

## RISK MANAGEMENT

# 8 steps to quickly and (almost) painlessly creating an employee handbook tailored to your medical office

Writing an employee handbook from scratch can be a daunting task. Where do you start? What do you include? And how are you going to find time to write the thing? It's tempting to set the job aside and wait until work slows down a bit. Of course if you wait for the perfect time to write, it's unlikely that you will actually do it at all. So we're here to help you get the project started.

Writing coach **Daphne Gray-Grant** understands how intimidating that blank piece of paper can be. She suggests breaking the process into small steps.

## PREPARE MORE, WRITE LESS

When tackling a writing project, Gray-Grant suggests that 40 percent of your time should be spent on preparing to write, 20 percent on actually writing, and 40 percent on rewriting or revising.

This is why, of the eight steps below, only one of them focuses on writing.

## STEP 1: UNDERSTAND WHY YOU'RE DOING THIS

In order to do anything well, it's important to understand the reason behind the task. Gray-Grant points out that a good employee handbook will:

- Ensure your employees are treated fairly and consistently
- Help your office meet your business goals
- Leave room for you, as manager, to use your discretion
- Reduce legal claims relating to inconsistent or discriminatory treatment

Keep these objectives in mind when planning and writing the handbook.

## STEP 2: DON'T REINVENT THE WHEEL

There are some topics that should be included in almost every handbook, such as:

- An introduction, including the purpose of the handbook
- A message from the managing physician
- The practice's history
- The practice's vision, mission, values, and goals
- A code of conduct
- A non-competition agreement
- A confidentiality agreement
- A telecommuting policy
- A dress code
- Details about employee benefits
- Time-off-work policies
- A policy regarding computer and Internet use
- Conflict resolution procedures
- A workplace bullying policy
- A harassment policy

## STEP 3: CUSTOMIZE YOUR CONTENT

Now you want to address topics unique to your office. For example, if severe weather conditions are a reality in your region, are there communication procedures staff members must follow in case of a storm? Are there parking issues that require explanation? Security issues? Are visitors permitted in the workplace?

To customize your employee handbook, Gray-Grant suggests you borrow a trick used for decades by technical writers and creative writers alike: the mindmap.

As you mindmap, you'll notice that words or phrases are leading you to a larger topic you hadn't considered.

As Gray-Grant explains, the beauty of a mindmap is that it allows you to be free of the constraints of an outline. It helps you develop topic ideas unique to your office and allows for your culture's voice.

Here's how to do it.

Sit down with a blank piece of paper and a few colored pencils or highlighters. Turn the paper horizontal and in the center of it write: *What do employees working at our office need to know?*

Now let the right side—that is, the creative side—of your brain take over.

Circle the central question a few times and maybe even retrace it. Then, without stopping to think, draw a line from the question and write the first word that comes to mind. Circle it. Go back to the central phrase and draw a line and write the next word that comes to mind. Circle it. Go back to the central phrase and continue drawing lines outward to different words or phrases that come to mind.

When a word you write sparks another closely related idea, draw a line from that word to the new word. Keep branching out.

Do this as fast as you can. If a word doesn't come to mind, keep circling the central phrase or the last word you wrote. You can even doodle something that the word triggers. The idea is to keep your hand moving and to not overthink.

The words or phrases can be anything related to your central phrase—it can be information about the patients, physician quirks, special events that your office observes, coffee preferences, time-

saving billing tricks that you want staff to use, whatever. Keep drawing lines and bubbles from each related thought.

As you mindmap, you'll notice that words or phrases are leading you to a larger topic you hadn't considered. For example, perhaps you jot down something about the importance of prompt replies to patients, or a physician's preference that patients be addressed by Mr. and Ms. instead of their first names. If so, you might realize the need to include a section in your handbook on patient communication best practices. These revelations will come to you suddenly. And when you recognize these connections, you'll feel a shift—what Gray-Grant calls the “aha moment.” You're ready to write.

You might feel a little self-conscious or uncomfortable through this process. That's understandable. You're a professional. But what this exercise does is allows you to identify seemingly random associations that you normally wouldn't consider.

