



From Hire to Separation: The Legal Documents Every Employer Needs in All 50 States

May 25, 2023

Agenda

1 Hiring in
New States

2 Creating &
Managing an
Employee Handbook

3 Separating
Employees

4 Questions &
Answers

Which state's laws govern your employment relationships?

Lawyer answer: it depends

General rule: the law of the state where the employee works

Registrations & Regulations

To-Do List for Hiring in a New State:

- ❑ Register to do business in the new state
- ❑ Find a registered agent (if one is required)
- ❑ Report your new hire to the appropriate state office
- ❑ Obtain unemployment, workers' compensation, and/or short-term disability insurance
- ❑ Register to withhold state income tax
- ❑ Understand state pay frequency and overtime requirements
- ❑ Determine whether you need to register for a state retirement program
- ❑ Post or distribute required signs and notices

Crafting Offer Letters in New States

Trend: More states are requiring notices and disclosures prior to the start of employment. The offer letter is the best place to include those.

Pay Transparency

- CT example: If not requested earlier, employer must disclose the wage range for the position to the applicant at the latest by the time of offer.
- Possible penalties for violation: compensatory damages, attorney's fees and costs, and punitive damages

Notice of Restrictive Covenants

- Employer must notify potential employee that a restrictive covenant is a required condition of employment and advise to seek counsel
- Employer must comply with required notice periods
- Penalties: Non-enforceable restrictive covenant, civil penalties, damages, attorney's fees

How to Draft Employment Agreements for New States

- Governing Law Issues
- Non-Competition and Non-Solicitation Agreements
- Non-Disclosure Agreements
- Arbitration Agreements

Employment Agreements

Non-Compete/Non-Solicitation

- Complete bans (will federal law follow these states?)
- Wage thresholds
- Notice and disclosure requirements
- Reasonableness requirements
 - Duration
 - Geography
 - Scope
- Legitimate business interest

NDAs

- Federal prohibition on limiting disclosure of sexual harassment or assault
- State prohibition on limiting disclosure of all forms of discrimination and workplace violations
- Trade secrets and other confidential information not affected

Arbitration

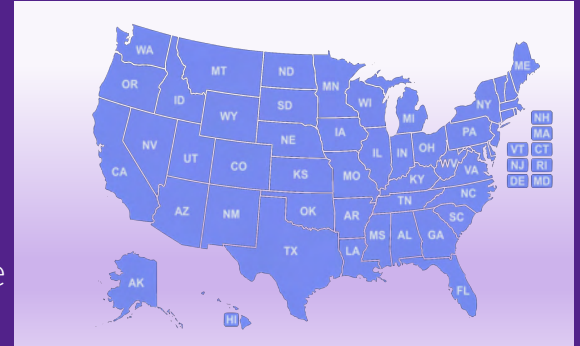
- Federal limits on arbitration of sexual assault/harassment claims
- State bans on arbitration of any employment claims
- Potential conflict between federal and state law that is unresolved

Checklist for ensuring employment contracts are legally compliant:

- Know where your employees are located and have a written relocation policy
 - Require preapproval
 - Have list of preapproved states
 - At minimum, require notice of relocation

- For new hires, ensure contract provisions comply with the law of the state where the employee is located
 - Including non-compete/non-solicit, non-disclosure, arbitration, proprietary invention and assignment, jury trial waivers, and others

- For relocating employees, determine if current contract complies with the law of the new state and, if not, execute a new or modified contract



Creating the Right Employee Handbook for your Organization

A good handbook

- Sets employee expectations
- Establishes values and commitments
- Defines important aspects of the employment relationship
- Lays out employees' legal entitlements and rights
- Serves as notice and a reference

Keep in mind your

- Employee count
- Employee locations
- Employee and management expectations

How SixFifty Breaks Down a Handbook

Our Commitments

The beginning of the handbook. Sets the tone and covers key issues

Key Policies

Mission Statement
Values

Equal Employment and
Anti-Discrimination
Sexual harassment

Our Expectations

The rules that employees have to follow.

Key Policies

Code of conduct
Conflict of interest
Workplace violence
Drug policies
Health and safety
Dress code
Employer Property
Technology Systems
Pets in the Workplace

Our Relationship

The interactions between employee and company

Key Policies

At-Will Employment
Americans with Disabilities Act (and accommodations request forms)
Lactation Accommodations
Payroll
Benefits
Direct Deposit
Business Reimbursement
Temporary/Permanent
Employee Relocation

Time Off

The paid and unpaid time off provided to employees

This includes paid leave benefits as well as legally required leave

Key Policies

Vacation/PTO
Sick Leave
Family and Medical Leave
Military Leave
Jury Duty Leave
Voting Leave

How to Tame an Unruly Handbook

State Addenda

Remove most or all of the state-specific policies from the handbook

Attach an addenda to the handbook with information organized by state

Universal Policies

Replace state-specific policies with one policy that complies with the most strict requirements from all states

Unlimited/Flexible Time off

Replace time off policies with one overarching time off policy that can be used for any reason

Still keep track of required leave!

