

THE JOB DESCRIPTION

Six Employee Handbook Revisions to Consider for 2012



Employment law continues to change, not just with new laws on the books, but also with established laws that are receiving strong interest these days from attorneys for employees and state and federal agencies. Here are six workplace policies you may want to add or revise in your employee handbook:

1. Social Media Policies. The NLRB is finding that social media policies in employee handbooks violate the National Labor Relations Act if they are too broad, because they have a “chilling effect on concerted activity.” Your social media policy may be overbroad and need to be revised. For example, if your social media policy prohibits social media activity that disparages the company without making it very clear that this prohibition does not include protected concerted activity, then your policy needs to be amended.

2. Discrimination Policies. Based on the EEOC’s increased activity, every employer needs to ensure that its non-

[Continued on page 2](#)

ISSUE 4, WINTER 2012

In This Issue:

Six Employee Handbook Revisions to Consider for 2012	1
U.S. Supreme Court to Hear High-Profile Challenges to Healthcare Reform	2
U.S. Department of Transportation Announces Rule that Bans Hand-Held Cell Phones	3
Record Number of EEOC Charges Filed	3
Management Tips	4

The Cavanaugh Law Firm, LLC is committed to your company's success. We are available to provide you knowledgeable advice on the full range of labor and employment law issues and to defend your company and its managers in lawsuits and agency proceedings. If you have any questions about the contents of this newsletter or about any issue affecting your company, please contact us.

Bryan P. Cavanaugh
The Cavanaugh Law Firm, LLC
512 Sunnyside Avenue
St. Louis, Missouri 63119
(t)314.308.2451; (f)314.754.7054
bcavanaugh@cavanaugh-law.net
<http://www.cavanaugh-law.net>

(Continued)

discrimination and non-harassment policies include all of the protected classes that apply to that employer based on federal, state, and local law. Some new classes may have taken effect this year, and you do not want to be charged with discrimination on a basis that is missing from your employee handbook. You also want to be careful about including unnecessary classes that do not apply based on your company's location or size.

3. Leave of Absence and Attendance Policies.

Over the past few years, the EEOC has aggressively challenged employers' leave of absence and attendance policies under the Americans with Disabilities Act (ADA). The EEOC continues to target two general types of employer policies: inflexible leave of absence policies and no-fault attendance policies. The agency's focus highlights areas in which employers' policies can expose them to significant legal risks under the ADA - and also provides valuable insight into ways your company can reduce these risks by proactively reviewing leave and attendance-related policies and procedures.

4. Family Medical Leave Act Policies. Does the FMLA apply to all of your locations? If not, do you want to apply it voluntarily to all locations? Do you want to make part of FMLA time paid leave as an employee benefit? The FMLA is a detailed act, and now is a great time to audit your FMLA policies and procedures to ensure that they comply with the law and make good business sense.

5. Drug and Alcohol Policies. When do you want to perform drug and alcohol tests? Does the DOT or a collective bargaining agreement mandate when you must or must not perform tests? Does your policy consider the privacy rights and special medical conditions of employees?

6. Confidentiality. Many areas of your business can and should be kept confidential, such as pricing models, client lists, and business strategies. But your policies should not prohibit

employees from discussing wages and bonuses among themselves. Such a prohibition would violate the National Labor Relations Act and other applicable state laws. The confidentiality policy should also be reviewed to ensure it does not have a chilling effect on whistleblowers and employees wishing to file charges with the EEOC.



U.S. Supreme Court to Hear High-Profile Challenges to Healthcare Reform

The U.S. Supreme Court has agreed to hear challenges to the Affordable Care Act in late March. The Court will take up a lawsuit brought by 26 states and the National Federation of Independent Businesses (NFIB), who contend that Congress overstepped constitutional boundaries by mandating that individuals obtain health insurance and requiring states to massively expand expensive Medicaid programs as part of the health care overhaul.

The Court will rule on four key questions: whether the individual mandates are constitutional, whether the Medicaid expansions are constitutional, whether challenges to the law are premature under a provision known as the Anti-injunction Act, and whether overturning the individual mandate would topple the entire law.

The three-day hearing will take place March 26-28. While the Court usually allots far less time for oral arguments, the fact that it has scheduled three days for the health care lawsuit indicates the intense legal debate and high political stakes at play.



Record Number of EEOC Charges Filed

The U.S. Equal Employment Opportunity Commission (EEOC) received a record 99,947 charges of discrimination in FY2011, the highest number of charges in the agency's 46-year history. The fiscal year ended with 78,136 pending charges – a decrease of 8,202 charges, or ten percent. In previous years, the pending inventory had increased as staffing declined 30 percent between fiscal years 2000 and 2008.