#### STEP 4: DELEGATE WHAT YOU CAN

Once your mindmap has helped you identify the topics to include in the handbook, you can choose to write the whole thing yourself or, better still, assign portions of it to others in the office.

The benefits of delegating portions of the handbook are twofold: first, it frees you up to oversee the project and, second, it gives other members of the office an opportunity to take ownership of the project, leading to a greater chance of staff buy-in.

But, of course, you want to ensure that you have a cohesive handbook that is written clearly and on time. To achieve that, Gray-Grant suggests you:

1. Give small jobs to many people
2. Assign a person a subject he or she is personally interested in
3. Specify the word count

4. Include the deadline in the subject of the email
5. Start with a fake deadline
6. Send a reminder a week before the due date

By the way, don't be concerned about assigning a task to a busy colleague. Says Gray-Grant, "It's a paradox, but it's been shown that busy people usually get more done."

## STEP 5: WRITE!

Remember, only 20 percent of this project is writing. But for many people, that's the hardest part of all. The trick is to not expect perfection the first time through. In fact, Gray-Grant suggests that for your first draft, you drop that expectation completely and embrace what she calls the "crappy first draft."

"If your first draft doesn't need to be perfect, you'll be able to write in about half the time you normally take," says Gray-Grant. "Writing a crappy first draft means you don't have to edit *while* you write."

Here are some techniques to get the first draft started:

- Turn on a timer for 20 minutes and do not allow yourself to do anything other than write until the timer goes off.
- Turn off your monitor or drape a towel over the screen. Why? Those angry red squiggly lines beneath typos and fragmented sentences can be very distracting. Typing blind will encourage you to just write and not edit as you go.
- Now mindmap again. This time, make your central phrase a topic, say, dress code. And when you reach the "aha moment," stop mindmapping and start writing. Fast. Write down everything.
- When you get stuck on something that requires more information, don't stop writing to do your research. Instead, write yourself

a series of notes to look into when you've finished this writing time.

## STEP 6: REVISE AND EDIT

Once you have produced your rough draft, you can focus on the editing and rewriting stage.

"Instead of just editing once, I advise passing through your draft many times, looking for and repairing specific problems," says Gray-Grant.

She suggests you look for:

- Sentence length. "Ideally, your average should be somewhere between 14 and 18 words. It's perfectly okay—desirable, even—to have some 38- and 41-word sentences. But these need to be balanced by some super short ones," she says.
- Unnecessarily complicated words
- Unnecessary words
- Clichés
- "Spend one pass reading aloud and check the rhythm of your prose. If it sounds clunky then rework it until it sounds better," says Gray-Grant. "Even corporate prose needs to be rhythmical."

"This may sound like a lot of work," she says, "but most of these edits, or 'passes' as I like to call them, are actually pretty easy."

## STEP 7: PROTECT THE PRACTICE

Remember, there are some legal considerations you need to be mindful of when putting together the employee handbook. For example, it could appear to be creating a contract between the office and an employee. The language used in the handbook might reduce your ability to manage employees or it might not protect the office adequately against employment-related claims. Also, the language used might appear to show favoritism to certain employees or discriminate against other employees.

"Don't let these concerns hinder you," says Gray-Grant. "Just be sure to have your employee handbook properly reviewed by an employment lawyer."

You'll also want to include a disclaimer in your handbook stating that the handbook is intended to offer only policies and guidelines and is not to be construed as a contract or an implied contract.

This disclaimer should be reiterated on the acknowledgement of receipt that you have each employee sign and date and then place in the employee's personnel file.

## **STEP 8: SUBMIT THE HANDBOOK FOR APPROVAL**

Once you have a workable draft, it's time to submit the handbook for approval. But, says Gray-Grant, don't call it that, if you want to keep the feedback manageable and the project moving along.

"Call this stage 'fact-finding' instead of 'approval' and find a senior champion who is willing to lead a small group of people in the signing off process," she says.

## **CONCLUSION**

Don't expect to produce a comprehensive employee handbook right away. Start small, says Gray-Grant, and remember: "First drafts don't have to be perfect. They just have to be written."

## COMPLIANCE

### Office handbook: danger in saying too much or too little

While most offices have an employee handbook, few realize the responsibilities and even dangers it creates.

