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# Employee Handbooks

Creating clear and compliant policies



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COMPLIMENTARY HUMAN RESOURCES
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The Monterey County Workforce Development Board has partnered with the California Employers Association to provide Monterey County employers a NO-COST HR HOTLINE!

- Providing guidance on:
• Hiring & Firing Processes
• Paid Sick Leave Laws & FMLA
• Breaks, Lunches & Overtime
• Employee Handbooks
• Harassment Prevention
• Remote Workers



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- Handbook benefits & risks
- Essential provisions
- Best practices
- Reviewing/Editing
- Annual checkups (at least!) and other reminders




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## Handbook Benefits



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## What to Avoid?

- Not following
- Not reviewing
- Not updating
- Downloading a random version from the internet
- “Borrowing one”



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# Creating Your Handbook

- **Assess current policies**/new policies required
- Begin the **drafting process**
- The ideal handbook has **policies** that **are**:
  - **Carefully & clearly** worded
  - **Accurate reflections** of your policy
  - Consistent with applicable **legal requirements**
  - **Understood** by the audience
  - Not a **snooze-fest**



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# Handbook vs. Policy Manual

|  |   |
|--|---|
|  <p><b>Handbooks:</b></p> <ul style="list-style-type: none"> <li>• Generally applicable policies</li> <li>• Abbreviated coverage</li> <li>• For everyone</li> </ul> |  <p><b>Policy Manuals:</b></p> <ul style="list-style-type: none"> <li>• Procedures</li> <li>• Detailed coverage / forms</li> <li>• Managers &amp; Supervisors</li> </ul> |
|--|---|



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## The Essentials

Let's Cover the Basics:

- What's Required
- Best Practices/ all the others you may want to consider




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## Sound Familiar?

- You can't **change** my job description!
- Do we have to give **2-weeks' notice**?
- What if my coworker makes me **uncomfortable**, what do I do?
- My friend who is a **lawyer says** you have to give me that time off ... and pay me!
- Do I get paid for **holidays**?
- How much **vacation** do I get each year?
- What if I don't want to take my **breaks**?



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## Important Statements

- 01** →  Employee or Employer can change the terms and conditions of employment (termination, demotion, transfer, reassignment) without advance notice or cause.
- 02** →  Not subject to change except in writing signed by the employee and an expressly designated company representative.
- 03** →  Include an integration clause - supersedes prior agreements.



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## Discrimination and Harassment Prevention

Make employment decisions based on **work-related** factors such as:

- **Work performance**
- **Attendance** issues
- **Safety** violations
- Violation of **company policy**, etc. (*\*importance of handbook!*)



Know all of the **protected classes**



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## Harassment Prevention Policy – Essential Elements

- Harassment is illegal and will not be tolerated
- List all protected categories
- Law's prohibition of co-workers and third parties, as well as supervisors, from engaging in prohibited conduct
- Anti-retaliation statement
- DFEH and EEOC contact information and training links

### Detailed complaint process:

- Confidentiality to the extent possible
- **Timely** response
- Impartial and **timely** investigation
- Documentation and tracking for reasonable progress
- Options for remedial actions and/or resolutions
- **Timely** closure

PRO TIP: If 10% or more of employees speak a language other than English, you must have policy translated.




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## California Protected Classes

- Age (40+)
- Ancestry
- Disability (Physical/Mental)
- Gender
- Gender Expression
- Gender Identity
- Genetics
- Marital Status
- Perceived Status
- Medical Condition
- National Origin
- Pregnancy
- Race
- Color
- Religion
- Sexual Orientation
- Military/Veteran Status
- Association based on Status




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## Required Leaves of Absence Policies




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# Paid Sick Leave Policy

- Healthy Workplaces/Healthy Families Act
- Provides for **3 days** or 24 hours of paid time off and **job protection** for all employees to address their own health needs and/or health needs of their **families**.



\*Be aware of job abandonment provisions\*



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# Paid Sick Leave

- **Accrual Method:** Accrue one hour for **every 30 worked**, can cap at 48 hours, 24 to use per year; **or**
- **Lump Sum Method:** Can grant lump sum of 3 days/24 hours each year; expires at end of year and starts over.
  - Can require employee to **wait 90 days** to use PSL
  - **Not paid out** at termination (unless part of PTO plan)
  - Employer may not retaliate
- **PTO (combined) Plan:** Must make the paid leave available for the **same purposes** and under the **same conditions** as in the law. PTO must be paid out at term.



