

# Employee Handbook Self Audit

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## Introduction

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Most employment relations experts agree that employee handbooks are an essential part, if not the foundation, of effective human resources (HR) management and positive employee relations. Handbooks can also play a critical role in demonstrating employment law compliance. Properly used, employee handbooks:

- Communicate policies and procedures.
- Play a key role in the orientation process for new employees.
- Serve as a valuable employee relations vehicle for educating current and prospective employees.
- Contribute to uniform and consistent application, interpretation, and enforcement of company policies.
- Protect against claims of improper employer conduct.

While carefully drafted employee handbooks can be an important part of employee relations media, handbooks that are unskillfully or improperly drafted can create organizational and legal headaches. Courts increasingly view employee handbooks as binding contracts subject to judicial enforcement. Accordingly, employers must carefully review every policy and procedure contained in a handbook to minimize potential contract claims and be prepared to update them periodically. The questions in this self-audit are designed to determine whether a handbook:

- Includes positive employee relations provisions that will improve employee morale and create a positive image of an organization.
- Educates employees regarding an organization's origin, history, and employee relations philosophy.
- Provides a mechanism for two-way communications.
- Contains the necessary protective language to minimize the threat of litigation and/or employee complaints to governmental agencies.

Handbooks that are properly drafted and tailored to an organization's needs can serve as the cornerstone of human resource management. However, improperly drafted, they can be a disruption that causes serious harm to the future well being of an organization. The questions that follow are designed to help an employer highlight the positive and negative features of an employee handbook.

## Questions

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### 1. Has the organization developed policies and procedures dealing with the following:

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|---|------------|
| • Wages?                                    | Yes _ No _ |
| • Benefits?                                 | Yes _ No _ |
| • Employee relations?                       | Yes _ No _ |
| • Day-to-day operations and administration? | Yes _ No _ |
| • HR management?                            | Yes _ No _ |

### 2. How are these policies and practices communicated to employees?

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|---|------------|
| • Orally and by having the employee observe how an organization operates?   | Yes _ No _ |
| • In written memos and documents given to employees and placed on bulletin boards (including Intranet bulletin boards)? | Yes _ No _ |
| • Through the use of a written employee handbook?   | Yes _ No _ |
| • By posting an electronic version of the handbook on an intranet?  | Yes _ No _ |

### 3. If the organization has promulgated an employee handbook, what are the purposes of a handbook?

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|---|------------|
| • To help answer the employee question: "Why should I work — or continue to work — here?" | Yes _ No _ |
| • To help answer routine employee questions about employment with the organization?       | Yes _ No _ |
| • To help create positive employee relations?   | Yes _ No _ |
| • To communicate important information to employees?                                      | Yes _ No _ |
| • To contribute to organizational orderliness?  | Yes _ No _ |
| • To comply with legal obligations and requirements?                                      | Yes _ No _ |
| • To delineate the organization's employment-related prerogatives?                        | Yes _ No _ |

- Other? Yes \_ No \_
4. Has the organization assessed the employee handbook's success at meeting these objectives? Yes \_ No \_
5. Does the employee handbook include a discussion of both the written and unwritten policies and practices of the organization? Yes \_ No \_
6. Does the interviewer monitor comments made during the applicant interviewing process to determine if they are consistent with statements made in the employee handbook? Yes \_ No \_
7. Have statements made on job application forms, offer letters, and other personnel action forms been reviewed to determine if they are consistent with statements made in the employee handbook? Yes \_ No \_
8. Is an "issue date" indicated on each page of the employee handbook? Yes \_ No \_
9. Are the policies and practices discussed in the employee handbook, the format and design of the handbook, and the methods used to distribute the handbook regularly reviewed? Yes \_ No \_
10. Are revision dates indicated on pages of the employee handbook? Yes \_ No \_
11. Have procedures been developed to ensure that all employees receive copies of revised handbook pages? Yes \_ No \_
12. Before issuing the employee handbook, was it reviewed by the following:
- The HR department? Yes \_ No \_
  - Senior management? Yes \_ No \_
  - Legal counsel? Yes \_ No \_
  - Supervisors and/or managers? Yes \_ No \_
  - A sample group of employees? Yes \_ No \_
  - Other? Yes \_ No \_
13. Is the employee handbook an element of strategic HR activities? Yes \_ No \_
14. Does the employee handbook add value to the employment brand? Yes \_ No \_
15. Does (would) the employee handbook create a positive image and a favorable impression of the organization with the following:
- Employees? Yes \_ No \_
  - Supervisors? Yes \_ No \_
  - Stockholders and investors? Yes \_ No \_
  - Employment practices liability insurance (EPLI) carrier? Yes \_ No \_
  - The Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), the U.S. Department of Labor, and other governmental agencies that may have an occasion to inspect it? Yes \_ No \_
  - The courts and juries? Yes \_ No \_
  - Others? Yes \_ No \_
16. Have any employee surveys been conducted to determine if the employee handbook effectively communicates the organizational and/or employee relations message? Yes \_ No \_
17. Are supervisors sufficiently well versed in the employee handbook's contents and the organization's policies and procedures to accurately answer routine employee questions? Yes \_ No \_
18. Does the organization have any of the following:
- Employing units in more than one state? Yes \_ No \_