A handbook ensures that both employer and employee understand the full picture of the employment, says **Beth De Lima, SPHR-CA**, of HRM Consulting, a human resource management consulting company in San Diego, CA. It tells what the office expects of the employee in terms of behavior, and it tells what the employee can expect of the office in terms of salary, benefits, and so on.

Where the danger comes in is saying too much or too little. Here De Lima lists the essential provisions along with the cautions to take in setting out the details.

#### YES, I'VE READ THIS

The first necessity is a signed acknowledgement that the staffer has received the book and has a responsibility to read it, understand it, and follow it. And so nobody can claim ignorance, put in the name of the contact person for questions.

That needs to be repeated every time the book is updated.

Most offices stop short with that, De Lima says. They require employees to know the book but don't require the same of management.

In her own company's work, she says, "We see many supervisors who haven't read it in 10 years or have never read it." And violations occur as a result. "The managers aren't deliberately not following the policies," De Lima says. "They just don't pay attention to them."

Because a handbook creates two-way responsibility, she says, either side can hold the other to it. Suppose it says the office does performance appraisals every year when in fact

they haven't been done for three years. Now there's room for argument of wrongful discharge because that policy wasn't followed.

#### AT-WILL EMPLOYMENT

Another necessity is a statement that anybody can be terminated with or without cause.

The caution here is to make sure the rest of the handbook doesn't negate that, De Lima says. That can happen if the book also lays out a progressive discipline procedure. Someone who is fired could claim the office was required to go through that process.

#### THIS IS HOW I GET PAID

Put in a section on wages, and here De Lima's advice is to cover every possible aspect of, "How do I get paid?" and, "When do I get paid?"

Along with that, lay out the overtime requirements. And there needs to be a provision that overtime has to be approved and that anyone who works overtime without approval "is subject to disciplinary action up to and including termination."

Approved or not, overtime has to be paid for, so that provision "is the only way to stop people from working unauthorized hours and demanding pay," De Lima says.

#### THESE ARE MY BENEFITS

Next is the here's-what-I-get section.

List all the insurance coverages. List vacation, sick leave, personal paid time, and holidays. List the retirement benefits.

Then to make things absolutely clear, list the perks the office provides. If there's free parking or a gym membership, put that in.

Also tell when people qualify for each benefit,

perhaps that vacation kicks in after six months of employment or that only full-time employees can qualify for some benefit. Make that clear so nobody can claim to have been promised something the office doesn't provide.

## THIS IS FOR MY SAFETY

The physical safety measures the office has in place also need to be explained.

One item is the procedure for responding to violence, whether from an employee, a patient, or from an outsider.

Cover too the building security and whatever safety practices the office follows, perhaps that anybody who works after a certain hour can ask for an escort to the car.

## THESE LAWS WILL PROTECT ME

Employment laws also need to be covered—EEOC requirements, the ADA, family and medical leave, Uniformed Services provisions, and so on.

But along with those, De Lima says, set out the complaint procedure to follow when someone experiences or witnesses or has knowledge of a violation.

## HERE'S HOW I'LL BE RATED

Tell when reviews are held, what items are covered in the reviews, and how performance is evaluated.

## HERE'S HOW WE ALL HAVE TO BEHAVE

Another essential is employee conduct.

Start with the attendance and tardiness requirements, and from there go to the use of the Internet, computers, copiers, and other equipment, including the limits on personal use.

Cover every requirement the office sets out—cell phone use in the office, dress, grooming, and so on.

Lay out the procedure for giving resignations—the amount of notice the office requires and whether the resignation has to be in writing.

Many items such as patient confidentiality will be particular to the office. But there may also be requirements such as that no one can talk with the media without permission or that no one can take pictures of the office without some type of permission.

This section will change and expand over time, De Lima says, because in most cases an office doesn't have a requirement until it encounters a problem.

## THESE ARE MY WORKING HOURS

Outline the working hours, and include meals and breaks. Also tell how the office keeps track of time and whether staff have to fill out time cards.

## THIS IS HOW I QUIT

Lay out the procedure for giving resignations—the amount of notice the office requires and whether the resignation has to be in writing.

