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EMPLOYER NEW YEAR'S RESOLUTION #4—DUST OFF THOSE EMPLOYEE HANDBOOKS

We've made it to the last week of January and our last employer resolution: reviewing and updating the company's employee handbook. While this may seem like the simplest resolution, it will actually require careful thought and review. A handbook is more than just a list of "dos and don'ts." It is an employer's first line of defense in litigation and an important tool for setting company culture. Employers need to look at both whether their handbooks address their *actual* policies, practices, and values that are implemented in the workplace and whether their policies are legally compliant. Even if you updated your handbook a year or two ago, the legal landscape has potentially shifted, requiring updates.

When considering handbook updates, pay particular attention to the following areas, some of which may be affected by the NLRB's 2023 *Stericycle* decision, which now presumes that rules that could be "reasonably interpreted" to chill an employee's rights are unlawful. Although *Stericycle* could be overturned under the current administration, for now, it is good law, and running afoul of it could put employers in the NLRB's crosshairs.

1. Conduct and Civility: General requirements to "act professionally" or "be positive" are under fire. The NLRB often views broad "anti-disparagement" or "civility" rules as a way to prevent employees from complaining about their supervisors or workplace safety.
2. Confidentiality: While employers have a right to protect trade secrets and confidential information, employers cannot prohibit employees from discussing "terms and conditions of employment," which include their pay, benefits, and workplace grievances. Employees who have access to trade secrets and confidential information should be required to sign, at a minimum, a separate non-disclosure agreement, as most employee handbooks are structured to not be enforceable contracts.
3. Social Media and Communications: Policies that broadly ban "detrimental" posts about the company often fail the *Stericycle* test. These rules must be specific and include clear "safe harbor" language.
4. Recording: Blanket bans on taking photos or recordings in the workplace (often intended to protect privacy and confidentiality) can be seen as an attempt to prevent employees from documenting unsafe working conditions or labor violations.
5. Leave Laws: Many state-specific leave laws have been implemented in recent years, and employers with locations in multiple states, or even remote employees working from their homes in different states, should ensue that they are compliant with all applicable laws such as sick time and family leave.
6. Accommodations: While employers hopefully have solid policies and procedures in

place for addressing accommodations for disabilities, the need to carefully address religious accommodations is becoming increasingly important. Both of these policies and processes should be addressed clearly in the employee handbook.

Resolution: Dedicate Time to Your Handbook Review

Handbook reviews are not the most exciting project, and in the busy day-to-day, it's an easy task to push off for months or even years. But an outdated handbook can cause confusion among your employees or even lead to litigation due to inaccurate, inapplicable, or impermissible policies. In 2026, dedicate the required time to reading and reviewing your employee handbooks to make sure that they are up to date and legally compliant.

As always, **O'Neil Cannon** is here for you. We encourage you to reach out with any labor and employment questions, concerns, or legal issues you may have, including assistance with drafting and reviewing employee handbook.