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# Be Aware of Local Sick Leave Ordinances



- Many require **more** than three days/24 hours per year.
- Many **local** ordinances.
- Be aware of ordinances where your employees are **working remotely!**

[www.employers.org/pages/additional-resources/](http://www.employers.org/pages/additional-resources/)



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# Pregnancy Disability Leave (PDL)

- 01 **Covered Employer:** If you have 5 or more employees in the current year **OR** had 5 or more employees in the past year for 20 or more consecutive weeks, then must provide PDL.
- 02 **Covered Employee:** Anytime a **health care provider** states that an employee cannot perform one or more of the essential functions of their job without undue risk to themselves, or their pregnancy's successful completion.
- 03 PDL can occur before, during or after the actual birth of a child.



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# How Much Time Off?

- 01 Up to 4 months = 17 1/3 weeks or 88 days (704 hours)
- 02 Amount of Leave is per pregnancy, not per year. No limit.
- 03 Leave can be used all at once or intermittently (increment used **cannot** be **greater than** 1 hour).
- 04 Can require or EE may choose to use sick leave. Cannot require to use vacation or PTO, but EE may choose to.
- 05 Time needed = must be certified by a healthcare provider.



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# CFRA California Family Rights Act

- Provides up to 12 weeks of unpaid leave with benefits**
- An employee is eligible for CFRA if:
  - Work for an employer with **5 or more employees**
  - worked **12 months & 1250 hours** in prior 12 months
- Covered Reasons Under CFRA:
  - **Birth of child**, adoption or foster care (baby bonding);
  - Employee's **own serious health condition** (except pregnancy)
  - Care for **family member** with serious health condition (spouse/RDP, parents (in-law), siblings, and more)
  - Exigency re: spouse/DP, child, or parent on **active duty** status with Armed Forces.



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## FMLA Family Medical Leave Act

- If you employ **50 or more employees**, you are covered by the federal Family and Medical Leave Act (FMLA)
- FMLA provides **12 weeks** of leave in a 12-month period.
- Employees eligible only if they:
  - Work at a location with **50 or more employees** in 75 mile radius; **and**
  - Have worked for **12 months** for the employer; **and**
  - Have worked at least **1,250 hours** in prior 12 month period.



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## Employer Must Define 12-Month Leave Period for FMLA/CFRA

Most employers use one of the following methods:

- The **calendar year**
- Any **fixed 12-month** leave year, (i.e., fiscal year, July-June), or the employee's anniversary date
- The 12-month period measured forward from the date an **employee's first family leave begins**

**Must select one method and stick with it for all employees.**



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## More Protected Leaves

- **Bone Marrow/Organ Donation**
- **Crime Victims**
- **Emergency Duty**
- **Civil Air Patrol**
- **Drug/Alcohol Rehab**
- **Jury Duty**
- **Medical Leaves** under W/C, ADA, FEHA
- **Voting Time**
- **School Suspension**
- **School Activities**
- **Military Service**
- **Military Spousal Leave**



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## Wage and Hour Policies



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## Daily Overtime Requirement

### Must be paid 1-1/2 times regular rate of pay

- For work over 8 hours in a day
- For any work over 40 hours in a workweek
- For the first 8 hours worked on the 7<sup>th</sup> day worked in a workweek

### Must be paid 2 times regular rate of pay

- For work in excess of 12 hours in a day
- After 8 hours on the seventh workday in a workweek

### Minors

- It is a misdemeanor to require a minor to work more than eight hours in any one workday, regardless of whether overtime is paid.



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## Minimum Wage Definitions



- **Workday**
  - Any consecutive **24-hour** period beginning at the same time each calendar day
- **Workweek**
  - Any **7 consecutive days**, starting with the same calendar day each week

Be aware of local minimum wage ordinances!  
[bit.ly/Local\\_Min\\_Wage](http://bit.ly/Local_Min_Wage)



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# Breaks and Meal Periods

- Continue to be **costly** wage/hour claims
- Include a **section** in **handbook** setting forth meal and break period policy
- **Non-exempt** employees
- Train managers to **strictly follow** your policy!



