



EMPLOYMENT & LABOR · WORKPLACE POLICY PRACTICE NOTE

The Handbook You Never Finished

Ten Reasons a Draft Employee Handbook Is a Liability — and Why “We Don’t Have a Union” Is the Most Expensive Sentence in the File

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A NOTE BEFORE YOU READ — employment law is jurisdictional, and this alert is not a substitute for jurisdiction-specific advice. Employment and labor obligations differ materially from state to state — and, within states, from city to city. A handbook that is compliant in Pennsylvania may be unlawful in New Jersey; a policy that satisfies Philadelphia may fail in Pittsburgh. This alert draws its illustrations principally from federal law and from Pennsylvania, New Jersey, and New York, the jurisdictions in which our attorneys most frequently counsel employers. **Employers should engage counsel experienced in the law of each jurisdiction in which they have workers** before adopting, amending, or relying on a handbook.

Several authorities discussed below are in motion. The National Labor Relations Board seated a three-member majority on August 7, 2026 that has signaled interest in revisiting the current work-rule and severance-agreement standardsⁱ; the U.S. Department of Labor has proposed rescinding and replacing its independent contractor ruleⁱⁱ; and the New Jersey Department of Labor’s new classification regulations become operative on October 1, 2026ⁱⁱⁱ. The law is stated as of August 17, 2026 and should be re-verified before a handbook is finalized.

At a Glance

- **A draft is not a policy.** Nearly every legal benefit a handbook confers — affirmative defenses, safe harbors, notice compliance, at-will preservation — depends on the document having been *issued, distributed, and acknowledged*. An unissued draft delivers none of them.
- **“We’re not a union shop” is not a defense.** Section 7 of the National Labor Relations Act protects concerted activity by employees whether or not a union is anywhere in sight^{iv}, and the Board reviews the handbook rules of wholly nonunion employers under a standard that treats a chilling rule as presumptively unlawful^v.
- **A draft can be worse than nothing.** A circulated but unfinalized document can trigger notice obligations^{vi} and supply plaintiffs a promise to enforce, while denying the employer the disclaimer, the distribution proof, and the version control that make a handbook defensible.

- **Contractors and partners are not outside the problem.** Classification is tested by conduct and by documents; New Jersey’s ABC test puts the burden on the employer on all three prongs^{vii}, and its codifying regulations become operative October 1, 2026^{viii}.
- **Handbooks expire.** Between June 2025 and August 2026, New Jersey, New York, Philadelphia, Pittsburgh, the FTC, the DOL, the EU, and the UK each changed something a handbook has to say.
- **Workers abroad change the exercise entirely.** A U.S. handbook exported to the EU or UK can be unlawful on arrival — GDPR privacy notices, invalid employee consent, works council co-determination, and mandatory whistleblowing channels are not optional appendices.

First, the Sentence We Hear Most

“None of my employees are union, so I don’t need to worry about the labor stuff.” It is the single most common — and most expensive — misconception among the employers who come to us with a handbook sitting in a shared drive marked *DRAFT v4 (FINAL) rev2*.

Section 7 of the National Labor Relations Act confers rights on “employees,” full stop. It contains no condition of union representation, and the Supreme Court has protected unorganized employees who acted together without any union, any formal demand, and any bargaining relationship^{ix, x}. The Board says the same thing on its own public-facing page^{xi}. The overwhelming majority of the Board’s handbook-rule cases arise in wholly nonunion workplaces.

What makes this acute is the standard the Board currently applies to facially neutral work rules. Under *Stericycle, Inc.*, the General Counsel need only show that a rule has a reasonable tendency to chill employees in the exercise of Section 7 rights — read from the perspective of an economically dependent employee, not from the employer’s intent. The rule is then presumptively unlawful, and the employer may rebut only by proving a legitimate and substantial business interest that cannot be advanced by a more narrowly tailored rule^{xii}. Confidentiality clauses, civility rules, social media policies, no-recording rules, and prohibitions on discussing pay are the recurring casualties; broad confidentiality and non-disparagement language in severance agreements draws parallel scrutiny^{xiii}. The template language most employers paste into a draft handbook is precisely the language most likely to fail that test — and leaving the document in draft does not defer the problem. It means the overbroad rule is being enforced informally, by managers, without anyone having tested it.

Ten Problems With a Handbook Left in Draft

The costs below are not hypothetical drafting preferences. Each is a defense forfeited, a safe harbor unavailable, a notice obligation unmet, or an admission created.

One: You Forfeit the Harassment Affirmative Defense

Where a supervisor creates a hostile work environment but takes no tangible employment action, an employer avoids vicarious liability only by proving both that it exercised reasonable care to prevent and promptly correct the harassment and that the employee unreasonably failed to use the preventive or corrective opportunities provided^{xiv, xv}. A published anti-harassment policy with a working, multi-channel complaint procedure is how employers prove the first element and create the second; a policy no one received creates no opportunity the employee can be said to have bypassed.

New Jersey is harsher still: an employer that implements an *ineffective* policy may not assert the defense at all^{xvi}, and the governing inquiry asks whether there are formal *and* informal complaint structures, mandatory training including for supervisors, monitoring of effectiveness, and an unequivocal commitment from top management^{xvii}. In New York the point is not even discretionary — Labor Law § 201-g requires every employer to adopt a written policy meeting or exceeding the State model and to hand it to each employee in writing at hire and at every annual training, in the employee’s primary language^{xviii, xix}.

