

Creating Legally Compliant Personnel Policies

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What is the Purpose of Your Handbook?

Communication Resource

- Includes City mission, values, policies, procedures and benefits

Limits Legal Liability

- Protects against discrimination and unfair treatment claims

Administrative Time Saver

- Helps orient new employees
- Answers questions that arise during employment
- Easy to access forms

What Should Your Handbook Accomplish?

Three C's

- **Not a Contract**
 - Watch for possible language that can be interpreted as a contract for employment
- **Communicate Policies**
 - Distribute to and provide training for all employees and supervisors
- **Comply with Applicable Laws**
 - What laws apply to a municipality?!?!?

What a Handbook is ~~NOT~~

- **Not a substitute for good practices**
 - Policies are worthless unless the city and its supervisors follow them
- **Not a substitute for personal interaction**
 - Cannot take the place of one-on-one interaction between supervisors and employees
- **Not a substitute for training**
 - Training on what the policies state and specific requirements must still occur

Mistake #1: One Size Does Not Fit All

- **Handbooks must be tailored to your workplace**
- **Form policies may:**
 - Contain irrelevant policies
 - Especially to municipalities
 - Omit important material
 - Especially for municipalities
 - Make promises the City cannot meet
- **Your handbook must set the right tone for your City and reflect its culture**



Mistake #2: Do as I Say, Not as I DO Conflicting Policies/Practices

If there are no policies develop them

Scan your workplace for practices

- Do policies reflect the practice that occurs in the workplace?
 - “The city shall give an annual performance review”
 - Is this occurring on an annual basis?
 - Use wiggle room language
 - “Generally we attempt to review your performance on an annual basis”

Mistake #2:
Do as I Say, Not as I DO
Conflicting Policies/Practices

Uniformity and Consistency in Application / Enforcement

- Are all supervisors applying the policies to all employees in the same manner?

Compare Handbook to other City Documents to Ensure Consistency

- Department policies
- Ethics Ordinance
- Benefit documents

Mistake #3:
Too Much Ain't Enough
Is Your Handbook Too Wordy

Write to the level of your entire employee population

When you can, keep it simple

- Policies explaining city practices, benefits, etc. should be short and easy to understand

Employment laws sometimes make brevity a challenge

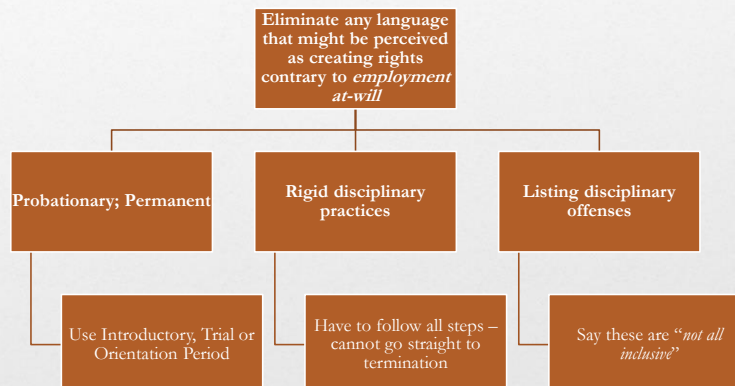
- FMLA
- Harassment & Discrimination
- Drug Free Workplace

Mistake #3: Too Much Ain't Enough Is Your Handbook Too Wordy

- Avoid overly legalistic language
 - Whereas
 - Heretofore
- Do we really need a policy on this topic?
- Do not include employee names or other information that changes frequently
 - Include positions
 - Keep information general when possible



Mistake #4: Not a Contract Means Not a Contract



Mistake #5:
Can I Bring My Gun to Work?
Conforming to State & Federal Laws

Weapons in the Workplace

- Unfortunately, the answer as to whether or not the city can have a policy against employees carrying weapons openly while at work depends on whether KRS 65.870 extends to a ***city acting in its employer capacity*** to restrict the carrying of weapons by employees as a matter of workplace policy.
- KRS 237.115(2) allows the regulation or prohibition of carrying concealed deadly weapons in buildings controlled by the city by persons with licenses to carry concealed deadly weapons.

Mistake #5:
Can I Bring My Gun to Work?
Conforming to State & Federal Laws

Weapons in the Workplace (cont.)

