

August 2009 Newsletter

Not the standard newsletter

This month we are doing something a little different with our newsletter. We are featuring questions that you, our clients, friends and associates have asked.

We hope you enjoy the articles. If you have any questions, MyOHR is here to answer them!

Are we legally required to have an employee handbook?



MyOHR says:

Generally speaking, employers aren't required to have handbooks. There is no designated format required under any existing laws. Employee handbooks typically outline an employee's rights and responsibilities for working at a company. They also include company policies and affirm compliance with applicable employment laws. An employee handbook is an excellent format for providing employees with legally required notifications. There are advantages and disadvantages to having published employee handbooks.

The advantages include:

1. A handbook can convey fairness and consistency in the treatment of employees
2. Establish expectations for conduct and performance, and
3. Provide an opportunity to discuss policies and expectations with employees, reducing the chance of claims that employees were unaware of the workplace rules and policies

The disadvantages include:

1. Confusing or ambiguous rules and policies if the handbook has not been written and/or reviewed by a handbook expert
2. Implications that "at-will" employees have job security

3. Use of policies which limit the employer's ability to appropriately use discretion in discipline and termination decisions, and
4. Failure to align documented policies with operation practices

MyOHR recommends that every employer have an employee handbook which includes established policies, procedures, notifications of employee rights and responsibilities, etc. which focus on legal compliance.

Can we post our employee handbook on our intranet?

MyOHR says:

If you plan to post your employee handbook on your intranet in only electronic format you need to consider the following.

The advantages include:

1. Convenience - employees can read the handbook at their convenience
2. The employer can set defaults for items that need to be acknowledged within a certain time frame
3. Only current version available to employees, no previous versions available to cause confusion
4. No cost to reproduce and distribute copies to every employee

The disadvantages include:

1. ALL employees may not have access to the intranet
2. Safeguards must be in place to insure that the employee clicks through all the required notifications
3. Difficult to establish if the employee actually read the handbook or just clicked through it or had someone else do it
4. Difficult to determine if employee understood the policies in the handbook

Although there has been increasing acceptance of electronic documents,



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including employee handbooks, MyOHR recommends that employee handbooks be issued in written format with revision control

measures and include a written acknowledgment that the employee signs. HR places the acknowledgement in the employee's personnel file.

We also recommend annual training to all employees outlining the contents of the handbook.

For more information on guidelines for keeping electronic records we recommend:

Department of Homeland Security's guide related to electronic I-9 forms
<http://www.ice.gov/pi/news/factsheets/i-9employment.htm>

OSHA's interpretive letter regarding electronic safety programs at
http://osha.gov/pls/oshaweb/owadisp.show_document?

IRS guide for keeping electronic tax records at <http://www.unclefed.com/Tax-Bulls/1997/Rp97-22.pdf>

What should we expect when ICE audits our I-9s?

On July 10th ICE announced plans to focus its enforcement resources on employers rather than arresting undocumented workers. ICE plans to inspect the I-9 records of 625 employers. Investigators should have a search warrant or subpoena to review company records. Generally, search warrants or subpoenas are issued for obtaining:

- Quarterly wage reports
- EINs
- Business licenses
- Correspondence from SSA regarding no-match letters, and
- Payroll data

Steps you should take upon receiving notification of an I-9 audit:

1. Contact company legal counsel, determine who your contact will be in the event you need assistance
2. Determine who will be the company representative that the ICE representative will contact. All communication with ICE should be channeled through the representative to avoid redundancy or contradiction.
3. Determine which managers in the company need to be aware of the ICE audit

Ask the investigator for identification and the warrant or subpoena before allowing access to your I-9 records.

Every employer should review and maintain I-9 records on an on-going basis. Destruction or loss of records after notification could be interrupted as an attempt to destroy evidence or sabotage.

To receive a copy of OHR's I-9 Compliance Audit Checklist contact Linda Railton at lindar@myohr.com.

Educational Seminar August 27th

On Thursday, August 27th, Tami Sires of Blue Shield of California will share information on what employers need to know about Medicare and interaction with employer health plans and retirement programs.

This session is scheduled in Campbell CA. A "Go-To-Meeting" is available for this session. Feel free to join us for this insightful and timely information. Invite a friend!

To RSVP, contact Linda Railton at lindar@myohr.com

These articles should not be construed as legal advice or as pertaining to specific situations. Consult with your legal counsel for further information.



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About Us

MyOHR provides key Human Resources consulting and support for small, emerging and mid-size companies. Focusing on Human Resource legal compliance, MyOHR assists businesses in achieving operational efficiency by providing the infrastructure necessary to manage the workforce in compliance with State and Federal requirements. MyOHR is cost effective for companies that have not budgeted for a full-time HR position. Contact Jaime Orendac, SPHR-CA at Jaimeo@MyOHR.com.

Sincerely,

Jaime Orendac, SPHR-CA

Linda Railton, PHR
OHR -- Office of Human Resources

OHR - Customized HR Consulting to Meet Your Business Needs