

Employers are Asking: Handbook Updates

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Arkansas's unemployment rates are at the lowest we have seen in decades, which means employers across the state are onboarding new employees at an exciting pace. As businesses review their new-hire paperwork, many have had questions about updating their employee handbooks. From adding pandemic-preparedness provisions to updating existing policies to reflect changes in the law, we encourage all Arkansas employers to revisit their handbooks. Continue reading to learn about some common handbook updates employers might need.

Medical Marijuana

We encourage employers to include a drug-free workplace policy in their handbooks. These policies typically identify prohibited conduct; enumerate the employer's drug-testing policy, if any; and explain the penalties for violation of the policy. Employers as part of any such policy should be aware of the Arkansas Medical Marijuana Amendment of 2016 (the "Medical Marijuana Amendment") and how it should inform their drug-free workplace policies.

The Medical Marijuana Amendment applies to employers with nine or more employees, and it affords certain protections to Arkansas employees who lawfully use medical marijuana. Under the Medical Marijuana Amendment, employers may not discriminate against applicants or employees in hiring, terminating, or any condition of employment, or otherwise penalize an applicant or employee based on the applicant or employee's current or present status as a "qualifying patient." Ark. Const. Amend. XCVIII, § 3(f)(3)(A). Under the law, a qualifying patient is an individual who has been diagnosed by a physician as having a qualified medical condition and who has registered with the Arkansas Department of Health. *Id.* at § 2(14)(A).

The Medical Marijuana Amendment also includes a safe haven provision for employers – it permits employers to exclude a qualifying patient from being employed in or performing a safety sensitive position based on the employer's good faith belief that the qualifying patient is engaged in the current use of marijuana. *Id.* at § 3(f)(3)(B)(iii). The law defines safety sensitive positions as those in which a person performing the position while under the influence of marijuana may constitute a threat to health or safety. *Id.* at § 2(25)(B).

When drafting or revising their drug-free workplace policies, employers should include a disclaimer that the policy does not apply to medications taken as prescribed, including the use of medical marijuana by an employee or applicant who has a current marijuana registry identification card. Employers should also include language reserving the right to exclude qualifying patients under the Medical Marijuana Amendment from being employed in or performing in a safety sensitive position. It is important to note that the Medical Marijuana Amendment requires employers to designate their safety-sensitive positions

in writing. We recommend doing so within the drug-free workplace provision in your employee handbook.

Pandemic Preparedness

The COVID-19 pandemic thrust employers into uncertain territory, and most found themselves without a pandemic-specific policy at the start. At the height of the pandemic, many employers took great care in drafting and re-drafting COVID-19 return-to-work policies. Now that COVID-19 is moving toward an endemic stage (perhaps to become more like seasonal flu), we encourage employers to replace their COVID-19-specific return-to-work policies with broader return-to-work policies to ensure they are ready for an outbreak of any contagious illness.

Employers should include language in their handbooks encouraging employees to remain at home any time they are infected with an illness. We recommend instituting a policy which requires employees who are ill upon their arrival to the workplace to return home and remain there until they have been fever-free for twenty-four hours or a doctor has cleared them to return to work. We also encourage employers to generally direct employees to the Centers for Disease Control's website to learn more about preventing the spread of illnesses.

Within their pandemic preparedness policies, employers may also choose to enumerate their stances on requesting medical information and travel information from employees. Employers should evaluate the need for such information now and be mindful of the prohibitions of the Americans with Disabilities Act ("ADA"), which only permits employers to make medical inquiries if they are "job-related" and "consistent with business necessity."

Workplace Safety and Violence Prevention

Many Arkansas employers choose to prohibit the possession of weapons at the workplace; however, not all employers are aware that Arkansas law protects an individual's possession of a firearm in a private employer parking lot. See Ark. Code Ann. § 11-5-117. We have seen many template handbooks include language prohibiting the possession of weapons "on company property." Some even go so far as to specify that weapons are banned from company parking lots. These policies run afoul of Arkansas law. Fortunately, the fix is simple. Employers should ensure their workplace violence prevention policies prohibit the possession of weapons in "company facilities" or "company buildings" rather than on company property and company parking lots. Employers who work in office buildings with other businesses can also state that employees must abide by all rules of the building in which they are located.

We hope many Arkansas employers can look forward to expanding their business and workforces in the coming months. We recommend taking the time to read through your employee handbook, especially if you have not revised it in a couple of years (or ever!) Employee handbooks are not evergreen, but a few small changes from time to time will benefit employers and employees alike.