Two: The FMLA Notice Obligation Attaches to the Document You Have

The general notice regulation provides that a covered employer with eligible employees “shall also provide this general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, **if such written materials exist**”^{xx}. The trigger is the existence of written guidance, not its formal adoption — a leave summary circulated to managers or an intranet benefits page will do. Failure “may constitute an interference with, restraint, or denial of the exercise of an employee’s FMLA rights,” with liability for lost compensation and equitable relief including reinstatement^{xxi}. The draft handbook is the worst of both worlds: enough written material to raise the question, not enough discipline to answer it.

Three: You Cannot Reach the FLSA Safe Harbor

Improper deductions from an exempt employee’s salary can destroy the exemption — and not only for that employee: where there is an actual practice of improper deductions, the exemption is lost for every employee in the same job classification under the same managers^{xxii}. The regulation offers a safe harbor to an employer with a clearly communicated prohibition, a complaint mechanism, reimbursement, and a good-faith commitment to comply — and names the vehicle expressly: “The best evidence of a clearly communicated policy is a written policy that was distributed to employees prior to the improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, **publishing the policy in an employee handbook ...**”^{xxiii}. The safe harbor is not retroactive; the policy must have been communicated *before* the deduction.

Four: Statutorily Mandated Policies Simply Never Issue

A growing body of state and municipal law requires specific written policies and proof of delivery. New York alone requires the sexual harassment prevention policy^{xxiv}; a written lactation accommodation policy delivered at hire, annually, and on return from childbirth leave^{xxv}; a retail workplace violence prevention policy at ten or more retail employees statewide^{xxvi}; a written injury reduction program for covered warehouse operations^{xxvii}; and sick and paid prenatal leave terms, where any restriction the employer wants to enforce must be in writing and delivered before the leave is earned^{xxviii}. New Jersey requires written earned sick leave notice specifying benefit-year dates, in the employee’s primary language, with five-year recordkeeping^{xxix}.

Pennsylvania has no statewide analogue — but Philadelphia requires notice of sick time entitlement and terms of use^{xxx}, and Pittsburgh, as amended effective January 1, 2026, provides that “[a]n Employer shall adopt a policy or policies that comply with the Paid Sick Days Act,” with accrual raised to one hour per thirty hours worked and the minimum annual entitlement raised to seventy-two paid hours for employers of fifteen or more^{xxxi}. A single Pennsylvania handbook cannot serve both cities without jurisdictional supplements.

Five: The At-Will Disclaimer Never Takes Effect

The disclaimer is the most valuable paragraph in the book, and it is worthless undistributed. New Jersey treats a personnel manual's job-security provisions as capable of creating an implied contract unless negated by a disclaimer^{xxxii} that is conspicuous as a matter of law and advises employees in straightforward terms, without confusing legal language, that employment is terminable at will^{xxxiii}. New York permits handbook-based contract claims where an express provision was relied upon^{xxxiv} but gives employers a clean defense where a disclaimer exists, because an employee who relies on a promise "must also be held to reliance on the disclaimer"^{xxxv}. Pennsylvania is the most employer-friendly: a handbook binds only where a reasonable person would read it as supplanting the at-will rule^{xxxvi}, and it must "in some way clearly state" that it is to have contractual effect^{xxxvii}.

Three states, three doctrines, one common requirement — the employee must actually have received the document. Multiple circulating drafts are affirmatively harmful, because they make it impossible to say which text governed on the date of the decision. Pennsylvania employers should also note that the Wage Payment and Collection Law folds vacation and holiday pay into "wages" and turns handbook silence on accrued-PTO forfeiture into the ground on which payout claims are litigated^{xxxviii}.

Six: Your Work Rules Have Never Been Tested

This is the *Stericycle* problem in operational form^{xxxix}. Because a chilling rule is presumptively unlawful and the employer bears the tailoring burden, every confidentiality, civility, social media, recording, and investigation-confidentiality provision needs an articulated business justification, narrow drafting, and — as a belt-and-suspenders measure — a Section 7 savings clause; severance templates the handbook cross-references require the same scrutiny^{xl}. None of that analysis happens to a document nobody has finished. Restrictive-covenant exposure has shifted, not disappeared: the FTC's non-compete rule was set aside and has now been removed from the Code of Federal Regulations, but the Commission continues case-by-case Section 5 enforcement against employers imposing broad non-competes on rank-and-file workers^{xli}, and state law — untouched by the FTC's exit — remains the operative constraint.

Seven: You Forfeit Trade Secret Exemplary Damages and Fees

The Defend Trade Secrets Act requires notice of the statutory whistleblower immunity in any agreement governing the use of a trade secret or other confidential information, and permits compliance by cross-reference — but only to "a **policy document provided to the employee** that sets forth the employer's reporting policy for a suspected violation of law." Noncompliance forfeits exemplary damages and attorney fees against that person, and "employee" expressly includes contractors and consultants^{xlii}. A confidentiality agreement pointing to a handbook section that exists only in draft is a forfeiture waiting to be discovered in litigation.

Eight: Your Classifications Are Contradicted by Your Own Document

Employers of mixed populations — employees, contractors, partners or members, full- and part-time staff — routinely draft one handbook and never resolve who it covers. That unresolved question is evidence. New Jersey applies the ABC test, presumes employment, and places the burden on the employer on all three prongs, with failure on any one yielding employee status^{xliii}; its codifying regulations become operative October 1, 2026^{xliv}. A handbook that subjects a "contractor" to schedules, reporting lines, performance management, and discipline is Exhibit A on the control prong.

The federal picture requires care. The 2024 independent contractor rule remains codified and remains applicable in private FLSA litigation, even though the Wage and Hour Division announced in May 2025 that it would no longer apply that analysis in its own enforcement, and even though a rescission-and-replacement rule was proposed in February 2026^{xlv}. “The DOL will not enforce it” and “the rule is gone” are different propositions, and only the first is true. The remedy is structural: define the covered population in the handbook’s scope provision and keep contractor-facing terms in the services agreement.