Also in this section, tell what benefits such as COBRA coverage employees are entitled to when they quit and when they are terminated.

And along with that, explain the policy on giving job references.

## YES, WE CAN CHANGE OUR MIND

Finally, never let a handbook get written in stone.

Include a statement that the office has the right to change the policies at any time.

## TERMINATION

# Three layers of protection: a handbook, candid reviews, and progressive discipline

To avoid the risks of employment law claims, an office needs three layers of protection, advises employment law attorney **Peter T. Mavrick** of Ft. Lauderdale, FL.

One is a handbook, one is a procedure for progressive discipline, and the third is candid reviews.

With those three elements in place, the office is safe from just about any type of EEOC claims.

Here's what each entails.

### WHAT GOES INTO THE HANDBOOK?

The first protection is the employee handbook.

A handbook serves both sides of the office, Mavrick says.

For employees, it's a guide. It shows them what they have to do "to keep straight" and perform well in their jobs.

For the office, it's strong defense against legal claims, because it shows there are procedures in place to prevent violations and to deal with them appropriately if they occur.

Here are the basic items to include.

- **An at-will employment statement.** Say that the handbook does not create a contract but that employment is at-will at all times, which means employee or employer can terminate it at any time.
- **The work schedule.** Give the office's hours and tell when people are expected to show up for work.  
List the paid holidays plus the vacation, personal, and sick leave allowed and tell how to request days off.
- **Overtime requirements.** Outline the working

hours required and tell what lunch and break times are allowed.

Also lay out the office's requirements for getting authorization to work overtime and how to turn in overtime hours. Or, if the office doesn't allow overtime, say so.

Mavrick points out that there's no way around having to pay overtime. If somebody works extra hours—even without authorization and against office policy—that person has to be paid. For that reason, it's essential to explain the office's rules so that if somebody doesn't follow policy, the office can treat it as a discipline problem.

He adds that "the largest source of claims today" is overtime law. "And it's easy to run afoul of it" unintentionally.

For protection, keep records of the hours people work.

In addition, set up some sort of procedure for people to clock in and out, and enforce it.

- **Discrimination complaints.** Put in a brief summary of the discrimination laws and outline the office's complaint procedure. Also name at least two contact persons for complaints so no one can say there was no recourse because the contact person was the one doing the discriminating.

"A complete complaint procedure protects the employer," Mavrick says.

It's an affirmative defense, because it evidences a commitment to prevent discrimination. If discrimination does occur, it's easy to prove that the guilty party was a "rogue employee" and that the offense can't be attributed to the office.

- **Confidentiality.** Cover it with a statement that employees cannot discuss patient or business activities outside the office.  
Staff also need to sign a confidentiality agreement that includes everything from patient information to data confidentiality.
- **Personal Internet and e-mail use.** Put in a statement that the office owns the information system and has the right to monitor its use. A good addition to that is a warning that staff "should not access sites they wouldn't want the manager to know about."  
Don't limit personal use altogether, he says. "There's no need to be a slave driver." But don't lose sight of the fact that the office is paying those employees while they are playing on the internet. Take a common sense approach and say that staff must use it judiciously. Then if it becomes a problem, address it as a productivity issue.
- **Worker's compensation.** Tell how to report injuries and also how to apply for coverage.
- **Dress and professionalism.** With dress, don't get specific. It's enough to say that employees are expected to dress professionally or in whatever style the office requires, and leave it at that, Mavrick says.  
As for professionalism, things that would appear to be common sense still need to be covered, so say that staff are expected to conduct themselves in a professional manner.  
Also point out that each person's behavior impacts patient care and affects the office's image and reputation in the community.
- **Insurance and benefits.** List whatever coverages the office provides.
- **Mediation requirements.** Some employers require mediation for employment law disputes. If so, that should be stated in the handbook.

Never lose sight of the fact that most employment relationships end at some point.

- **State and local laws.** Mavrick also recommends consulting with a local employment law attorney on state or local laws that need to be mentioned. In Florida, for example, there are specific requirements for jury duty leave.

## BEWARE THE TOO-NICE REVIEW

The second layer of protection is candid reviews. Any review that's less than candid "can come back to bite," Mavrick says.