- Unless a judicial opinion is issued or legislation is enacted to clarify that KRS 65.870 applies only to cities as governmental entities rather than employers.
- Currently, the statute's broad prohibition would likely prevent cities from enacting policies preventing employees from open carry.
 - This is due to the specific statutory language prohibiting regulation of the "possession, carrying, storage, or transportation" of firearms.

Mistake #5:
Can I Bring My Gun to Work?
Conforming to State & Federal Laws

- **Weapons in the Workplace (cont.)**
 - Cities should review the information that we have available and work with the city attorney on designing a policy that they feel comfortable with enforcing.
 - We will notify cities as soon as we have an answer.



Mistake #5:
Can I Bring My Gun to Work?
Conforming to State & Federal Laws

Weapons in the Workplace (cont.)

- Other regulation issues:
 - KRS 527.020(8) prohibits the regulation within personal vehicles.
 - KRS 527.070 - Unlawful possession (whether carried openly or concealed) of a weapon on school property, except for certain specified exceptions.

Mistake #5:
Can I Bring My Gun to Work?
Conforming to State & Federal Laws

Access to Personnel Records

Employee Requests

- Ownership of the file rests with the City
- You have the right to control the time and the place when these will be reviewed – within reason
- Include that employees put their request in writing and respond back in writing

Mistake #5:
Personnel Records
Conforming to State & Federal Laws

Access to Personnel Records

- **Employee Requests (cont.)**
 - Have a policy on how employee requests will be handled
 - If the employee is unhappy with a document in his or her personnel file, in the presence of the City Clerk, the employee may write an explanation or clarification and attach it to the disputed document

Mistake #5:
Personnel Records
Conforming to State & Federal Laws

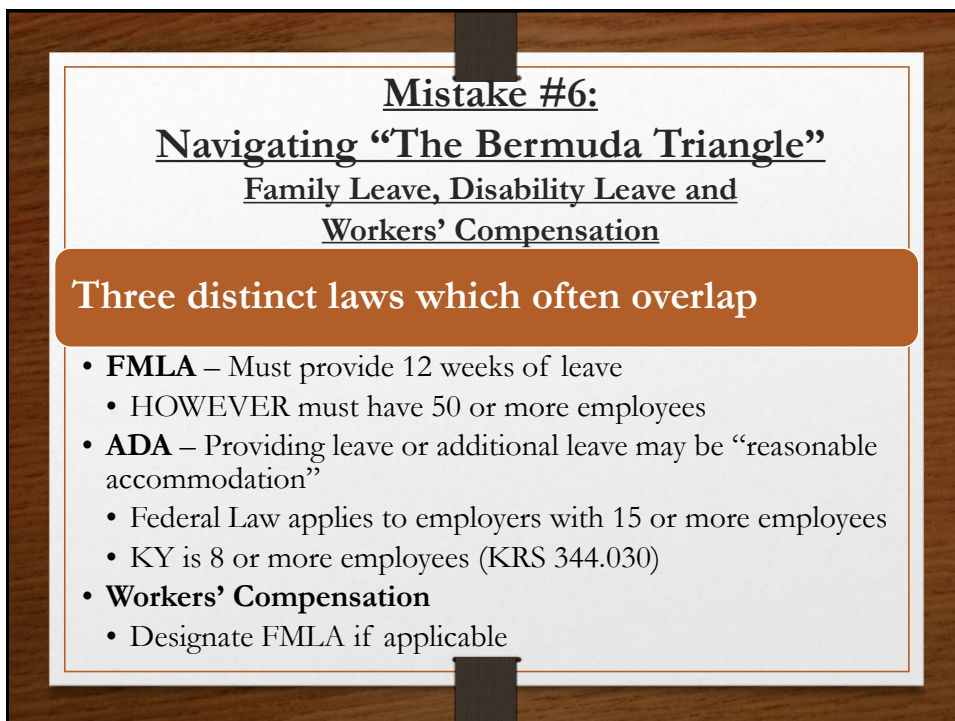
Access to Personnel Records

- **Citizen requests**
 - Follow your City Open Records policy
 - Policy should be in ordinance form and posted in the city office
 - KLC has samples
- **What is subject to open records?**
 - For specific questions contact KLC Legal Department

Mistake #5:
FMLA
Conforming to State & Federal Laws

FMLA

- FMLA applies to all governmental employers.
- However, employees are not eligible for FMLA if the employer employs less than 50 at the worksite.
- So, are cities with less than 50 employees required to provide FMLA leave????
- NO. See 29 C.F.R. § 825.108.



