



# Your Employee Handbook

## Ensure that all of your information is current

by: Greg Goldberg, incoming BTA General Counsel

**M**y March column focused on the U.S. Department of Labor’s new legal test for classifying employees versus independent contractors. This month continues the theme of employment law issues with a commonly neglected, but critically important, topic: employee handbooks. Though many dealers understandably prefer not to bear the expense of updating their onboarding materials, new regulations and judicial decisions from 2023 — in part, in reaction to dramatic increases in remote and hybrid work arrangements resulting from the COVID-19 pandemic — warrant a fresh look at employee handbooks to ensure legal compliance. You should prioritize the following issues:



■ **Workplace Accommodations** — Generally speaking, a workplace accommodation is an adjustment to a job or a work environment that enables an employee to perform in his (or her) role. Historically, workplace accommodation policies primarily covered individuals with disabilities or chronic medical conditions. Following developments from 2023, employers should expand the scope of their workplace accommodation policies to include explicit language addressing accommodations related to pregnancy and religious beliefs.

Under a new 2023 law, the Pregnant Workers Fairness Act (PWFA), private-sector businesses with at least 15 employees (i.e., “covered employers”) are required to provide “reasonable accommodations” for workers with limitations resulting from pregnancy, childbirth or related medical conditions. Some examples of reasonable accommodation requests under the PWFA include parking spaces located closer to an employer’s facility, appropriately sized uniforms for pregnancy or additional break time to combat fatigue.

Similarly, in a recent U.S. Supreme Court case, *Groff v. DeJoy*, all nine justices unanimously agreed that Title VII of the Civil Rights Act prohibits employers from denying employees’ accommodation requests based on their religious beliefs or practices. Religious commitments are wide ranging. For instance, they may preclude observant employees from working on certain holidays or require them to pray at specific times throughout the workday. As long as an employee’s request does not substantially increase the cost basis of the employer, it is likely to be considered legally valid.

Updated workplace accommodation policies that incorporate recent changes in the law should not require employees to make accommodation requests in writing. Instead, a better

practice is to designate a point person to handle employee accommodation requests and ensure he recognizes the types of specific requests that invoke legal protections.

■ **At-Will Employment** — Terminating underperforming employees always poses a risk to employers because defending against a wrongful termination lawsuit may be prohibitively costly, even if the employer prevails. Fortunately, at-will employment arrangements allow employers to terminate employees for any lawful reason — or no reason at all.

Employee handbook terms outlining the parameters of at-will employment should be clear and unequivocal. For instance, an effective policy may read: “Neither this handbook nor any other representation made to an employee creates an express or implied contract of employment.” Employee handbook or policy language that potentially creates a contract of employment should be avoided. Common examples of language to be avoided include references to future dates or future obligations placed on the employer.

■ **Diversity, Equity & Inclusion (DEI)** — Some companies are implementing DEI policies to foster more diverse and inclusive workplaces. Because DEI policies have become a politically charged topic, the focus here is strictly limited to legal compliance for employee handbook policies. Last year, in *Students for Fair Admission v. Harvard*, the U.S. Supreme Court struck down race-conscious affirmative action considerations in the higher education admissions process. Unlike colleges and universities, U.S. employers have never been permitted to consider an applicant’s race, gender, ethnicity or other protected class status in making hiring decisions. Along these lines, DEI initiatives should be mindful of overstepping the threshold between encouragement and requirement. For instance, where an employer may make efforts to attract a more diverse applicant pool, equalize employment practices (including compensation) or recognize certain groups or individuals, the employer should not adopt hard and fast rules, such as hiring quotas.

A variety of employment resources, including sample forms and documents, is available at [www.bta.org/LegalDocuments](http://www.bta.org/LegalDocuments). ■

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