• Diversity in the types of employing units, for example, a manufacturing plant, a distribution center, a call center, a computer center, retail operations, and an office facility?	Yes _ No _
• Both union and nonunion facilities?	Yes _ No _
• Employees that work on government contracts?	Yes _ No _
• A diverse workforce?	Yes _ No _
• A combination of different employment categories, for example, regular full-time employees, as well as a significant number of part-time employees, temporary employees, contract employees, and/or independent contractors?	Yes _ No _
<b>19. Is English the second language of some employees, are some employees illiterate, or do some employees have difficulty reading small type font?</b>	Yes _ No _
<b>20. If yes to Question #19, does the organization ensure that it effectively communicates employment policies, procedures, practices, and benefits to individuals that require special language and reading consideration?</b>	N/A _ Yes _ No _
<b>21. Is the employee handbook Americans with Disabilities Act (ADA) compliant?</b>	Yes _ No _
<b>22. Do some employees telecommute?</b>	Yes _ No _
<b>23. Is the employee handbook regularly reviewed to determine the following:</b>	
• If the target audience for the handbook has changed?	Yes _ No _
• If changes in the organizational structure, locations, or operations have altered the handbook's purpose, scope, or method of distribution?	Yes _ No _
• If the information and material in the handbook is still current?	Yes _ No _
• If the information and material in the handbook is still relevant?	Yes _ No _
• If the information and material in the handbook is still responsiveness to the needs of employees and other interested parties?	Yes _ No _
• If the information and material in the handbook is complete, i.e., does it cover all the issues that need to be addressed?	Yes _ No _
• If the information and material in the handbook comply with federal, state, and local laws and HR management best practices?	Yes _ No _
<b>24. Does the employee handbook anticipate future organizational and employment issues?</b>	Yes _ No _
<b>25. Does the employee handbook contain a brief history of the organization?</b>	Yes _ No _
<b>26. Does the employee handbook contain a statement of the organization's employee relations philosophy?</b>	Yes _ No _
<b>27. Is the employee handbook clear, concise, and easy-to-read?</b>	Yes _ No _
<b>28. Is the employee handbook written with a positive, personalized, upbeat tone?</b>	Yes _ No _
<b>29. Does the employee handbook use the following terms or phrases:</b>	
• "Probationary periods"?	Yes _ No _
• "Permanent" employee or employment?	Yes _ No _
• Explicit or implied language that an employee will only be fired for "cause," "just cause," or similar terminology?	Yes _ No _
• "Promising future"?	Yes _ No _
• "Unlimited advancement"?	Yes _ No _
<b>30. Are all employees required to sign a receipt of employee handbook acknowledgement form and are these forms kept in employees' personnel files?</b>	Yes _ No _
<b>31. Does the employee handbook use the following terms or phrases:</b>	
• A statement regarding "at-will" employment?	Yes _ No _

- A statement that the handbook is not a contract and that nothing contained therein is intended to create or imply a contractual relationship? Yes \_ No \_
- A statement that policies, practices, procedures, and benefits, including those described in the handbook may be changed from time to time, at the employ Yes \_ No \_
- A statement indicating who in the organization has the authority to enter into any agreement for employment for any specified period of time or to make any agreement contrary to an employment-at-will policy? Yes \_ No \_

**32. Does the employee handbook include the following topics:**

- A statement concerning the organization's commitment to Equal Employment Opportunity (EEO)? Yes \_ No \_
- A statement concerning sexual harassment? Yes \_ No \_
- A policy statement on the organization's labor relations philosophy? Yes \_ No \_
- A complaint procedure so that employees may register their concerns or grievances to various levels of management? Yes \_ No \_
- A drug-free workplace? Yes \_ No \_
- A code of ethics and a statement concerning a commitment to legal compliance? Yes \_ No \_
- A discussion of wage and overtime policies? Yes \_ No \_
- A discussion of a FMLA policy? Yes \_ No \_