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# Rest Breaks

- An employer is to **“authorize and permit”** an employee to take ten minutes **“net”** rest time for every four hours worked
- A rest period is to be in the **middle** of a work period
- Rest periods need **not** be **recorded** on time cards
- **Cannot require** employees to remain on the premises
- Failure to provide = 1 hour **penalty pay** (total for any workday)

| Hours Worked      | Rest Periods |
|-------------------|--------------|
| 0 – 3.5           | 0            |
| 3.5 – less than 6 | 1            |
| 6 – less than 10  | 2            |
| 10 – less than 14 | 3            |



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# Meal Breaks / Lunches

- Permit a minimum **30 minute** meal break if employee works more than **five hours** per day
- Must start meal break **before** the end of the 5th hour (**4:59**)
- **Relieve** of all job duties
- Failure to provide = 1 hour **penalty pay** (total for any workday)

| Hours Worked    | Meal Break(s) |
|-----------------|---------------|
| Less than 5     | 0             |
| Over 5 up to 10 | 1             |
| Over 10         | 2             |



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# Meal and Rest Policy Tips

Meal and rest break policies should be **comparable**:



- Employee **may leave** the premises
- Employee must be at **work station promptly** at end of break
- Employee must **notify** supervisor/document any **missed breaks** and **reason why**



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# Workplace Benefits & Expectations

- Vacation
- Conduct
- Do's and Don'ts
- Profit Sharing
- And more...



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# About Vacation Policies



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# Integrity Policies

- Open Door
- Conduct
- Attendance
- Drugs and Alcohol (Testing)
- Workplace Violence
- Workplace Weapons
- Electronic Communications
- No Solicitation
- Dating in the Workplace
- Outside Employment



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# A Word About Drug Free Workplace Policies

- Recommended for **all** employers
- Required to **inform** your employers before you can test them. (Reasonable suspicion)
- **No law** precludes **disciplinary action** against employees under the influence of drugs or alcohol at work
- There are substance abuse – but **not on-the-job-use** – protections under the ADA/FEHA and Labor Code



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# What about Prop 64: Adult Use of Marijuana Act

- Permits **recreational use** of marijuana for adults age 21+
- **No impact** on Employer Drug Free Workplace Policies
- No requirement for **accommodations** for medical marijuana
- Still a **Schedule 1** narcotic (i.e. heroin, meth) – illegal under federal law
- Treat **marijuana** and **alcohol usage** the same in the workplace



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## Suggested Discipline Policy Guidelines



Present discipline as "guideline" rather than required progressive steps...



Reiterate that employment is at-will and that disciplinary action does not alter at-will status



Suggested language: "Violation of any company policy, either written or otherwise, may result in disciplinary action up to and including termination."



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## A Few More Policy Suggestions

- Company **social media** accounts
- **Mobile phone** use
- **Breaks/meal periods/** after hours
- Company vehicles/**gas cards**
- **Injury** reporting
- Company **property**
- **Personal vehicle** use



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## Do Not Include in Employee Handbook

- **"Probationary"** periods
- **Lock-step** disciplinary procedures
- Policies that are subject to **frequent change**
- Policies or language that **imply job security** or contractual obligations
- **In-depth** supervisory or manager information
- Details of **benefit plans**
- **Pre-employment** practices



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## Consider an Employee Action Hotline



- **Proactive tool** to reduce liability
- Employers learn about **potential** wrongful acts before they **escalate**
- Sexual **harassment deterrent**
- Allows employees to assist the employer in maintaining workplace standards and report their **concerns & observations** (anonymously or not)

**Sign up today - [employers.org/action-hotline](https://employers.org/action-hotline)**



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## Check Your Handbook for.....

- Required Leaves of Absence Policies
- Post Accident/Reasonable Suspicion Drug Testing Policies
- Rest Period / Meal Breaks
- Harassment Policy Requirements
- Gender Specific References – FEHA is gender neutral
- Language which may violate the National Labor Relations Act

**2022 – if you haven't updated your handbook in a year, it's out of date!**



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## Handbook Reminders

- Review it** – make sure it's right
- Distribute it** – get those acknowledgements back!
- Follow it** - monitor your handbook's effectiveness
- Train managers** for consistency



And don't forget your...

- State and Federal Labor Law Posters
- Injury Illness Prevention Program
- COVID-19 Plan



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We are here to help you succeed!

Contact us today!

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