supervisors, and other members of management. If they are not properly trained, no Manual will provide any protection and in fact may be the basis for upholding an employee’s claim against a company.




CA License #0814733 | Poms & Associates Insurance Brokers

69

### TIPS AND CONSIDERATIONS

4. Don’t “wing it.” Many employers write handbooks, distribute them, and then fail to read and follow them when making important employment decisions. Read your handbook and follow it.
5. Don’t just put it on the shelf. Handbooks should be reviewed and updated at least annually for legal compliance and to ensure that you’re following your own policies.
6. Beware templates and do-it-yourself software package at the local Office Wiz store. Unfortunately, those one-size-fits-all packages don’t adequately reflect state or local law and are often poorly drafted.
7. Have your handbook reviewed by your employment law attorney – not by your divorce lawyer.



CA License #0814733 | Poms & Associates Insurance Brokers

70



## GOING FORWARD: Implementing Changes to Your Employment Policy Manual

71

- 1 • Review current organization policies
- 2 • Create an outline
  - Include: mission statement, equal employment opportunity statement, statement about at-will employment, handbook’s purpose, background information
- 3 • Summarize versions of each update policy and procedure
- 4 • Add each summary in the appropriate place after the outline
  - Assign team to review
- 5 • Submit the final version to legal council for review
- 6 • Select a means of publication
- 7 • Distribute handbook to all covered employees
- 8 • Establish a system for periodic review and updating

CA License #0814733 | Poms & Associates Insurance Brokers

72

### ASSESSING YOUR EMPLOYMENT POLICIES


- Do the policies comply with the current laws (statutes, regulations and case law)?
- Have any policies interfered with company operations?
- Have any of the policies affected employees' productivity or morale?
- Have any of the policies generated lawsuits or charges of discrimination?
- Have the policies been consistently applied?
- Are there policies that need to be added to the Manual, or that should be deleted?

CA License #0814733 | Poms & Associates Insurance Brokers

73

### MANUAL CREATION & IMPLEMENTATION

- Policies Should Reflect Organization Culture
- Enlist Support from Staff & Management
- Align with Procedures, Forms, other Documents
- Clarity, Conciseness and Coherence
- Review and Approval Process - Legal Review
- Distribution, Training, Acknowledgement



CA License #0814733 | Poms & Associates Insurance Brokers

74

### EXTERNALLY DRIVEN POLICIES: JURISDICTIONAL

Externally driven policies are usually expressed as laws or regulations formulated and enforced by government on the federal, state, or local (county or municipal) level. For example:

- **Federal** – Fair Labor Standards Act, FMLA, and on, and on ...  
*See handout of federal laws by number of employees*
- **State** – Anti-discrimination laws, NM “Victims of Domestic Violence Act,” Workers Compensation, Wage & Hour laws, Voting, CA Paid Leave laws, etc.
- **Local** – Minimum wage ordinances, anti-discrimination ordinances e.g. Cincinnati ordinance prohibiting discrimination on the basis of “Appalachian Descent”

We strongly recommend that you incorporate policies into your EPM that reflect requirements from all jurisdictions that apply to you.

CA License #0814733 | Poms & Associates Insurance Brokers

75

### EXTERNALLY DRIVEN POLICIES: INDUSTRY-SPECIFIC

Many industry-specific policies are also externally driven, expressed as laws formulated and enforced by government. For example:

- Federal Contractors – AAP, paid leave, hiring practices, etc.
- Medicaid-Funded Entities – DRA Medicaid Fraud, Whistleblower
- USDOT-Covered CDL Drivers – Drug Free Workplace, driver safety
- Tree Service Companies – OSHA ANSIZ133.1 Standard for Tree Care Safety
- Differences between public and private sector under FLSA
- Healthcare Organizations – OSHA Infection controls, HIPAA

Again, we highly recommended that you append, reference, or incorporate such industry-specific policies in EPM.

