

DAVIS MALM & D'AGOSTINE P.C.

A T T O R N E Y S A T L A W



≡ Employment Law Update ≡

JUNE 2003

The Top Ten Employment Policies and Procedures Every Employer Should Have and Follow

Due to recent changes in the law and the workplace, it is imperative that all employers review their company's workplace policies and procedures to make sure that they are up to date and in compliance with law. At a minimum, they should cover the following essential policies and procedures:

1. **At-Will Employment Policy**
2. **Equal Employment Opportunity Statement**
3. **Sexual Harassment Policy and Annual Training**
4. **Confidentiality Policy**
5. **Electronic Mail, Internet, Voicemail and Computer Usage Policy**
6. **Mobile Telephone Policy**
7. **Vacation Accrual Policy**
8. **Family and Medical Leave, Small Necessities Leave and Maternity Leave Policies**
9. **Policy Prohibiting Workplace Violence and Other Conduct**
10. **Workweek, Attendance and Overtime Policy**

1. **At-Will Employment Policy**

While most managers know that employment is presumed to be at-will, many employees assume that employment cannot be terminated without good cause. It is therefore important to have a written policy that states in clear language that all employment, unless otherwise agreed to in writing by the employer, is at-will and may be terminated at any time and for any reason. The policy should also state that any employment handbook or policies do not and are not intended to create contractual obligations, may be modified by the employer without notice, and their enforcement is at the sole discretion of the employer.

2. **Equal Employment Opportunity Statement**

This should be one of the first policies in your handbook or policy manual. It should state that the company provides equal employment opportunity to all applicants and employees without regard to race, creed, religion, national origin, sex, age, handicap/disability, sexual orientation, ancestry, genetic information and veteran status. Employers with employees in multiple states should review the protected categories applicable in each state.

3. **Sexual Harassment Policy and Annual Training**

All Massachusetts employers with six or more employees must have a written policy against sexual harassment. The Sexual Harassment Guidelines issued by the Massachusetts Commission Against Discrimination ("MCAD") require that the policy be amended as of October 2002 to include a statement that sexual harassment includes harassment through electronic media such as electronic mail, Internet usage and voice mail and should designate a male and female to whom complaints of sexual harassment may be made. In addition, the MCAD encourages employers to provide regular sexual harassment training to all employees and separate, more comprehensive training to supervisors and managers. Employers should review their training history and have their policies and complaint procedures reviewed by legal counsel as soon as possible for compliance with the new guidelines.

4. **Confidentiality Policy**

Every employer should have a written confidentiality policy, whether or not your employees are required to sign a confidentiality statement. Employees should be on notice that the information they are exposed to in their workplace is proprietary and confidential and should not be disclosed to third parties outside of the work context.

5. Electronic Mail, Internet, Computer and Voicemail Usage Policy

This policy is essential in any modern workplace. An employer should clearly establish that all information stored or contained on an employee's computer and other office equipment is the property of the employer and the employee should have no expectation of privacy in that information. An employer should state that computers, Internet, electronic mail and voicemail are for business use and purposes and any unauthorized use may subject the employee to discipline, including termination. The policy should specify that the communications are the property of the employer and are subject to monitoring at any time. Actual monitoring should be conducted only in limited situations in which you have a business need to do so.

6. Mobile Telephone Usage Policy

In a recent trend, employers with employees who drive as part of their employment are facing exposure to claims for negligent operation of a vehicle arising from motor vehicle collisions that occur while an employee is conducting business on a mobile phone. Some jurisdictions have banned or restricted the use of hand-held mobile telephones and many others are considering legislation in this area. To guard against this exposure, employers should have a policy regarding the use of mobile telephones while driving on company time.

7. Vacation Accrual Policy

Because vacation pay may be considered earned wages, depending upon the state you operate in, every employer should have a clearly stated policy regarding vacation accrual and forfeiture and how termination affects this. In Massachusetts, terminated employees are entitled to pay for all accrued and unused vacation. Your policy should clearly state whether an employee may carry over accrued but unused vacation from one year to the next. If certain categories of employees, such as commission salespeople, do not accrue paid vacation, the policy should indicate this.

8. Family and Medical Leave, Small Necessities Leave, and Maternity Leave Policies

If you have fifty or more employees then you must

have a written FMLA policy or provide employees with an FMLA disclosure sheet. In addition, Massachusetts employees who are eligible for FMLA leave are also entitled to 24 hours per year of Small Necessities Leave, which may be used to attend their child's school activities or to accompany their child or parent to routine medical or dental appointments. Due to differences between state and federal law, Massachusetts employers should also have a clearly stated maternity leave policy. Massachusetts employees who have served through a probationary period or three months are entitled to 8 weeks of maternity leave for the birth of each child. Please note that while the FMLA permits an employer to require an employee to use accrued sick or vacation time during an FMLA leave, under Massachusetts law an employer may not require an employee to use accrued sick or vacation time during her maternity leave.

9. Policy Prohibiting Workplace Violence, Insubordination and Other Conduct

Employers should have a policy prohibiting workplace violence and other unwanted and disruptive conduct. This might include the use of profanity, fighting (verbal and physical), threats, intimidation, destruction of property, and attendance at work under the influence of alcohol or illegal drugs.

10. Workweek, Attendance and Overtime Policy

Employers should have a policy detailing the expectations for attendance at work during working hours, procedures for reporting absences, and expectations regarding overtime. Attendance policies should be clear and simple to follow. Companies with non-exempt employees should require written approval for any overtime. You are probably aware that the DOL recently issued proposed comprehensive revisions to the "white collar" exemptions under the FLSA. The final form of these new regulations is not yet certain.

As always, policies are only as good as their enforcement. Even the best written policies will do little to protect an employer who fails to follow and enforce them. ♦

Employment Law Group

Judith Ashton	(617) 589-3873
Gary M. Feldman	(617) 589-3874
David Rapaport	(617) 589-3812

Laurie Alexander-Krom	(617) 589-3867
David M. Cogliano	(617) 589-3812

DAVIS MALM & D'AGOSTINE P.C.

ATTORNEYS AT LAW

Should you have questions about this article, please contact : Gary M. Feldman: (617) 589-3874 • gfeldman@davismalm.com or Siobhan M. Sweeney: (617) 589-3822 • ssweeney@davismalm.com • One Boston Place • Boston, MA 02108