At the end of the fiscal year, there were 580 systemic investigations involving more than 2,000 charges under way. EEOC field legal units filed 261 lawsuits; 23 involved systemic allegations affecting large numbers of people, 61 had multiple alleged victims, and 177 were individual lawsuits.

The EEOC's private sector national mediation program also achieved historic highs, obtaining more than \$170 million in monetary benefits for complainants, and securing the highest number of resolutions in the history of the program: 9,831. This is five percent more than the number of resolutions reported in fiscal year 2010.

The EEOC has not yet released detailed charge statistics for FY2011, but allegations of race discrimination and retaliation have historically been the two most common allegations.

U.S. Department of Transportation Announces Rule that Bans Hand-Held Cell Phones

The U.S. Department of Transportation (DOT) has issued a new rule prohibiting interstate truck and bus drivers from using hand-held cell phones while operating their vehicles. This joint rule from the Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) is the latest action by the U.S. Department of Transportation to try to end distracted driving.

The final rule prohibits commercial drivers from using a hand-held mobile telephone while operating a commercial truck or bus. Drivers who violate the restriction will face federal civil penalties of up to \$2,750 for each offense, and disqualification from operating a commercial motor vehicle for multiple offenses. Additionally, states will suspend a driver's commercial driver's license (CDL) after two or more serious traffic violations. Commercial truck and bus companies that allow their drivers to use hand-held cell phones while driving will face a maximum penalty of \$11,000. Approximately four million commercial drivers would be affected by this final rule.

While driver distraction studies have produced mixed results, FMCSA research shows that using a hand-held cell phone while driving requires a commercial driver to take several risky steps beyond what is required for using a hands-free mobile phone, including searching and reaching for the phone.

In September 2010, FMCSA issued a regulation banning text messaging while operating a commercial truck or bus; PHMSA followed with a companion regulation in February 2011, banning texting by intrastate hazardous materials drivers.

The DOT cites research about the added distractions of using a hand-held phone while driving and statistics about distractions contributing to fatalities and injuries.

Many of the largest truck and bus companies, such as UPS, Covenant Transport, Wal-Mart, Peter Pan, and Greyhound, already have company policies in place banning their drivers from using hand-held phones. Transportation companies subject to the DOT rules should examine their policies and procedures and determine exactly how to comply with this rule while still allowing their drivers to communicate for business purposes.

Management Tips

Motivated employees are productive employees. Wondering how to motivate your employees more in 2012? Try these tips:

1. Be generous with praise. Everyone wants it and it's one of the easiest things to give. Plus, praise from the boss goes a lot farther than you might think. Praise every improvement that you see your team members make. Once you're comfortable delivering praise one-on-one to an employee, try praising them in front of others.

2. Make your ideas theirs. Instead of telling people what you want done, ask them in a way that will make them feel like they came up with the idea. "I'd like you to do it this way" turns into "Do you think it's a good idea if we do it this way?"

3. Never insult. This is unproductive and demotivating. Instead, focus on the problematic act or omission.

4. Create leaders. Highlight your top performers' strengths and let them know that because of their excellence, you want them to be the example for others. You'll set the bar high and they'll be motivated to live up to their reputation as leaders.



5. Give recognition and small rewards. These two things come in many forms. Praise someone in a company meeting for what he or she has accomplished. Run contests or internal games and keep track of the results on a whiteboard that everyone can see. Tangible awards that don't break the bank can work too. Try things like dinner, trophies, spa services, and plaques.

6. Throw company parties. Doing things as a group can go a long way. Have a company picnic. Organize birthday parties. Hold a happy hour. Don't just wait until the holidays to do a company activity; organize events throughout the year to remind your staff that you're all in it together.

7. Share the rewards and the disappointments. When your company does well, celebrate. This is the best time to let everyone know that you're thankful for their hard work. Go out of your way to show how far you will go when people help your company succeed. If there are disappointments, share those too. If you expect high performance, your team deserves to know where the company stands. Be honest and transparent.



Bryan P. Cavanaugh
The Cavanaugh Law Firm, LLC
512 Sunnyside Avenue
St. Louis, Missouri 63119
Phone: 314.308.2451
Fax: 314.754.7054
[*bcavanaugh@cavanaugh-law.net*](mailto:bcavanaugh@cavanaugh-law.net)
[*http://www.cavanaugh-law.net*](http://www.cavanaugh-law.net)

The articles in this newsletter are for informational and educational purposes and should not be considered legal advice. If you have any questions about specific situations, please contact Bryan P. Cavanaugh. The choice of a lawyer is an important decision and should not be based solely upon advertisements.