**33. Does the employee handbook include a listing of offenses subject to disciplinary action?** Yes \_ No \_

**34. If yes to Question #33, are these offenses divided into major and minor categories?** N/A \_ Yes \_ No \_

**35. If yes to Question #33, does the handbook indicate that this listing of offenses is not all-inclusive?** N/A \_ Yes \_ No \_

**36. Does management reserve the right to discipline for other reasons?** Yes \_ No \_

**37. Does the employee handbook contain a procedure for enforcing progressive disciplinary action?** Yes \_ No \_

**38. Does the employee handbook in any way limit the right to discipline or discharge employees?** Yes \_ No \_

**39. Does the employee handbook include a discussion of key employment policies, general working policies, employee development, attendance and hours of work, wages and pay related issues, and benefits?** Yes \_ No \_

## Analysis

### Analysis for Questions 1 and 2

Most organizations have employment policies and procedures, compensation and benefits programs, and day-to-day methods of human resources administration. Some policies, procedures, programs, and methods are created in response to issues and situations that arise spontaneously in the workplace, others are the result of detailed planning, while others are imposed upon the organization by third parties, such as governmental agencies or benefit providers. Collectively these policies, procedures, programs, and methods become part of the organization's virtual employee handbook and, in some form, must be communicated to the organization's current and future workforce.

Since employee handbooks are not specifically required by law, organizations are generally free to determine the best method and most effective means to communicate important HR related information to their employees.

Factors that affect an organization's need for a written employee handbook include the following:

- The number of employees.
- The number of employing units.
- The state(s) in which the organization operates.
- The industry.
- Whether or not the organization is a government contractor.
- Whether or not the organization is unionized.
- Whether the organization has purchased employment practices liability insurance (EPLI).

Should a virtual handbook be put into a formal written document? As a general rule, if an organization's employment policies, procedures, programs, and methods are important and contribute to the organization's success, they should be in writing. Once in writing, they must be

consistently enforced. To be consistently enforced, they must be effectively communicated. To be effectively communicated, they should be promulgated in a format that is easily accessible and readily available. That is an employee handbook — whether in hard copy or in an electronic version.

## Analysis for Questions 3 Through 5

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Employee handbooks should be designed to do more than just communicate information and answer routine questions. The handbook should help to achieve organizational goals and objectives. Thus, while a list of rules of conduct and a summary of benefits are important information that help employees understand what is expected of them and what they should expect from the employer, the goal is to get employees to act in ways that benefit the organization. In this respect, an organization should evaluate the handbook on its ability to help the organization meet its objectives.

One early and continuing purpose for an employee handbook is to help attract and retain employees. An employee handbook should help applicants and employees answer — hopefully in the affirmative — two important questions. “Why should I work here?” and “Why should I continue working here?” If employees are not receiving a positive message about the organization, the handbook is not doing its job.

The employee handbook should also contribute to organizational orderliness. The handbook should help reduce workplace stress by conveying useful information about the following:

- Hours of work.
- Paydays.
- Leaves of absence.
- Benefits.
- Other important information.

More importantly, the employee handbook should help create an atmosphere of trust and respect and give employees a sense of belonging, make them stakeholders in the organization's success, and inspire them to become advocates for the organization.

The employee handbook must help employers comply with their legal obligations and ethical requirements. It must also help protect management's right to make changes and adapt the organization's policies and programs to changing business realities.

Since the organization and its employees are affected by all written and unwritten policies, procedures, programs, and methods, an organization should ensure that the employee handbook recognizes, considers, coordinates, reconciles, and incorporates as many of the organization's written and unwritten policies, procedures, and methods as practical. The organization must further ensure that the handbook accurately and effectively communicates top management's commitment to the organization's policies. As a result, an employee handbook will promote consistency and assist employers in preventing claims of disparate treatment.

An employee handbook should be a tool to help achieve an organization's HR goals and business objectives. In this context, employers should regularly assess the employee handbook, not only from the standpoint of how well it communicated policies, procedures, programs, and methods, but also from the standpoint of how well it helped achieve the organization's goals and objectives. Employee handbooks that fail to help the organization succeed in these areas should be redesigned.