Nine: Arbitration and Dispute Resolution Are Built on Sand

An arbitration provision embedded in a handbook is fragile precisely because the handbook says it is not a contract and may be changed at any time. New Jersey will enforce an electronically delivered agreement, but cautioned that the employer “should not ... label those communications as ‘training’”^{xlvi}, and a waiver of rights must clearly and unambiguously explain that the employee is giving up the right to sue in court^{xlvii}. Federal law adds a carve-out that cannot be drafted around: at the claimant’s election, no predispute arbitration agreement or joint-action waiver is enforceable in a case relating to a sexual assault or sexual harassment dispute, and the question is for the court irrespective of any delegation clause^{xlviii}. In February 2026 the Sixth Circuit held that one covered harassment claim renders the agreement unenforceable as to *every* claim in the case^{xlix}. Execute arbitration agreements as standalone, separately signed documents outside the handbook, and build the carve-out in.

Ten: You Cannot Prove Which Version Governed

Every defense above is an evidentiary proposition: *this* text, delivered to *this* person, on *this* date. Draft handbooks fail at exactly that point — no acknowledgment file, no effective-date page, no version history, and frequently several inconsistent copies in circulation. When opposing counsel asks which document governed on the date of the termination, the honest answer is that nobody knows, and ambiguity in an employer-drafted document is not construed in the employer’s favor. Recordkeeping obligations compound the problem and do not run on a single clock: five years for New Jersey earned sick leave^l, three years under Philadelphia’s POWER Act — which also imposes a fifteen-day pre-suit cure notice and a rebuttable presumption of retaliation for adverse action within ninety days of protected activity^{li} — and two years under Pittsburgh’s Paid Sick Days Act^{lii}.

A draft handbook is not a partial handbook. For nearly every purpose the law cares about, it is no handbook at all — with the added disadvantage that it can still be read against you.

What a Finalized Handbook Actually Buys You

The affirmative case is stronger than the defensive one. A handbook that has been drafted for the employer’s actual operations, reviewed by counsel, issued with an effective date, and acknowledged in writing delivers concrete, provable value:

- **Affirmative defenses that work.** The anti-harassment policy and complaint procedure are the operative mechanism for both elements of the *Faragher/ Ellerth* defense^{liii, liv} and its New Jersey analogue^{lv, lvi}.

- **A wage-and-hour safe harbor.** A distributed safe-harbor policy with a named complaint channel is the cheapest available insurance against classification-wide loss of the exempt status of an entire job category^{lxvii}.
- **One vehicle for a dozen statutory notices.** FMLA general notice^{lxviii}, harassment and lactation policies^{lix, lx}, sick and prenatal leave terms^{lxi, lxii}, EEO statements calibrated to the applicable coverage thresholds — Pennsylvania’s Human Relations Act reaches employers of four or more and, by regulation, defines sex to include sexual orientation, gender identity or expression, pregnancy, and intersex characteristics^{lxiii} — and DTSA whistleblower immunity notice available for cross-reference from every confidentiality agreement^{lxiv}.
- **Preservation of at-will employment.** A conspicuous, plain-English disclaimer, actually delivered, is what defeats implied-contract claims in all three of our home jurisdictions^{lxv, lxvi, lxvii, lxviii}.
- **Consistency, which is the core discrimination defense.** Disparate treatment claims are proved by comparators. Written, uniformly applied standards for attendance, discipline, leave, and performance management are how an employer shows that similarly situated employees were treated alike.
- **Decision support for managers.** Most employment claims originate in a first-line supervisor improvising. A handbook plus a manager’s supplement converts improvisation into a documented process.
- **Compliance with pay transparency and posting rules.** New Jersey requires pay ranges and a benefits description on postings, and internal announcement of promotional opportunities^{lxix}; New York requires compensation ranges on jobs, promotions, and transfers^{lxx}. These are internal-posting rules as much as recruiting rules, and they belong in the handbook.
- **Diligence and insurance readiness.** Employment practices liability underwriters, lenders, and acquirers all ask for the handbook. “It’s in draft” is a diligence finding, and it prices.
- **Culture, expectations, and retention.** The handbook is often the clearest written statement an employer ever makes about how it intends to treat people — worth finishing for reasons that have nothing to do with litigation.

Why Counsel — and Why Every Year

Handbooks are not a document-assembly problem. The same paragraph can be prudent in Harrisburg, unenforceable in Trenton, and unlawful in Albany, and the interaction between provisions is where the errors live: an arbitration clause undermined by the disclaimer that protects the rest of the book^{lxxi, lxxii}; a confidentiality rule that satisfies a trade secret objective while violating Section 7^{lxxiii, lxxiv}; a non-disparagement clause in a separation template that New Jersey holds unenforceable in discrimination, harassment, and retaliation matters regardless of its label^{lxxv}. Counsel’s function is to reconcile those provisions against the employer’s actual headcount, locations, worker populations, and risk posture — and to write the scope provision that determines who the book covers in the first place.