Updating Your Employee Handbook

- How often do you need to update your employee handbook?
- How can you keep current on legal changes that affect your employee handbook?
- When do I need new Signatures and Acknowledgments?



Best Practice:

- Review your employee handbook every month for possible updates
 - Consider any new laws, states, and employee counts
 - Depending on your company complexity you may need to make many or no changes
 - A little time each month saves you a lot of time down the road
- A lot can change in a month
 - SixFifty Employee Handbook Update for November 2022 →

- **California** passed [SB 523](#) which amended the Fair Employment and Housing Act to prohibit employment discrimination on the basis of an individual's reproductive health decision-making. The [EEO](#) policy has been updated accordingly.
- **Colorado's** [new paid FMLA](#) program begins taking employer and employee contributions on January 1, 2023. Paid leave will be available to employees beginning January 1, 2024. The Colorado FMLA policy will be updated close to the effective date of the law.
- The **District of Columbia** [updated its Paid Leave Act](#) to increase available leave to: (i) twelve weeks of paid parental leave, (ii) twelve weeks of paid family leave, (iii) twelve weeks of paid medical leave, and (iv) two weeks of paid prenatal leave, up to a maximum of twelve weeks paid leave in any fifty-two-workweek period. The DC Paid Leave policy has been updated in the [Parental Leave policy](#).
- **Illinois** [decreased the employee count threshold for sexual harassment training](#) from 15 or more employees to 1 or more employee. The [Sexual Harassment policy](#) has been updated accordingly.
- **Illinois** [expanded bereavement leave](#) to include leave resulting from pregnancy loss, unsuccessful IVF treatment, a failed adoption or surrogacy, or a diagnosis that impacts pregnancy. The [Bereavement Leave policy](#) has been updated accordingly.
- **New York** [added siblings to the definition of family member](#) for the purpose of paid family leave. The [Parental Leave](#) and New York [FMLA policy](#) have been updated accordingly.
- **Oregon's** [new paid leave program](#) begins taking employer and employee contributions beginning January 1, 2023. Paid leave will be available to employees beginning September 3, 2023. The Oregon [FMLA policy](#) has been updated accordingly.

Staying Up to Date on Legal Changes

Do It Yourself

Some companies assign members of their HR or Legal teams to monitor the law in the states where they have employees and update their employee handbooks.

Law Firms

Some companies rely on their outside counsel to alert them when the law changes.

Some law firms send out emails or have web pages where they summarize changes to the law.

Third-Party Services

Third-party services can help you stay current on changes to state and federal laws.

At SixFifty, we send our customers a monthly update on legal changes and a redline of how we've updated our document creation engines.

Signatures and Acknowledgements

- When do you need to send your employee handbook to employees for signature or acknowledgement?
- An Employee Handbook is not a contract
- Different Approaches:
 - Send out for acknowledgement every time there is a significant change
 - Make employees aware of changes and send out for acknowledgment once a year
 - Make employee aware of changes but only get acknowledgments when employees start

Separating Employees: What to Do When It's Time to Move on

- Separation Documents
- Releasing Claims
- Confidentiality and Non-Disparagement Provisions
- Final Paychecks and Other Separation Requirements

Agreements and Acknowledgements

Different separation documents serve different purposes

- Acknowledgements - document the circumstances of the separation, provide any required notices, and remind employee of existing obligations (if any)
- Agreements - allow employer to obtain a release of claims and other promises in exchange for a severance payment

Agreements generally provide the company with more protection at a cost

- Consider the circumstances of each separation when deciding which type of document to use
- Can't force departing employees to agree

Releasing Claims

- Broad waivers are included in almost all separation agreements
- “Knowing and voluntary” waivers are effective for almost all employment claims
 - But cannot waive right to file charge with government agencies
- Some state & federal laws review and revocation period

Confidentiality & Non-Disparagement

Often used to prevent employees from divulging trade secret information or disparaging the company after separation

- Many states restrict application of these clauses as they pertain to certain types of wrongful conduct (e.g. sexual assault or harassment)
- Trend is to limit use to legitimate business-related purposes

As of February 2023, cannot be used to restrict employee's rights under Section 7 of the NLRA

- Includes right to file charge with NLRB, discuss working conditions with other employees, and otherwise engage in efforts to improve working conditions
- Just offering an overbroad confidentiality or non-disparagement position is unlawful

Final Paychecks & Other State Laws

Most states detail when and how to deliver final paychecks

- Timelines, methods for payment, what must be included, etc.
- Relatively simple, but can vary significantly from state to state
- Some requirements vary depending on how the separation occurs

Employers may also be required to give employee certain notice(s) upon separation

- Most commonly notices of Unemployment Benefits or COBRA coverage
- Can be tricky to identify due to inconsistent methods of enactment

Thank you!



Scan to see SixFifty's
Employment Tools