## Analysis for Questions 6 and 7

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An employee handbook is one of many HR management tools used by an organization to communicate important messages. An organization should ensure that the message communicated by the handbook to employees, applicants, supervisors, and third parties is the **same** message communicated:

- By interviewers during the interviewing process.
- In the employment application and other personnel action forms used during the hiring process.
- In comments made by supervisors during an employee's initial period of employment.

Inconsistent messages contribute to workplace confusion and disorganization and may vitiate one or more employment policies.

## Analysis for Questions 8 Through 11

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An employee handbook should indicate on each page the date of issuance. This will help establish when a policy, procedure, or program was established and track changes and revisions as they occur. As a general rule, employers should review the employee handbook annually; however, specific policies may need to be changed or revised more frequently.

The review should include an assessment of the employee handbook's:

- Contents.
- Format and design.
- Methods used to distribute it to employees.
- Its effectiveness in communicating policies and programs.

If an employer revises, adds, or deletes a policy, procedure, or benefit program discussed in the employee handbook, a copy of the change should be provided to all employees, and the date of any revision(s) should be indicated on each page. A signed acknowledgment of receipt from each employee should be obtained and a copy of this acknowledgement should be placed in an employee's personnel file.

## Analysis for Questions 12 Through 16

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An employee handbook should not be solely the product of the HR department — it should be the organization's product. The process of creating or revising the handbook should cause an organization to consider the following:

- The organization's strategic and tactical plans and how these plans will affect HR activities.
- The current and potential impact of economic, technological, competitive, and legal/social changes and how these changes will affect current and future HR planning needs.
- The current and potential impact of workplace and workforce trends and how these trends will affect employment branding and the way the organization recruits and retains employees.
- The implications of the organization's current employment practices and how these practices expose the organization to employment practices liabilities.

Ideally, the employee handbook creation activities should consider strategic as well as transactional issues. This requires the input from a number of sources, including senior management, legal counsel, supervisors, and managers. It may be useful during the development stage to show a draft of the handbook to a sample group of employees. In other words, the organization should take a marketing approach to launching an employee handbook. If the organization wants to know what the marketplace (employees and supervisors) think about the product, ask them.

As noted earlier, while creating a positive image of the organization for applicants and employees is the primary concern, it is not the only concern. Increasingly, the image as an employer is being scrutinized by outsiders. As a result, an organization should consider its image as an employer in a broader context. The employee handbook can play an important role in creating and communicating a positive image.

## Analysis for Questions 17 Through 22

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A number of factors affect the composition, scope, and purpose of employee handbooks. First, employing workers in multiple states can complicate attempts to provide a single, uniform HR management message, to standardize benefits, and to keep employment practices consistent. There can be significant differences in state EEO laws, wages, benefits, leave requirements, notice requirements, and a host of other issues. As the number of states in which an employer operates increases, the need to have state specific handbook sections or even separate handbooks also increases.

In addition to the need to tailor handbook sections to meet the requirements imposed by various states, other factors that could require an organization to create tailored employee handbook sections include the following:

- Diversity in the types of industries an organization employs workers.
- Having both union and nonunion operations.
- Being a governmental contractor or subcontractor.
- Diversity in the composition of the workforce.
- Having a variety of employment categories, such as full-time regular employees and part-time temporary employees.
- Having workers that telecommute or work in nontraditional workplaces.

One of the purposes of an employee handbook is to communicate important information about the workplace. This becomes more difficult if some of the workforce have limited English language skills or visual or cognitive impairments. To enhance the ability to communicate with workers in these categories, an employer may find it advantageous to have all or parts of an employee handbook translated in native languages, to create large type versions of the handbook, and/or to hold special meetings with these workers to review the handbook contents.

## Analysis for Questions 23 and 24

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Preparing an employee handbook is best described as a work in progress — the handbook is never really done. Updates and revisions are a constant issue for employee handbooks. Organizational and workplace changes can quickly make a handbook obsolete. As new policies are required to be issued to keep a handbook current, relevant, and responsive, employers will have to decide whether to wait and issue a new handbook or to issue interim notices. Additionally, as previously discussed, procedures will have to be developed that ensure that all employees are notified of changes, revisions, and additions.

The list of best practices in this area includes:

- Initially creating an employee handbook from a strategic perspective that will allow the organization to anticipate changes.
- Aligning employment policies, procedures, and programs, and thus the employee handbook, with organizational objectives.
- Seeking input from a variety of stakeholders.
- Reviewing the handbook on a regular basis.