CA License #0814733 | Poms & Associates Insurance Brokers

76

## ELEVEN ESSENTIAL POLICIES

1. At-Will Employment
2. Equal Opportunity Employer
3. Anti-Discrimination & Anti-Harassment
4. Leaves of Absence
5. Attendance & Punctuality
6. Discipline & Corrective Action
7. Safety Policies
8. Drug-Free Workplace (DOT, federal contractors, etc.)
9. Workplace Security & Violence Prevention
10. Policies Implicating Privacy Rights
11. Confidentiality and Trade Secrets (Data breach)



CA License #0814733 | Poms & Associates Insurance Brokers

77

## WELL ... 20 ESSENTIAL POLICIES, ANYWAY

12. Internet, E-Mail and Electronic Communications
13. Pay Practices
14. Benefit Description – not details!
  - Reference to Plan Documents, Benefits Handbook
15. Employee Status and Classifications
16. Grievance/Complaint Procedure
17. Separation Policies
18. FLSA Safe Harbor Policies
19. Code of Conduct – Expected, Prohibited, Off-Duty Conduct
20. Other Externally-Driven Policies – e.g. FMLA, Medicaid Fraud, etc.



CA License #0814733 | Poms & Associates Insurance Brokers

78

## KEY ELEMENTS OF A POLICY

- Be easy to understand
- Be applicable
- Be doable and enforceable
- Be phased in
- Be proactive (state what has to be done, don't make "thou shall not..." pronouncements).
- Meet organizational objectives
- Never, ever use absolutes... (ok, avoid) you might get backed into a corner you don't want to be in.
  - Don't state "violators of the password policy will have their employment terminated" unless you are willing to live with the consequences.

CA License #0814733 | Poms & Associates Insurance Brokers

79

## KEY ELEMENTS OF A POLICY

- Policy manuals must be tailored to your workplace
- Forms:
  - May contain irrelevant policies
  - May omit important material
  - May make promises you cannot meet
- Your policy manual must set the right tone for your company and reflect your company's culture
- SAY "When driving a company car, always use a headset" INSTEAD OF "Don't use cell phones without a headset"

CA License #0814733 | Poms & Associates Insurance Brokers

80

**KEY ELEMENTS OF A POLICY**

- Scan workplace for practices. If there are no policies, develop them.
- Do policies reflect practice in workplace?  
 (“You will receive an Annual performance review”)
- Use wiggle room language  
 (“Generally we attempt to review your performance on an annual basis”)
- Uniformity and Consistency in Application/Enforcement
- Compare Manual to other company documents (benefit documents) to ensure consistency

CA License #0814733 | Poms & Associates Insurance Brokers

81

**KEY ELEMENTS OF A POLICY**

- Write to the level of your entire employee population
- When you can, keep it simple
  - Policies explaining company practices, benefits, etc. should be short and easy to understand
- Employment laws sometimes make brevity a challenge
  - Family and Medical Leave Act
  - Harassment and Discrimination laws
- Still, avoid overly legalistic language
  - No “Whereas” or “Heretofores”
- Do we really need a policy on this topic?
- Do not include employee names, other information that changes frequently

CA License #0814733 | Poms & Associates Insurance Brokers

82

**KEY ELEMENTS OF A POLICY**

Eliminate any language that might be perceived as creating rights or an implied contract that is contrary to employment at will

- “Probationary”; “Permanent”
- Lock step disciplinary practices
- Listing disciplinary offenses
- Arbitration Agreements
- Non-Competition/Confidentiality Agreements
- Employee Invention Agreements

CA License #0814733 | Poms & Associates Insurance Brokers

83

**KEY ELEMENTS OF A POLICY**

- Conforming to State Laws:
  - Weapons in the Workplace
  - Access to Personnel Records
  - Family/Pregnancy Leave
  - Payment on Termination
  - Accrual of Vacation
  - Mandatory Leave (Domestic Violence, Search & Rescue)

USE OF THE CATCHALL PHRASE  
 “. . . unless otherwise required by state law.”

CA License #0814733 | Poms & Associates Insurance Brokers

84

**KEY ELEMENTS OF A POLICY**

- Privacy Rights and Informed Consent
- Medical Privacy – HIPAA may require privacy and security safeguards
- Confidential Business Information
- Computer/Internet/Technology Issues
- Searches on Employee Property
- Surveillance – Cameras, GPS units, etc.
- Compensation Information
- Who is in charge of safeguarding this information, and is importance reflected in your policies?