Annual review is not a marketing cadence. Consider what changed in a single fourteen-month window, each item requiring a handbook edit for at least some employers:

A SAMPLING OF CHANGES SINCE MID-2025

EFFECTIVE	DEVELOPMENT	HANDBOOK CONSEQUENCE
May 27, 2025	Philadelphia POWER Act ^{lxxvi}	Three-year records; 15-day pre-suit cure notice; 90-day retaliation presumption
June 1, 2025	New Jersey pay transparency ^{lxxvii}	Pay range plus benefits description on postings; internal promotion announcements
June 1, 2025	NY warehouse injury reduction program ^{lxxviii}	Written program, annual worksite evaluation, annual paid training
June 2, 2025	NY Retail Worker Safety Act ^{lxxix}	Written workplace violence prevention policy and training at 10+ retail employees
Jan. 1, 2026	Pittsburgh Ordinance No. 11-2025 ^{lxxx}	Accrual to 1 hr per 30; 72 hrs paid (15+) / 48 hrs (<15); policy must be adopted
Feb. 12, 2026	FTC non-compete rule removed from the CFR ^{lxxxi}	No federal rule — but live Section 5 enforcement and unchanged state law
Feb. 27, 2026	DOL independent contractor NPRM ^{lxxxii}	2024 rule still governs private litigation; do not redraft to the proposal
Mar. 18, 2026	NJDOL pay transparency enforcement sweep ^{lxxxiii}	Posting practices are being audited, not merely legislated
2026 cycle	NY § 201-g model policy re-evaluation ^{lxxxiv}	Re-benchmark your policy against the State model then current
June 7, 2026	EU Pay Transparency Directive transposition due ^{lxxxv}	Salary-history bans and pay-range disclosure for EU-facing roles
Aug. 7, 2026	NLRB three-member majority seated ^{lxxxvi}	Work-rule and severance standards may shift; build in savings clauses
Oct. 1, 2026	N.J.A.C. 12:11 becomes operative ^{lxxxvii}	Re-audit every New Jersey contractor relationship before this date
Oct. 2026 (expected)	UK “all reasonable steps” harassment duty ^{lxxxviii}	A documented prevention policy is required for UK staff
Dec. 2, 2026	EU Platform Work Directive transposition due ^{lxxxix}	Presumption of employment and limits on algorithmic management

Our recommendation to employer clients is a fixed cadence: a full counsel review annually, an interim review on any of four triggers — crossing an employee-count threshold, opening a location in a new state or municipality, adding a new worker category such as contractors or remote staff in a new jurisdiction, or a material change in operations such as an acquisition — and a documented redistribution with fresh acknowledgments whenever a substantive provision changes.

Employers With Workers Abroad: A Different Exercise Entirely

A U.S. handbook translated and emailed to staff in Frankfurt, Paris, Amsterdam, or London is not a compliant handbook. It is frequently an unlawful one. Employers with cross-border headcount should plan on a core global code supplemented by mandatory country annexes, reviewed by local counsel.

Data Protection Is the Threshold Issue

The GDPR requires a transparent, plain-language privacy notice to employees covering the purposes and legal bases for processing their data, retention, recipients, transfers, and rights^{xc}. Two points catch U.S. employers repeatedly. First, **employee consent is generally not a valid legal basis**: the imbalance of power between employer and worker means consent is rarely “freely given,” and European regulators have said so directly^{xcii}. HR processing must instead rest on contract, legal obligation, or legitimate interests — which changes how the policy is written. Second, records of processing activities are required, and the small-organization derogation effectively never rescues HR data, which is neither occasional nor free of special-category information^{xcii}. Article 88 permits member states — and collective agreements — to impose additional employment-specific rules, which is why a single pan-EU handbook does not exist. Fines reach the higher of €20 million or four percent of worldwide annual turnover^{xciii}.

Monitoring deserves separate treatment. UK regulators state plainly that consent is not usually appropriate in the employment context and that monitoring without transparency is unfair^{xciv}. Any provision on email review, device monitoring, location tracking, or productivity analytics needs a lawful basis, a notice, and often a data protection impact assessment.

Four Directives That Change What the Handbook Must Say

- **Whistleblowing.** Private-sector entities with fifty or more workers must maintain internal reporting channels with a seven-day acknowledgment and three-month feedback clock, plus anti-retaliation protection and a reversed burden of proof on detriment^{xcv}. A single global hotline is often not sufficient.
- **Pay transparency.** Transposition of the EU Pay Transparency Directive was due June 7, 2026. Employers must give applicants the initial pay or pay range and may not ask about salary history; pay-secrecy clauses are prohibited; and gender pay gap reporting begins with a June 7, 2027 deadline for employers with 150 or more workers^{xcvi}. Many member states missed the deadline, which makes the compliance picture uneven rather than optional.
- **Written statement of terms.** Core employment particulars must be given in writing within seven calendar days, and any change communicated no later than the day it takes effect^{xcvii}. The drafting consequence is counterintuitive: anything incorporated from the handbook into the statutory statement becomes something the employer cannot change unilaterally. Keep the statement and the handbook structurally separate, and draft the handbook as expressly non-contractual.
- **Platform and algorithmic management.** Where work is organized through an app or platform-like intermediary, a rebuttable presumption of employment applies from December 2, 2026, together with limits on data processing and a requirement that decisions to restrict, suspend, or terminate access be taken by a human^{xcviii}. The algorithmic-management rules are the template regulators will apply to AI-assisted HR tools generally.

You May Not Be Able to Adopt the Handbook Unilaterally

In Germany, works council co-determination extends to rules of conduct in the establishment and to technical systems capable of monitoring employee conduct or performance — with a conciliation committee award substituting for agreement if none is reached. In the Netherlands, specified personnel policies require the works council’s prior consent, and a policy adopted without it is voidable. In France, internal rules may be introduced only after submission to the social and economic committee for its

opinion, with filing formalities and a delay before entry into force^{xcix}. Rollout planning must build in local sign-off gates.

Two closing points. HR data flowing to a U.S. parent or U.S.-hosted HRIS may rely on the EU-U.S. Data Privacy Framework where the importer is certified, but the adequacy decision is on appeal before the Court of Justice and undecided as of this writing; standard contractual clauses plus a documented transfer impact assessment should be maintained as a standing fallback rather than reconstructed after an adverse judgment^c. And in the United Kingdom, a statutory duty to take *all* reasonable steps to prevent sexual harassment — with third-party harassment liability and restrictions on confidentiality clauses — is expected to commence in October 2026, discharged through a documented prevention policy^{ci}.