## Analysis for Questions 25 Through 28

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An employee handbook presents an excellent opportunity for an employer to educate employees about the organization, its history, and its origin. It also allows an organization:

- To establish a positive employee relations philosophy.
- To let employees know that they are an essential and valued part of an organization.
- To instill in employees a positive and favorable attitude towards the organization.

If a “No” was answered to any of these questions, the organization is missing an excellent opportunity to achieve these objectives.

## Analysis for Question 29

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Employers must guard against using terms and phrases that imply anything other than an employment-at-will relationship, unless of course an employer wants to establish such relationships. If any of these terms or phrases are used in an employee handbook, an organization could be inviting a claim that its handbook guarantees a greater degree of job security or protection than intended. For example, the term “probationary” may imply a certain degree of job security once the probationary period has been completed. This is also true for the other terms and phrases in this question. In short, employee handbooks should avoid using terms or expressions that could be construed to imply a greater degree of job security and job protection than the organization’s employment-at-will policy provides.

## Analysis for Question 30

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A receipt and acknowledgement form is a must for every employee handbook. By signing this form, an employee acknowledges that he or she has been given a copy of the handbook. This form should be detachable so that when an employee signs it, it can be removed from the handbook and put in the employee’s personnel file as a permanent record that the employee has indeed received the employee handbook. If an employee refuses to sign the acknowledgment form, the employer should so note the employee’s refusal on the form. It is advised that another member of management witness any such notation.

## Analysis for Question 31

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As mentioned in the **Introduction** section, handbooks are increasingly being held to be enforceable employment contracts. In order to be protected from breach of contract lawsuits by current and former employees, employers should specifically state that they retain the right to revise the employment relationship and that any employment handbook is not an employment contract, but merely a policy guide, which the employer has the right to change or revise at any time — with or without notice.

An employee handbook should also have an employment-at-will statement. The employment-at-will disclaimer, shown below, has received judicial approval:

“In consideration of my employment, I agree to conform to the rules and regulations of the Company, and understand that my employment and compensation may be terminated with or without notice, at any time, at the option of either the Company or myself. I understand that no other Company official has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the foregoing, except by a written document dated and signed by myself and an officer of the Company.”

If an employment-at-will statement is included in an employee handbook, it should be prominently displayed and highlighted in the front of the handbook. While not all courts have accepted the validity of these disclaimers or applied them with equal force, many courts have held that such disclaimers — stated in clear and unmistakable language and placed conspicuously and noticeably in a handbook — provide a strong, affirmative defense to breach of contract lawsuits.

**Note:** The use of employment-at-will statements is not without its critics. Opponents argue that employment-at-will statements have a negative employee relations impact, are counterproductive, and provide ammunition for union organizing activity. Notwithstanding this criticism, most legal experts, in light of current litigation trends, recommend the use of employment-at-will statements.

In addition to a statement that any published or unpublished policy, practice, procedure, or benefit is subject to change or revision at any time at an employer’s sole discretion, employers are well advised to specify how these changes will be effectuated. Setting forth such information will serve to protect an employer from employee claims that they had certain rights to these policies or benefits or that the changes were improperly adopted or publicized.

## Analysis for Question 32

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It is important to highlight certain employment policies and procedures, to establish a favorable employee relations climate, and to protect the organization legally, should the organization be targeted for an investigation by a government agency. Statements describing EEO and sexual harassment policies put employees on notice as to the organization’s commitments in these areas and alert employees to the importance attached to these policies. Government investigators examine these written policies as a routine part of their investigations, and their absence

creates a negative presumption about an organization's commitment that may color their investigation.

An EEO policy statement should **at a minimum** include a listing of the federal protected categories, for example:

"Our organization does not discriminate on the basis of race, color, religion, sex, pregnancy, national origin, ancestry, disability, or veteran status."

The policy statement should also indicate that the organization does not discriminate on the basis of categories protected under state and local employment statutes. In some states it may be prudent to also list the state and local protected categories. Since new protected categories are regularly added to the laws — especially at the state and local levels — employers should check their policy statement to ensure that any listing of protected categories is current.