CA License #0814733 | Poms & Associates Insurance Brokers

85

**KEY ELEMENTS OF A POLICY**

**Don't commit to a policy that can't be enforced**

- No fault attendance policy
- Strict progressive discipline policies
- No personal cell phone use during working hours

**Avoid Rigidity**

- Listing prohibited conduct
- Personal appearance policies
- Personal/romantic relationships

**Avoid language which unduly limits management discretion**

CA License #0814733 | Poms & Associates Insurance Brokers

86

**KEY ELEMENTS OF A POLICY**

**Laptops, cell phones, tools, vehicles, uniforms, etc.**

- What does your policy state about the use of such equipment?
  - at work
  - on the employee's personal time

**Policy should clearly state:**

1. Equipment belongs to the Employer
2. Policies to guide proper use, care and return of property
3. Consequences if equipment is damaged, lost or not returned

CA License #0814733 | Poms & Associates Insurance Brokers

87

**KEY ELEMENTS OF A POLICY**

- Once Handbook is written, it must be periodically reviewed and revised to reflect changes
  - Law – Policy – Procedure
- Who is in charge of this?
- How often should this be done?
- As Company grows, different laws may apply
- Are your supervisors trained on policies?
  - Trained on changes/revisions
  - Company's vision/culture

CA License #0814733 | Poms & Associates Insurance Brokers

88



89

### TIPS FOR DRAFTING THE POLICY

- For most policies you will want to allow for exceptions to the rule. Use terms like “generally”, “usually”, and “typically” and avoid terms like “always” and “never”
- Be clear about the difference between “may,” and “shall.”
- Include a statement like “this is intended as a guide only”
- There are a few situations where you want to be absolutely clear that the standard set by the policy will apply in all situations. For example, in a violence policy you would want to say “violence at work will not be tolerated under any circumstances”
- If using a sample policy or draft, tailor the policy for your specific workplace

CA License #0814733 | Poms & Associates Insurance Brokers

90

### TIPS FOR DRAFTING THE POLICY

- Use straightforward clear language and avoid jargon and legal speak - you want the policy to speak directly to the people for whom it is intended
- Check that the content and wording is unbiased and encourages fair, consistent treatment.
- Use terms consistently and define any special terms
- Be sure that there is only one possible meaning to the standard or rule set by your policy
- It's a good idea to consider a few “what if” scenarios and see if the policy still fits, keeping in mind that most policies will not, and should not, cover every possible circumstance

CA License #0814733 | Poms & Associates Insurance Brokers

91

### POLICY-WRITING TIPS AND TRAPS


- A policy is a guiding principle used to set direction in an organization, or a course of action to guide decisions and actions.
- The purpose is to communicate regulations that apply to all personnel, concerning matters for which they are held accountable.
- Includes information about the target user, the intended purpose, and some type of effectiveness measure.

CA License #0814733 | Poms & Associates Insurance Brokers

92

### POLICY-WRITING TIPS AND TRAPS

- What to Avoid in Writing Policies and Procedures
- Absolutes (“always,” “never”)
- Negative phrasing (“Don’ts”)
- Double negatives
- Harsh language
- Personal language (“we,” “you”, “they”)
- Assumptive or presumptive language
- Vague language
- Casual language
- Condescending or judgmental language



CA License #0814733 | Poms & Associates Insurance Brokers

93

### POLICY-WRITING TIPS AND TRAPS

**Be a word miser! Eliminate any words that do not add clarity or substance.**

- 1) Dump fancy language.**
  - At this point in time it is thought that... vs. The company believes....
- 2) Dump the flab.**
  - In accordance with our policy... vs. Our policy is....
- 3) Dump duplicative and phrases.**
  - Advance planning... vs. Planning
- 4) Dump long clauses.**
  - Use the carefully crafted end of year report that is vetted by numerous reviewers... vs. Use the end of year report.