Mistake #7: Are You Kidding Me? Unrealistic Policies

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

- No fault attendance policy

Avoid Rigidity

- Listing prohibited conduct
- Personal appearance policies

Avoid language which unduly limits discretion

- Trust



Mistake #8: I Thought It Was A Gift! Equipment Use and Return

- Laptops, cell phones, tools, vehicles, uniforms, etc.
- What does your policy state about the use of such equipment?
 - at work
 - on the employees personal time

Cell Phone Policies
in the Workplace




Mistake #8:
I Thought It Was A Gift!
Equipment Use and Return

Policy should clearly state:

1. Equipment belongs to the City
2. Policies to guide proper use, care and return of property
3. Consequences if equipment is damaged, lost or not returned
4. Match language in Code of Ethics



Mistake #9:
Failure To Update

- 
- A 3D graphic showing a white book with a brown cover. The book is open, and a brown sign is attached to the cover. The sign contains text about handbook updates. The book's pages list three items: Law, Policy, and Procedure.
- Once Handbook is written, it must be periodically reviewed and revised to reflect changes
- Law
 - Policy
 - Procedure

Mistake #9: Failure To Update

Name a position in charge of making sure policies are reviewed and that acknowledgements are signed?

How often should the review be done?

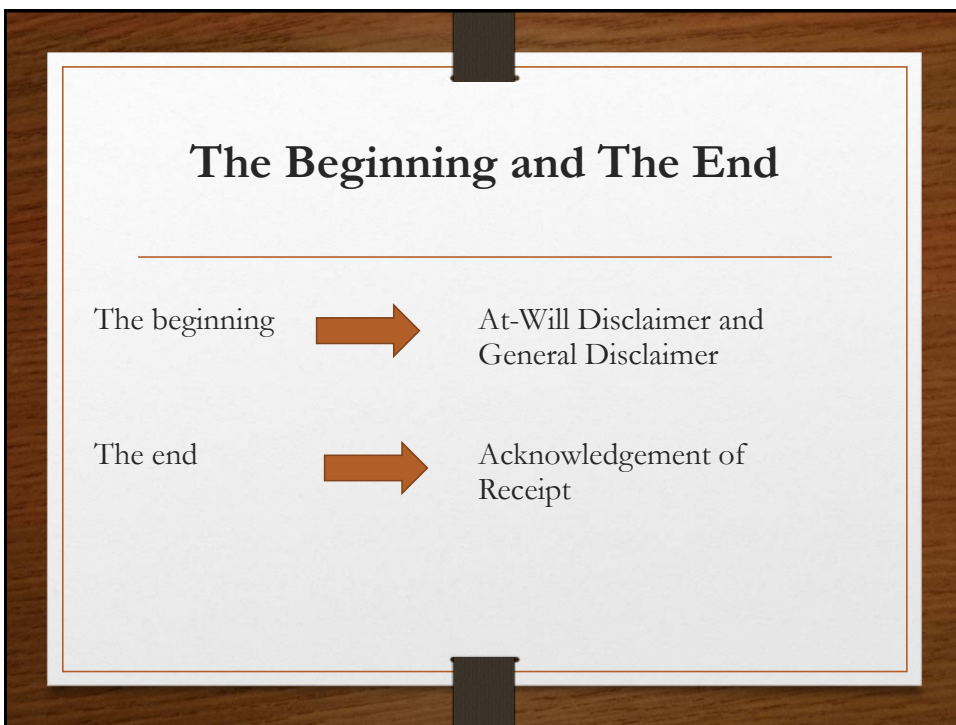
Who should do the actual review?

As the City changes, different laws may apply.

Mistake #10: Failure To Train

Are your supervisors and employees trained on policies?

- Trained on any changes/revisions
- Also mandatory policy training
 - Drug testing
 - Harassment
 - Safety policies



Equal Employment Opportunity Policy

- Commitment to equal opportunity
- Apply to all aspects of employment

“Preparation depends on the individual, but opportunity depends on society. That is why the government has a role in creating an equal-opportunity society, in which everyone has a fair chance to succeed.”