Labor experts also recommend that nonunion employers include a clear and forceful statement in their handbook explaining management's preference for a direct, personal employment relationship with its employees and how a union-free relationship benefits everyone. They further recommend that nonunion employers have a mechanism for resolving complaints, gripes, or other employee concerns. Management has a vested interest in resolving such complaints internally, rather than forcing employees to turn to outside intervention, such as litigation, federal, state, or local EEO agencies, or third parties, for example, labor unions. Such problem-solving mechanisms may range from the traditional open-door policy to full-fledged grievance procedures that culminate in such alternate dispute resolutions (ADR) systems as peer review or the use of independent arbitrators.

All federal contractors must have a drug-free workplace policy. The policy, information about drug testing procedures, and information about access to an employee assistance program (EAP) or other support services should also be discussed in an employee handbook.

An employee handbook should also include a statement concerning the organization's:

- Commitment to comply with state and federal laws.
- Code of ethics.
- Commitment to no retaliation.

In addition, employee handbooks should include:

- A discussion of how employees can bring violations to an employer's attention.
- A discussion of disciplinary action that may be taken if violations occur.

Recent changes in the white-collar regulations create financial incentive for employers to promulgate a policy statement that communicates their commitment to complying with the requirements of the Fair Labor Standards Act (FLSA) and discusses how employees can bring wage-related problems to the organization's attention.

In the *Model Salary Basis Policy*, the U.S. Department of Labor recommends that an organization's wage and hour policy include the following statement:

"It is our policy to comply with the salary basis requirements of the FLSA. Therefore, we prohibit all company managers from making any improper deductions from the salaries of exempt employees. We want employees to be aware of this policy and that the company does not allow deductions that violate the FLSA.

If you believe that an improper deduction has been made to your salary, you should immediately report this information to your direct supervisor, or to [our human resources department]. Reports of improper deductions will be promptly investigated.

If it is determined that an improper deduction has occurred, you will be promptly reimbursed for any improper deduction made."

More information about the department's model policy is available at [www.dol.gov/esa/regs/compliance/whd/fairpay/modelPolicy\\_PF.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/modelPolicy_PF.htm).

If an employer is subject to the Family and Medical Leave Act (FMLA), the employer also needs to ensure the following:

- The organization's FMLA policy, including the method that will be used to determine the 12-month period of eligibility, is current.
- The organization effectively communicates its policy.
- The policy is included in a permanent document, for example, an employee handbook.
- All revisions are acknowledged by employees.

## Analysis for Questions 33 through 38

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Most employee handbooks contain a statement of employment rules and regulations and a listing of the disciplinary action that will result from the failure to follow those rules. An employer must be extremely careful not to limit disciplinary prerogatives to the list of infractions specifically



enumerated. This may be accomplished by including language in the handbook that indicates that the enumerated offenses are not all-inclusive and that the organization retains the right — at its sole discretion — to add, change, or enforce those items listed, depending on the seriousness of the infraction in question. In other words, employers must protect themselves from being constrained by a specific listing of offenses. It should be made clear which infractions are serious enough to warrant immediate discipline up to and including discharge, and which transgressions warrant less severe penalties — for example, the application of progressive disciplinary procedures — while still providing an employer with the flexibility to modify procedures as needed.

When a terminated employee turns to an attorney for assistance, one of the first steps legal counsel will take is to scrutinize the employee handbook to determine if the employee was terminated for a dischargeable offense and whether the employer followed the required procedural steps before finalizing the termination. To limit exposure to unnecessary lawsuits, employers should be certain that their handbooks do not unintentionally limit the ability to take proper disciplinary action and that the employer retains the ability to take make procedural changes as it is deemed necessary.

Also as noted previously, it is important that each employee — both new and current — receive a copy of the employee handbook. One of the most frequently heard defenses to employer disciplinary action is: “I didn’t know about that policy, rule, or regulation.” If an employer can conclusively demonstrate that the employee received a copy of the employee handbook and agreed to abide by the handbook’s provisions, the employer will have weakened the employee’s defense.

## Analysis for Question 39

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Employee handbooks come in all shapes and sizes, depending on the size of an organization and the depth to which the employer wants to address the various aspects of the employment relationship. Generally, employee handbooks should be manageable documents that can be easily used by employees. Frequently, they are small enough to be easily portable and easily accessible.

Employers should not make the mistake of treating an employee handbook as an operations manual containing written pronouncements on every aspect of business operations. Operations manuals should be distinctly separate documents, contained in a binder that can easily be updated by inserting new or changed policies and procedures as they are adopted. These more comprehensive manuals should not be confused with an employee handbook. **Appendix A** provides a list of basic topics that are generally contained in employee handbooks and which can serve as a guide when preparing an employee handbook.