CA License #0814733 | Poms & Associates Insurance Brokers

94

### POLICY-WRITING TIPS AND TRAPS

© 2018 Scott Adams, Inc./Dist. by UFS, Inc. | 0814733 | Poms & Associates Insurance Brokers

95



**ESSENTIAL CHANGES AND UPDATES FOR YOUR 2022 POLICY MANUAL**

96



### ESSENTIAL UPDATES FOR YOUR 2022 POLICY MANUAL

- Consider specific wording that should be used or avoided in your policies and handbook
- Ensuring that important changes to FMLA, FLSA and OSHA in a post-pandemic world are reflected in your handbook
- Changes that need to be made to wage and hour policies in the wake of the pandemic
- Updating references to state, county, or city paid leave laws
- Why anti-violence and anti-bullying policies need to be part of your handbook
- Adding LGBTQ categories as protected classes in EEO and anti-harassment policies as a result of Bostock vs Clayton County, Georgia, and state legislation (NM)
- Update to “Corrective and Disciplinary Action” policy
- Current with laws on concealed weapons in the workplace
- Expanded leave rights and programs (CA)

CA License #0814733 | Poms & Associates Insurance Brokers

97

### SOME NEW LEAVE LAWS

- Consider policies now that will be coming into effect in 2022, such as New Mexico’s Health Workplaces Act

CA License #0814733 | Poms & Associates Insurance Brokers

98

### KEY SECTIONS OF A POLICY MANUAL

#### Options for Multistate/Jurisdiction Employers

- A single handbook. Include all state and local variations in topical sections.
  - Opt for administrative consistency and adopt most employee-friendly policy to apply to all locations.
- Multiple versions. Tailor each handbook version to each company location.
  - A back-end approach. Deal with state/local jurisdiction-specific issues in addenda.

CA License #0814733 | Poms & Associates Insurance Brokers

99

### ESSENTIAL UPDATES FOR YOUR 2022 POLICY MANUAL

- Consider significant changes to laws, regulations and court cases that arose out of the COVID-19 pandemic, including:
  - A comprehensive review of important handbook policies you need to add or reword
  - Specific policies that need to be drafted or updated to meet OSHA and CDC related mandates and guidance
    - Safety and Security Plans
  - Remote work and telework policies
  - Necessary job description revisions post COVID-19
  - Temperature checks and medical testing - protecting employee rights under the ADA
  - Furloughing employees versus layoffs – policy differences
  - Temporary policies
  - Vaccination policies

CA License #0814733 | Poms & Associates Insurance Brokers

100

### ESSENTIAL UPDATES FOR YOUR 2022 POLICY MANUAL


- Health and Safety Requirement – particularly COVID-related
- Marijuana and drug testing policies
- Post-Accident and Post-Incident drug & alcohol testing
- Payout of accrued PTO/Vacation Leave (NMDWS Regulations)
- Outside employment – dual employment laws
- Contracts and other legally binding instruments—including noncompete, non-solicitation, and nondisclosure agreements, as well as arbitration agreements and releases of liability—may be better kept separate from the handbook. This may help to strengthen the handbook’s enforceability and protect the entire handbook from being construed as a contract.
- Ban the Box/Fair Chance Laws
- Electronic Communications, cyber-security, dual-use devices

CA License #0814733 | Poms & Associates Insurance Brokers

101

### EPM – MUST BE ALIGNED WITH OTHER DOCUMENTS

- An Employment Policy Manual is only one document in an entire set of employment documents that a company needs.
- All of these documents are interrelated and contradictions between one document and another document can cause problems in the event of employment charges or litigation.




CA License #0814733 | Poms & Associates Insurance Brokers

102

### EPM – MUST BE ALIGNED WITH OTHER DOCUMENTS

- An Employment Policy Manual is particularly interrelated with other employment documents because it is a summary of most of the information related to a company’s employment practices and policies.
- Very few companies review their Employee Handbooks in the context of their other employment documents.
- A related problem is revising one document and not reviewing/revising other documents that are affected by the change in the first document.




CA License #0814733 | Poms & Associates Insurance Brokers

103

### MANAGEMENT AND LEGAL REVIEW & FEEDBACK

- Have key management employees and supervisors review policies to ensure understanding
- Review by the employment attorney who will be defending you if an employment practices claim or charge is filed.
- Re-draft based on feedback, prior to publishing.