Where managers run into problems is in giving good reviews to mediocre and even poor employees. Some do it to encourage better performance; others do it because they don't like conflict.

But if it later becomes necessary to discipline or fire the employee, all those good reviews are going to hit hard. Here comes the EEOC saying "Wait a minute! You gave a good review, and now you're saying this person is terrible?"

The goal of the review "should be to encourage people to do better," he says. But tell the truth. Outline the good points and the bad. Be honest and be candid.

If there are issues the manager doesn't like, perhaps that the staffer is chronically late to work or doesn't get along with another employee, the review is the time to raise them.

Never lose sight of the fact that most employment relationships end at some point. And they don't always end as the manager had hoped. Given a chance, "people will go after some money."



Also, he says, managers need to be aware that “employees and employers think of the work much differently.”

## PROGRESSIVE AND SAFE DISCIPLINE

The third protection is the old standby—a progressive discipline policy.

That plus documentation showing the manager has followed it is proof enough that the office has given the employee every chance to succeed. It’s a solid defense against any claim of discrimination or wrongful termination.

The manager can demonstrate that the employee had “a track record of past infractions” and that the discipline or firing was warranted.

A progressive policy needs to cover two parts, Mavrick says.

One is the verbal warning. That’s given when the manager first learns of the inappropriate behavior.

Keep the warning informally. Document what’s said, but don’t ask the staffer to sign anything. Do that and the staffer goes immediately on the defensive.

Word the warning so as to help the staffer succeed. If the issue is tardiness, for example, phrase it as “You’ve been 10 minutes late three days this week. I need you to start work on time. I want you to succeed here, and to do that, you need to get to work on time every day.”

There’s no effort to push that person out the door. The manager has simply told the staffer that improvement is necessary.

That shows a genuine effort to help the staffer do well at the office, and people appreciate it. “They’re getting a chance.”

And legal issues aside, he says, the office’s profit depends on all the employees doing their jobs well.

The second part of the policy is the written warning, and that’s given when the staffer hasn’t made the improvements outlined earlier.

The written warning has to be clear so the staffer understands what’s happening, why, and the consequences of not improving.

Tell exactly what the problem is, give the dates of the infractions, tell what the staffer has to do to correct the performance, and explain that if the situation isn’t corrected, there will be more serious discipline, including termination.

Have the staffer sign the warning and put it in the personnel file.

After that, give more written warnings, suspension without pay, and even terminate the staffer. But document every step along the way.

All that shows “the office didn’t jump the gun and fire somebody.”

What’s more, if the staffer later files a claim and lies about what happened, the office can show a complete record of everything. It can also show that the employee “had a track record” of unacceptable performance.

## BUT NOT IN THE HANDBOOK

Don’t outline the progressive discipline procedure in the handbook, Mavrick cautions.

Doing that boxes the office in.

Every situation is different. It might be appropriate to fire a poor performer for some infraction but use other discipline for an outstanding employee who does the same thing.

What more, with the progressive discipline spelled out, someone who is immediately terminated for cause could claim the office promised progressive discipline.

## DUMP THESE

# It's not me, it's you: 5 office policies to break up with

By Paul Edwards

Springtime may mean that love is in the air, but your office can't hesitate to dump a policy that creates problems. Some policies are so blatantly unenforceable, they shouldn't even have gotten past the first date! If any of these are in your employee handbook, it's time to say, "Let's not even be friends anymore."

### #1: "EMPLOYEE SALARIES ARE CONFIDENTIAL, AND SHOULD NOT BE DISCUSSED."

Federal labor laws allow employees to discuss many aspects of their working conditions, including pay. You may personally know of other offices with a policy like this, but don't be fooled—that doesn't mean it's legal. And all it takes to get you in trouble is one employee who knows their rights, or any lawyer who glances through your policies.

### #2. "WORKPLACE GOSSIP IS HARMFUL AND WILL NOT BE TOLERATED."

This policy violates the same labor laws as the first. Although it doesn't specifically ban talking about working conditions, it's so vague it could easily be *interpreted* as banning it. For example, would two employees discussing an unpopular change in the office be gossiping? Don't let an employee lawsuit answer that question for you!