## Appendix A

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### Listing of Employee Handbook Topics

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- **Welcome:**
  - Purpose of the employee handbook.
  - Corporate vision and mission.
  - Employment-at-will statement.
  - “This Handbook is not a contract statement.”
  - Reservation or rights statement.
- **Key Employment Policies:**
  - Initial period of employment.
  - Statement of equal employment opportunity.
  - General antiharassment policy, including ADA statement.
  - Sexual harassment policy.
  - Drug- and alcohol-free workplace.
  - Smoking policy.
  - No solicitation/no distribution policy.
  - Safety and health.
  - Open door policy.
  - Compliant procedures.
- **General Working Policies:**
  - Confidential information.
  - Personal appearance/dress code.
  - Standards of conduct and code of ethics.
  - Business expense reimbursement.
  - Company rules.
  - Bulletin boards.
  - Computers, electronic mail, and voice mail policy.
  - Company vehicles.
  - Personal phone calls.

- Workplace violence policy.
- Discipline policy.
- Attendance policy.
- Call-in procedures.
- Personnel files.
- Requirements for medical exams.
- Use of mobile phones policy.
- **Employee Development:**
  - Performance evaluations.
  - Promotional opportunities and transfer policy.
- **Hours and Attendance:**
  - Hours of operation.
  - Employment classifications.
  - Exempt and nonexempt status.
  - Full-time and part-time employment.
  - Temporary employment.
  - Independent contractor status.
  - Absence and lateness policy.
  - Severe weather and emergency situations.
  - Meals and rest breaks.
  - Overtime.
- **Pay Periods and Paychecks:**
  - Compliance with wage and hour laws.
  - Equal pay statement.
  - Pay periods.
  - Time keeping.
  - Deductions from pay.
- **Leaves of Absence/Time Off:**
  - Holidays.
  - Vacation and personal leave.
  - Sick leave.
  - Funeral (bereavement) leave.
  - Jury and witness duty.
  - Military reserves and National Guard.
  - FMLA leave.
- **Benefits:**
  - General benefits policy.
  - Group health insurance.
  - Disability and life insurance.
  - Retirement/savings.
  - Government required coverage.
  - Insurance premiums during a leave of absence.
  - Educational assistance and reimbursement.
- **Employment Separation:**
  - Separation of employment.
  - Reference checks-post employment inquiries.
  - Noncompete and conflict-of-interest policy.
  - Separation and last paycheck.
  - Rehire policy.
- **Agreements:**
  - Acknowledgement and receipt of employee handbook.
  - Noncompete/antipiracy agreement.

## Employment Practices Audits: A Loss Control Tool

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Remember the story about the Emperor's new clothes? The Emperor convinced himself and his loyal subjects that he was wearing the finest clothes, when in fact he was exposed to the elements. It was only a little boy's honest — if undiplomatic — observation that finally brought reality to the empire. Like the Emperor, many organizations convince themselves that they are protected (clothed), when in reality they are exposed to employment-related liabilities. Only when there is a charge of an unlawful employment practice does an organization begin to recognize it is vulnerable.

Remember connect-the-dots puzzles? Without a numbered path to define the picture, the answer typically remains a mystery. In solving the

puzzle of effective human resource and risk management, organizations similarly need a structured approach (a numbered path). Without this approach, organizations frequently fail to see the picture of employment practices vulnerability — at least until a claim is filed. To help organizations recognize and define their exposure to employment practices issues and help reduce losses, employers — and more frequently insurers — are increasingly using human resource (HR) auditing and risk management assessment techniques. Some of these techniques, including the **Employment-Labor Law Audit (ELLA<sup>TM</sup>)** the most frequently used employment practices auditing tool, are discussed below.

## General Comments

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There has been a significant growth in the use of HR audits in recent years. Some of these audits evaluate the effectiveness of HR management, while others benchmark best practices. Employment practices audits are designed to assess an organization's compliance with the myriad of federal, state, and local laws and regulations.

Unfortunately, many organizations limit the benefits they derive from these audits. Some use audits only as a tool to identify what someone is doing wrong. Once they identify a wrongdoer, punishment is meted out. Other organizations use audits solely as a tool to collect information about employing units' activities and performance. Once collected, this information is then sorted, dissected, analyzed, compared, and stored for future use, which often never occurs. While this information is useful in reports to top management, it has few other uses.