CA License #0814733 | Poms & Associates Insurance Brokers

104

**TAKE YOUR EMPLOYMENT MANUAL ONLINE: 8 TIPS**

Is your Manual still an actual book?

- Turning your Manual into an electronic document can cut costs, make updating easier and give employees a convenient place to access policies.
- It also eliminates “rogue” copies of Manuals that can cause you legal problems.
- Going electronic isn’t technically difficult. But the process involves more than simply transferring written documents to a database or internal website.



CA License #0814733 | Poms & Associates Insurance Brokers

105

**TAKE YOUR EMPLOYMENT MANUAL ONLINE: 8 TIPS**

1. **Put acknowledgment upfront.** Format the electronic Manual so that employees access the disclaimer and acknowledgment forms before reading the web version of the document.
2. **Require employees to log in using their passwords to access it.** You don’t want outsiders to access your policies.
3. **Include links in the Manual** that connect the policies and information to commonly used forms or documents, such as benefits, health plan summaries and IRS forms.
4. **Include HR email and telephone contacts.** Update as needed.
5. **Proofread the Manual** before and after putting it online to find mistakes and omissions. Test links.

CA License #0814733 | Poms & Associates Insurance Brokers

106

**TAKE YOUR EMPLOYMENT MANUAL ONLINE: 8 TIPS**

6. **Alert employees to the change.** Send an email (with a link to the Manual) explaining the Manual is available online. Ask employees to read the Manual, sign the forms and return them to HR by a certain date. Follow up with workers who don’t respond.
7. **When Manual changes are made, immediately email all employees.** Make it clear in the subject line that the email is urgent and employees must read it. Keep records of these update emails in case legal action requires proof.
8. **Make hard copies of the Manual available** for employees who prefer paper versions or have infrequent or no access to a computer. Assign these “**Control Copies**” to area supervisors to maintain and make available to employees.

CA License #0814733 | Poms & Associates Insurance Brokers

107

**GOING FORWARD – TRACKING CHANGES, UPDATES, ADDITIONS**

- Develop a plan for active maintenance and review
- Encourage users to provide feedback, and be prepared to make revisions as needed
- Archive changes and date new releases with an “Effective Date” – see header on samples
- Once adopted **your policies must be followed & enforced by supervisors** – check with them regularly
- Remember - you can change your mind and change your policy!

CA License #0814733 | Poms & Associates Insurance Brokers

108

### GOING FORWARD – TRACKING CHANGES, UPDATES, ADDITIONS

- Make it simple to update and keep it updated
- Track updates clearly and consistently
- Don't just throw it on the shelf
- Remember it is a “living” document subject to legislative rulings, industry norms, technological advancements, and changes in your organization
- Measure outcomes by monitoring or testing – Why have a policy that nobody follows?

CA License #0814733 | Poms & Associates Insurance Brokers

109

### ON-GOING ASSESSMENT OF YOUR POLICIES

- Do the policies comply with the current laws (statutes, regulations and case law)?
- Have any policies interfered with company operations?
- Have any of the policies affected employees' productivity or morale?
- Have any of the policies generated lawsuits or charges of discrimination?
- Have the policies been consistently applied?
- Are there policies that need to be added to the Manual, or that should be deleted?

CA License #0814733 | Poms & Associates Insurance Brokers

110

### IN CONCLUSION...

- Develop an employment policy manual.
- Review content one more time.
- Have an attorney review for compliance.
- It's a living document - review **at least once a year**.
- When you can, keep it simple.
- Know and follow your policies.
- Ensure that your managers and supervisors follow your policies.
- Include the details.
- Revise them if they don't make sense for your practice.

CA License #0814733 | Poms & Associates Insurance Brokers

111

### Disclaimer



*DISCLAIMER: Please be advised that insurance coverage cannot be altered, bound, or cancelled by voicemail, email, facsimile, or online, and insurance coverage is not effective until confirmed in writing by a licensed agent. The materials contained herein do not establish a broker relationship with Poms & Associates Insurance Brokers and is provided for informational purposes only.*

*A representative of Poms & Associates Insurance Brokers can provide you with a personalized assessment. Please contact us at 818-449-9317.*

CA License #0814733 | Poms & Associates Insurance Brokers 112

112