Every Jurisdiction Is Different — and That Is the Point

We have used Pennsylvania, New Jersey, and New York throughout because the contrast among them makes the argument better than any general statement could. The same handbook paragraph is presumptively non-binding in Pennsylvania^{cii, ciii}, contract-forming in New Jersey absent a conspicuous plain-English disclaimer^{civ, cv}, and defeated by a disclaimer in New York^{cvi}. Pennsylvania's anti-discrimination statute reaches employers of four or more^{cvi}, where Title VII reaches fifteen. Most states, Pennsylvania among them, do not mandate the harassment policy and annual training that New York requires of every employer^{cvi}. Philadelphia and Pittsburgh disagree with each other on sick leave^{cix, cx}. Multiply that by every state and municipality in which an employer has a worker — including the remote employee who relocated and never told anyone — and the conclusion follows. **Retain counsel experienced in the employment law of each jurisdiction in which you have workers.** Nothing in this alert is a substitute for that advice, and no handbook template purchased online, however well drafted, can perform that function.

The Bottom Line

A handbook left in draft is not a partial compliance program. It is a document that carries most of the risks of publication and almost none of the benefits: it can create expectations, trigger notice obligations, and be read against the employer, while delivering no affirmative defense, no safe harbor, no enforceable disclaimer, and no provable version. The absence of a union changes none of this — Section 7 protects concerted activity in nonunion workplaces, and the Board reviews nonunion handbook rules under a standard that presumes a chilling rule unlawful^{cx}, ^{cxii}.

Finishing the handbook is neither difficult nor expensive relative to what it protects: decide who it covers, reconcile it against the law of every jurisdiction in which you have workers, have counsel review it as an integrated instrument, issue it with an effective date, collect acknowledgments, and calendar it for annual review. That is a matter of weeks. The claim it prevents is a matter of years.

The question is not whether your handbook is perfect. It is whether you can prove, on the day it matters, what it said and who received it.

If you are finalizing an employee handbook, auditing worker classifications ahead of New Jersey's October 1, 2026 regulations, or extending your policies to workers outside the United States, we would be pleased to help.

F O R F U R T H E R I N F O R M A T I O N

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A T T O R N E Y A D V E R T I S I N G — I M P O R T A N T N O T I C E S

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Employment and labor law varies materially among the states and among municipalities within them, and among foreign jurisdictions. This alert summarizes authorities in effect as of August 17, 2026 and identifies several that are subject to imminent change, including the standards applied by the National Labor Relations Board, the U.S. Department of Labor's independent contractor regulations, and pending European and United Kingdom implementing measures. Nothing in this alert constitutes an opinion on any particular handbook, policy, worker classification, or employment decision, and no employer should adopt, amend, or rely upon a handbook without advice from counsel experienced in the law of each jurisdiction in which it has workers. References to New York, New Jersey, and Pennsylvania law are illustrative and are not exhaustive of the obligations applicable in those jurisdictions.

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E N D N O T E S

ⁱ [McLaren Macomb, 372 NLRB No. 58 \(2023\)](#), applied as extant precedent in *Prime Communications, LP*, 374 NLRB No. 88, slip op. at 1 n.1 (Apr. 7, 2026) (members noting they “would be open to reconsideration of that precedent in a future appropriate proceeding”). A majority capable of revisiting both decisions was seated Aug. 7, 2026.

ⁱⁱ [Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 89 Fed. Reg. 1638 \(Jan. 10, 2024\)](#) (codified at 29 C.F.R. pt. 795); U.S. Dep’t of Labor, Wage & Hour Div., Field Assistance Bulletin No. 2025-1 (May 1, 2025) (the Division “will no longer apply the 2024 Rule’s analysis” in enforcement, but “the 2024 Rule remains in effect for purposes of private litigation”); 91 Fed. Reg. 9932 (proposed Feb. 27, 2026). No final rule had issued as of Aug. 17, 2026.

ⁱⁱⁱ [N.J. Admin. Code tit. 12, ch. 11 \(2026\)](#) (notice of adoption filed May 5, 2026; operative Oct. 1, 2026), proposed 57 N.J.R. 894(a) (May 5, 2025).

^{iv} [National Labor Relations Act § 7, 29 U.S.C. § 157 \(2018\)](#) (rights conferred on “employees,” without condition of union representation).

^v [Stericycle, Inc., 372 NLRB No. 113 \(2023\)](#) (a rule with “a reasonable tendency to chill employees from exercising their rights” is presumptively unlawful unless the employer proves a legitimate and substantial business interest that cannot be advanced by a more narrowly tailored rule), *overruling Boeing Co.*, 365 NLRB No. 154 (2017).