Considering the potential benefit from HR audits and the cost to conduct them, they should be more than purveyors of punishment and collectors of data. The primary purpose of HR audits is to cause action to occur: either to strengthen positive employment practices or to correct negative or unlawful activities. Experience shows that when audits are used to accentuate the positive and correct the negative they increase the active participation and cooperation of managers and supervisors, they reduce tendencies to react defensively, and they increase the stake employees have in achieving the desired outcomes. The net effect is a reduced exposure to employment-related claims and greater loss control.

**Note:** Information obtained from audits, assessments, and surveys can be a "smoking gun" and may be discoverable. Employers should investigate immediately, and take corrective action where required, reported incidents or perceptions of discrimination, harassment, or other inappropriate conduct.

**General Auditing Rule #1:** Employers should never collect information that cannot be used in making employment decisions.

**General Auditing Rule #2:** Employers should not conduct an audit if there is no intent to act on the findings.

## Employment Practices Assessments Tools

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### The Facilities Inspection

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The Americans with Disabilities Act (ADA) requires employers to create equal employment opportunities for workers with disabilities. The starting point in the employer-employee relationship is the recruitment, selection, and hiring process. Since most employers still require an applicant to visit their office to complete an application form or to be interviewed, an employer's application intake area and interviewing facilities must be able to accommodate individuals with a variety of disabilities. In inspecting facilities, the facility should be considered from the individual-with-a-disability perspective.

**Examples:** Can an individual with a mobility impairment gain access to the building and get to the human resources office? Will an individual with a visual impairment be able to complete the job application form? Is the form in Braille? Is there someone assigned and trained to help individuals needing assistance?

### Posters and Notices Inspection

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Federal, state, and local employment laws require that employers post in a conspicuous place posters and notices concerning employer obligations and employee rights under these laws. A visual inspection should be made to ensure that these posters are properly displayed.

### An Image Audit

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The 1991 Amendments to the Civil Rights Act allow plaintiffs to seek compensatory and punitive damages and provide for jury trials. Jury trials are usually problematic for employers. While the facts of each case are important, juries will typically consider such subjective factors as an employer's reputation for fair treatment and due process. An employer's reputation can be enhanced or destroyed by the explicit and implicit messages it sends in its annual report, advertising media, press coverage, and internal documents. A regular review of this material from a jury's perspective will help reduce negative impressions.

### Employee Attitude Surveys

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Employers are held accountable for the unlawful practices they knew about or should have known about. In the future, employers are likely to be held to a new and higher standard: Why didn't the employer know about the unlawful practice? Ideally, an employer should never be surprised — usually when a charge is filed — that its employees feel that they are mistreated, discriminated against, or are harassed.

**Note:** A study of EEOC data shows that most discrimination claims occur after employees have been terminated. That obviously is the wrong time to learn that there is a problem.

The only way most employers can effectively determine employees' workplace experiences and perceptions is through employee attitude surveys. Experience shows that when conducted on a periodic basis, and when the findings from these surveys are acted upon, employees feel more positive about their organization and more willing to use internal complaint mechanisms. This improved feedback mechanism allows employers to take corrective action before it is too late.

## Employment Practices Audits

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While a number of internally-designed audit programs exist, the **ELLA<sup>TM</sup>** is the most widely used and effective employment practices — loss control auditing tool. Endorsed by the insurance industry and by a number of employer associations, peer reviewed by the Society for Human Resource Management, the American Institute for Certified Public Accountants, and number of the nation's leading employment law experts, and used as course material for continuing professional education credit, **ELLA<sup>TM</sup>** helps employers ask the "right" questions about their employment practices, assess their organization's strength and weaknesses, identify problem areas, and prioritize corrective measures.

Available in both hard copy and software, **ELLA<sup>TM</sup>** allows employers, insurers, brokers, and risk managers to audit 18 employment practices issues, including the following:

- Recruitment, selection, and hiring.
- Application forms.
- Reference checking and responding.
- Employment handbooks.
- Workplace discrimination.
- The Americans with Disabilities Act (ADA).
- Sexual harassment.
- Performance appraisals.
- Leaves of absence.
- The termination process

As the incidence and severity of employment related claims increase, employers are being forced to pay greater attention to their employment practices and to take corrective action where needed. Additionally, as third-party intervention by stockholders and investors, the SEC, financial institutions, civil rights and consumer groups, and others increases, employers are more frequently being asked to explain and defend publicly their employment practices. For many companies there is a new internal question now being asked: Do we want to be known as a company or a case? In this environment, HR audits have become more important element in loss control.