Paul TP Wong

Anti-Harassment & Anti-Discrimination Policies

Zero tolerance

Include sample prohibited behavior

Complaint procedure with several avenues for reporting

- e.g., Supervisor, HR, Executive Authority
- Investigation process

No retaliation

False Accusations

Employee Classifications

- Full Time
- Part Time
- Seasonal
- Temporary
- Introductory
- FLSA classifications
 - Exempt vs. Nonexempt



Full-time
Part-time
Temporary

Employee Benefits

Eligibility

Right to modify

General overview – leaving flexibility

Reference to master documents

Retirement

COBRA / State Continuation Coverage

Hours of Work

Business Hours

- Regular hours
- Inclement weather

Making Schedules/Changing Schedules

- How are schedules established?
- Can they be altered by a manager – is executive authority approval needed?

Flex Time

- Can all departments have this available to them
- Can this be done with only manager approval – or is executive authority approval needed?

Payroll Practices

- **Timekeeping /Reporting**
- **Overtime**
- **Compensatory Time**
- **Pay Periods**
 - Beginning and end of work week
 - Weekly; biweekly; twice a month
- **Deductions** – mandatory and voluntary
 - Include FLSA language for exempt employees



Time Away From Work

- Attendance and Punctuality
- Vacation
- Personal Days
- Sick Days
- FMLA/Workers' Comp/ADA



Employee Conduct Policies

Some other topics that are must haves, include:

- Rules of Conduct
- Drug/Alcohol Policy
 - FRE
 - Safety Sensitive
 - Certified Drug Free Workplace
- Confidentiality
- Take Home Vehicles – Distracted Driver – Vehicle Accident Reporting
- Expense Reimbursement
- Workplace Violence



Technology

No expectation of privacy

E-mail

Internet

Social Media / Blogging

Mobile devices (cell phone, laptop)

Privacy Protection Policy KRS 61.931- 61.934

Termination of Employee-Employer Relationship

- Notice Requirements
- Exit Interviews
- COBRA / State Continuation Coverage
- Employee References



On your mark - get set - go!!

Starting from Scratch or Updating an Oldie?

Incorporating Existing Policies and Practices

- Opportunity for Change
- Feedback from Employees / Supervisors

Creating Goals and Objectives

- User Friendly Format
- Creating Expectations
- Fairness

Distributing Your Handbook

Hold a Meeting

- Go over the handbook
- Consider a separate meeting with supervisors

New Hire Procedures

- Include handbook review as part of orientation

Updates

- Make sure that updates are distributed
- Reviewed with employees and supervisors
- Acknowledgement is signed

Acknowledgement! Acknowledgement! Acknowledgement!

- **Collecting and Storing Employee Acknowledgment Forms**
 - Five years after termination of employment
- **Choosing the Right Words**
 - “received and read”
- **The Problem Employee Who Refuses to Sign**



Sample Handbook Acknowledgement

By signing this form, I acknowledge that I have received a copy of the City's Employee Handbook. I understand that it contains important information about the City's policies, that I am expected to read the Handbook and familiarize myself with its contents, and that the policies in the Handbook apply to me. I understand that nothing in the Handbook constitutes a contract or promise of continued employment and that the City may change the policies in the Handbook at any time.

I acknowledge that my employment is at will. I understand that I have the right to end the employment relationship at any time and for any reason, with or without notice, with or without cause, and that the City has that same right. I acknowledge that neither the City nor I have entered into an employment agreement for a specified period of time.

Signed _____ Date _____

Going Forward

- **Revising and Updating Your Handbook**
- **Training**
- **Enforcing What is Written**

IT'S TIME TO
GO FORWARD

KLC Personnel Policy Review Program

Sample Model Policy

- free for insurance customers

Complete review of city policy and update the policy without training

Complete review of city policy and update with training for elected officials and city employees

KLC Personnel Services

Personalized Training Programs

- Sensitivity, Diversity and Harassment for elected officials and supervisors
- Personnel Files
- Customer Service
- ADA
- FMLA
- Job Descriptions
- Performance Management
- Discipline and Termination
- Wage and Hour
- Supervisory and Leadership Basics

QUESTIONS????

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