- vi [29 C.F.R. § 825.300\(a\)\(3\) \(2026\)](#) (covered employer “shall also provide this general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist”).
- vii [N.J. Stat. Ann. § 43:21-19\(i\)\(6\)\(A\)–\(C\) \(West 2026\)](#); *Hargrove v. Sleepy’s, LLC*, 220 N.J. 289 (2015) (ABC test; employer bears the burden on all three prongs, and failure on any one yields employee status).
- viii N.J. Admin. Code tit. 12, ch. 11, *supra* note 3.
- ix 29 U.S.C. § 157, *supra* note 4.
- x [NLRB v. Washington Aluminum Co., 370 U.S. 9 \(1962\)](#) (unorganized employees who walked off the job over shop conditions engaged in protected concerted activity).
- xi [Nat’l Labor Relations Bd., Employee Rights \(“Employees who are not represented by a union also have rights under the NLRA.”\) \(last visited Aug. 17, 2026\)](#).
- xii *Stericycle*, 372 NLRB No. 113, *supra* note 5.
- xiii *McLaren Macomb*, 372 NLRB No. 58, *supra* note 1.
- xiv [Faragher v. City of Boca Raton, 524 U.S. 775, 807 \(1998\)](#).
- xv [Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 765 \(1998\)](#) (defense requires proof “(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer”).
- xvi [Aguas v. State, 220 N.J. 494 \(2015\)](#) (adopting the defense under the Law Against Discrimination, N.J. Stat. Ann. § 10:5-1 *et seq.*, but holding that an employer implementing an ineffective anti-harassment policy may not assert it).
- xvii [Gaines v. Bellino, 173 N.J. 301 \(2002\)](#) (formal policy; formal and informal complaint structures; mandatory training including supervisors; monitoring of effectiveness; unequivocal commitment from top management).
- xviii [N.Y. Lab. Law § 201-g \(McKinney 2026\)](#) (policy meeting or exceeding the State model, delivered in writing at hire and at every annual training, in the employee’s primary language).
- xix [N.Y. State Div. of Human Rights, Sexual Harassment Policy for All Employers in New York State \(2023 version\) \(last visited Aug. 17, 2026\)](#). Labor Law § 201-g directs re-evaluation of the model policy every four years; employers should re-benchmark against the version then current.
- xx 29 C.F.R. § 825.300(a)(3), *supra* note 6.
- xxi [29 C.F.R. § 825.300\(e\) \(2026\)](#) (failure to follow the notice requirements “may constitute an interference with, restraint, or denial of the exercise of an employee’s FMLA rights”).
- xxii [29 C.F.R. § 541.603\(b\) \(2026\)](#) (exemption lost “for employees in the same job classification working for the same managers responsible for the actual improper deductions”).
- xxiii [29 C.F.R. § 541.603\(d\) \(2026\)](#) (“The best evidence of a clearly communicated policy is a written policy that was distributed to employees prior to the improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, publishing the policy in an employee handbook ...”).
- xxiv N.Y. Lab. Law § 201-g, *supra* note 18.
- xxv [N.Y. Lab. Law § 206-c \(McKinney 2026\)](#) (written lactation accommodation policy distributed at hire, annually, and on return from childbirth leave; response within five business days).
- xxvi [N.Y. Lab. Law § 27-e \(McKinney 2026\)](#), added by Act of Sept. 5, 2024, ch. 308, 2024 N.Y. Laws, as amended by Act of Feb. 14, 2025, ch. 72, 2025 N.Y. Laws (retail workplace violence prevention policy and training at ten or more retail employees statewide; silent response buttons at 500 or more, eff. Jan. 1, 2027).
- xxvii [N.Y. Lab. Law § 789 \(McKinney 2026\)](#); N.Y. State Dep’t of Labor, *Warehouse Worker Injury Reduction Program Guidance* (2025) (last visited Aug. 17, 2026) (written program, annual worksite evaluation, and annual paid training, beginning June 1, 2025).
- xxviii [N.Y. Lab. Law § 196-b \(McKinney 2026\)](#); *id.* § 196-b(4-a) (twenty hours of paid prenatal personal leave per fifty-two-week period, eff. Jan. 1, 2025). State guidance requires that restrictions on use be reduced to writing and given or posted before leave is earned.
- xxix [N.J. Stat. Ann. §§ 34:11D-1 to -11 \(West 2026\)](#); N.J. Dep’t of Labor & Workforce Dev., *Earned Sick Leave* (last visited Aug. 17, 2026) (written notice of accrual, use, benefit-year dates, and anti-retaliation rights, in the employee’s primary language; five-year recordkeeping).
- xxx [Phila., Pa., Code § 9-4107 \(2026\)](#); see Phila., Pa., Code ch. 9-4100 (Promoting Healthy Families and Workplaces).
- xxxi [Pittsburgh, Pa., Code tit. VI, art. I, ch. 626, as amended by Ordinance No. 11-2025](#); City of Pittsburgh, *Guidelines for Administering the Paid Sick Days Act* v.4.1 (rev. Dec. 9, 2025) (last visited Aug. 17, 2026) (“An Employer shall adopt a policy or policies that comply with the Paid Sick Days Act”; accrual raised to one hour per thirty hours worked, with minimum annual entitlements of seventy-two hours paid (fifteen or more employees) and forty-eight hours (fewer than fifteen), effective Jan. 1, 2026).
- xxxii [Woolley v. Hoffmann-La Roche, Inc., 99 N.J. 284, modified, 101 N.J. 10 \(1985\)](#).

- xxxiii [*Nicosia v. Wakefern Food Corp.*, 136 N.J. 401 \(1994\)](#) (disclaimer must be prominent — conspicuousness being a question of law — and must advise employees in straightforward terms, without confusing legal language, that employment is terminable at will), as adopted in N.J. Model Civil Jury Charge 2.12.
- xxxiv [*Weiner v. McGraw-Hill, Inc.*, 57 N.Y.2d 458 \(1982\)](#).
- xxxv [*Lobosco v. New York Telephone Co./NYNEX*, 96 N.Y.2d 312, 317 \(2001\)](#) (“An employee seeking to rely on a provision arguably creating a promise must also be held to reliance on the disclaimer.”).
- xxxvi [*Small v. Juniata College*, 682 A.2d 350 \(Pa. Super. Ct. 1996\)](#).
- xxxvii [*Luteran v. Loral Fairchild Corp.*, 688 A.2d 211, 214 \(Pa. Super. Ct. 1997\)](#) (“To find that a handbook has legally binding contractual significance, the handbook or an oral representation about the handbook must in some way clearly state that it is to have such effect.” (quoting *Martin v. Capital Cities Media, Inc.*, 511 A.2d 830, 842 (Pa. Super. Ct. 1986))).
- xxxviii [*Pennsylvania Wage Payment and Collection Law*, 43 Pa. Stat. §§ 260.1–260.12 \(2026\)](#); *id.* § 260.4 (notice at hire of time and place of payment, rate of pay, and fringe benefits); *id.* § 260.2a (defining “wages” to include vacation, holiday, and separation pay). The WPCL is a collection mechanism and does not create the underlying entitlement.
- xxxix *Stericycle*, 372 NLRB No. 113, *supra* note 5.
- xl *McLaren Macomb*, 372 NLRB No. 58, *supra* note 1.
- xli [*Revision of the Negative Option Rule, Withdrawal of the CARS Rule, Removal of the Non-Compete Rule To Conform These Rules to Federal Court Decisions*, 91 Fed. Reg. 6507 \(Feb. 12, 2026\)](#) (removing and reserving 16 C.F.R. pt. 910); see *Ryan LLC v. FTC*, 746 F. Supp. 3d 369 (N.D. Tex. 2024) (setting aside the rule). Section 5 enforcement continues. See, e.g., *In re Rollins, Inc.*, FTC File No. 251-0011 (final consent order June 22, 2026).
- xl ii [*18 U.S.C. § 1833\(b\)\(3\)–\(4\) \(2018\)*](#) (notice required in any agreement governing use of a trade secret or other confidential information; compliance available by cross-reference to “a policy document provided to the employee”; noncompliance forfeits exemplary damages and attorney fees; “employee” includes contractors and consultants).
- xl iii N.J. Stat. Ann. § 43:21-19(i)(6), *supra* note 7.
- xl iv N.J. Admin. Code tit. 12, ch. 11, *supra* note 3.
- xl v 89 Fed. Reg. 1638, *supra* note 2.
- xl vi [*Skuse v. Pfizer, Inc.*, 244 N.J. 30 \(2020\)](#) (electronic delivery enforceable; “[t]he employer should not ... label those communications as ‘training’”).
- xl vii [*Atalese v. U.S. Legal Services Group, L.P.*, 219 N.J. 430 \(2014\)](#), *cert. denied*, 576 U.S. 1036 (2015).
- xl viii [*Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021*, Pub. L. No. 117-90, 136 Stat. 26 \(2022\)](#) (codified at 9 U.S.C. §§ 401–402); *id.* § 402(b) (applicability determined by a court “irrespective of whether the agreement purports to delegate such determinations to an arbitrator”).
- xl ix [*Bruce v. Adams & Reese, LLP*, No. 25-5210 \(6th Cir. Feb. 25, 2026\)](#) (statute “renders the arbitration agreement unenforceable with respect to each of the claims that comprise her case”).
- ¹ N.J. Stat. Ann. §§ 34:11D-1 to -11, *supra* note 29.
- li [*Protect Our Workers, Enforce Rights Act, Phila., Pa., Code §§ 9-6500, 9-6600 \(2026\)*](#) (eff. May 27, 2025) (last visited Aug. 17, 2026) (three-year recordkeeping; fifteen-day pre-suit cure notice; rebuttable presumption of retaliation within ninety days of protected activity).
- li i Pittsburgh, Pa., Code ch. 626, *supra* note 31.
- li ii *Faragher*, 524 U.S. at 807, *supra* note 14.
- li v *Ellerth*, 524 U.S. at 765, *supra* note 15.
- li v *Aguas*, 220 N.J. 494, *supra* note 16.
- li vi *Gaines*, 173 N.J. 301, *supra* note 17.
- li vii 29 C.F.R. § 541.603(d), *supra* note 23.
- li viii 29 C.F.R. § 825.300(a)(3), *supra* note 6.
- li x N.Y. Lab. Law § 201-g, *supra* note 18.
- li x N.Y. Lab. Law § 206-c, *supra* note 25.
- li xi N.Y. Lab. Law § 196-b, *supra* note 28.
- li xii N.J. Stat. Ann. §§ 34:11D-1 to -11, *supra* note 29.
- li xiii [*Pennsylvania Human Relations Act*, 43 Pa. Stat. § 954\(b\) \(2026\)](#) (“any person employing four or more persons within the Commonwealth”); 16 Pa. Code § 41.206 (2026) (defining “sex” to include pregnancy, sex assigned at birth, gender identity or expression, affectional or sexual orientation, and differences of sex development), adopted 53 Pa. Bull. 3237 (June 17, 2023).
- li xiv 18 U.S.C. § 1833(b)(3), *supra* note 42.
- li xv *Woolley*, 99 N.J. 284, *supra* note 32.
- li xvi *Nicosia*, 136 N.J. 401, *supra* note 33.

lxvii *Lobosco*, 96 N.Y.2d at 317, *supra* note 35.

lxviii *Luteran*, 688 A.2d at 214, *supra* note 37.

lxix [N.J. Stat. Ann. § 34:6B-23 \(West 2026\)](#), enacted by Act of Nov. 18, 2024, ch. 91, 2024 N.J. Laws (eff. June 1, 2025); N.J. Dep’t of Labor & Workforce Dev., Press Release (Mar. 18, 2026) (pay transparency compliance sweep) (last visited Aug. 17, 2026).

lxx [N.Y. Lab. Law § 194-b \(McKinney 2026\)](#) (employers of four or more must disclose compensation or a range, and the job description if one exists, for advertised jobs, promotions, and transfers).

lxxi *Skuse*, 244 N.J. 30, *supra* note 46.

lxxii *Atalese*, 219 N.J. 430, *supra* note 47.

lxxiii *Stericycle*, 372 NLRB No. 113, *supra* note 5.

lxxiv 18 U.S.C. § 1833(b)(3), *supra* note 42.

lxxv [N.J. Stat. Ann. § 10:5-12.8 \(West 2026\)](#); *Savage v. Township of Neptune*, 257 N.J. 204 (2024) (non-disparagement clause unenforceable where it would bar protected speech; labels do not control); *see also* N.Y. Gen. Oblig. Law § 5-336; N.Y. C.P.L.R. § 5003-b.

lxxvi *Phila., Pa.*, Code §§ 9-6500, 9-6600, *supra* note 51.

lxxvii [N.J. Stat. Ann. § 34:6B-23](#), *supra* note 69.

lxxviii [N.Y. Lab. Law § 789](#), *supra* note 27.

lxxix [N.Y. Lab. Law § 27-e](#), *supra* note 26.

lxxx *Pittsburgh, Pa.*, Code ch. 626, *supra* note 31.

lxxxi 91 Fed. Reg. 6507, *supra* note 41.

lxxxii 89 Fed. Reg. 1638, *supra* note 2.

lxxxiii [N.J. Stat. Ann. § 34:6B-23](#), *supra* note 69.

lxxxiv N.Y. State Div. of Human Rights, *Model Policy*, *supra* note 19.

lxxxv [Directive 2023/970, of the European Parliament and of the Council of 10 May 2023, arts. 5, 7, 9–10, 34\(1\), 2023 O.J.](#) (L 132) 21 (transposition due June 7, 2026; first gender pay gap reports due June 7, 2027 for employers of 150 or more).

lxxxvi *McLaren Macomb*, 372 NLRB No. 58, *supra* note 1.

lxxxvii *N.J. Admin. Code tit. 12, ch. 11*, *supra* note 3.

lxxxviii [Employment Rights Act 2025, c. 36, §§ 20–24, 33 \(UK\) \(Royal Assent Dec. 18, 2025\)](#); Equality Act 2010, § 40A (UK). Government guidance indicates the “all reasonable steps” duty and third-party harassment liability commence in October 2026; no commencement instrument had been made as of Aug. 17, 2026.

lxxxix [Directive \(EU\) 2024/2831, of the European Parliament and of the Council of 23 October 2024, arts. 5, 7–11, 2024 O.J.](#) (L 2024/2831) (rebuttable presumption of employment; limits on algorithmic management; transposition due Dec. 2, 2026).

xc [Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016](#) (General Data Protection Regulation), arts. 5, 6, 9, 12–14, 30, 83, 88, 2016 O.J. (L 119) 1.

xc1 [European Data Protection Board, Guidelines 05/2020 on Consent Under Regulation 2016/679, ¶¶ 21–23 \(May 4, 2020\)](#) (it is “problematic for employers to process personal data of current or future employees on the basis of consent”); *see also* Article 29 Data Protection Working Party, *Opinion 2/2017 on Data Processing at Work*, WP 249 (June 8, 2017).

xcii GDPR arts. 5, 6, 12–14, 30, 88, *supra* note 90.

xciii GDPR arts. 5, 6, 12–14, 30, 88, *supra* note 90.

xciv [Info. Comm’r’s Office, Employment Practices and Data Protection: Monitoring Workers](#) (last visited Aug. 17, 2026) (“consent is not usually appropriate in the employment context, due to the imbalance of power between you and your workers”); Data (Use and Access) Act 2025, c. 18 (UK) (Part 5 largely commenced Feb. 5, 2026).

xcv [Directive 2019/1937, of the European Parliament and of the Council of 23 October 2019, arts. 8–9, 21\(2\), 2019 O.J.](#) (L 305) 17 (internal reporting channels at fifty or more workers; seven-day acknowledgment and three-month feedback).

xcvi Directive 2023/970, *supra* note 85.

xcvii [Directive 2019/1152, of the European Parliament and of the Council of 20 June 2019, arts. 3–6, 2019 O.J.](#) (L 186) 105 (core terms in writing within seven calendar days; changes communicated no later than the day they take effect).

xcviii Directive (EU) 2024/2831, *supra* note 89.

xcix [Betriebsverfassungsgesetz \[BetrVG\] § 87\(1\) nos. 1, 6, § 87\(2\)](#) (Ger.); Code du travail [C. trav.] art. L. 1321-4 (Fr.); Wet op de ondernemingsraden [WOR] art. 27 (Neth.).

c [Commission Implementing Decision \(EU\) 2023/1795 of 10 July 2023, 2023 O.J. \(L 231\) 118](#); Case T-553/23, *Latombe v. Commission* (Gen. Ct. Sept. 3, 2025), *appeal docketed*, Case C-703/25 P (Oct. 31, 2025) (undecided as of Aug. 17, 2026); Commission Implementing Decision (EU) 2021/914 of 4 June 2021, 2021 O.J. (L 199) 31.

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- ci Employment Rights Act 2025, c. 36, *supra* note 88.
cii *Small*, 682 A.2d 350, *supra* note 36.
ciii *Luteran*, 688 A.2d at 214, *supra* note 37.
civ *Woolley*, 99 N.J. 284, *supra* note 32.
cv *Nicosia*, 136 N.J. 401, *supra* note 33.
cvi *Lobosco*, 96 N.Y.2d at 317, *supra* note 35.
cvii 43 Pa. Stat. § 954(b), *supra* note 63.
cviii N.Y. Lab. Law § 201-g, *supra* note 18.
cix Phila., Pa., Code § 9-4107, *supra* note 30.
cx Pittsburgh, Pa., Code ch. 626, *supra* note 31.
cxi 29 U.S.C. § 157, *supra* note 4.
cxii *Stericycle*, 372 NLRB No. 113, *supra* note 5.