### #3. "UNAUTHORIZED OVERTIME WILL NOT BE PAID."

It's fine to require employees to get authorization before working extra time. In fact, that's a smart policy to have. The problem here is not paying an employee for hours they have *already* worked, which is illegal. You can discipline someone who

Almost all states have laws specifying a required timeframe for issuing final paychecks.

works overtime without permission, but you still need to pay them for it.

### #4. "UPON TERMINATION, YOU MUST RETURN ALL COMPANY PROPERTY PRIOR TO RECEIVING YOUR FINAL PAYCHECK."

Almost all states have laws specifying a required timeframe for issuing final paychecks. Even in the few states without final paycheck rules, an employee can still file a complaint with the Department of Labor if they feel you are unfairly delaying the process or denying them pay. Responding to a complaint will be a time-consuming headache you don't need, so pay the employee and handle any other issues separately.

### #5. "EMPLOYEES ARE ONLY PAID TO ATTEND SEMINARS OR TRAINING WHEN THEY HAPPEN ON WORK DAYS."

Many employers get this one wrong. For time spent at an event to be truly OFF the clock, it must meet ALL of these requirements:

- The time must be outside of normal business hours. (Not days!)
- The time must be **voluntary**.
- The activity must be **unrelated to the employee's job** and does not benefit them.
- The employee must do **no productive work** during the time.

Some states have stricter laws. Regardless, very few situations truly qualify as unpaid time, so it's best to just assume the time must be paid. (There is an exception for maintaining certification, IF your practice isn't requiring training on a certain schedule. And associate doctors, physical therapists, and similar professionals are exempt from these rules.)

Of course, this list is not exhaustive. But as the office manager, it may be up to you to alert your doctor if your office is using policies that don't stand up to scrutiny. If you are worried about an iffy office policy breaking your heart, consult a qualified employment law expert for further advice.

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## LABOR RELATIONS

# Your office's social media policy: dangerous if not done right

By Paul Edwards

Many medical practices don't realize their social media policy is a crisis waiting to happen. In three recent, real-life cases, the National Labor Relations Board (NLRB) found employers' actions to be unlawful when they disciplined or terminated employees who did the following:

- **Employee A:** Used a social media account to accuse the boss of stealing money from employees, and launched into an expletive-laden rant when management later tried to discuss the situation.
- **Employee B:** Cursed out another employee during a public Facebook argument over whether the office rigged a contest.
- **Employee C:** While on break, used a business computer and email account to send every employee in their office a list of complaints about how the office is run.

In each case, the different employers pointed to their social media policy as the reason for disciplinary action or termination. Their policies prohibited employees from behaviors such as posting confidential information, slandering the company online, or using company email for personal matters.

"Wait a minute," you might be thinking. "I would also have disciplined any of those employees. And that sounds like a perfectly reasonable social media policy."

Not according to the NLRB. Instead of seeing these office social media policies as valid attempts to restrict harmful employee behavior, the NLRB found them overly broad and potentially infringing upon employees' rights to organize and better their working conditions. These rights are also known as Protected Concerted Activity, or PCA.

In each situation above, the NLRB ruled that the employer's social media policy was unlawful,

as was any disciplinary action taken against the employee. In two of the three cases, the employer had to settle monetarily or reinstate a terminated employee with back pay.

## AND THESE CASES WEREN'T UNUSUAL!

Unfortunately, even very small companies have been targeted by the NLRB. And if an employee brings a complaint against you, the NLRB will dissect your office policies as it considers the case, and punish you for anything it finds objectionable.


So what should you do? Not having any social media policy in your employee handbook leaves you completely unprotected—and yet it is nearly impossible for employers to determine exactly what the NLRB might find unreasonable.

## HERE'S YOUR BEST COURSE OF ACTION. ENSURE THAT YOUR POLICY:

Unfortunately, even very small companies

- Is limited in scope and gives specific examples;
- Only prohibits truly egregious or malicious behavior (not protected by the NLRB);
- States that you are supportive of your employees' rights to PCA; and
- Is written *and* regularly updated by a **qualified HR or employment law expert.**

Following these guidelines will help make sure the employee handbook is your practice's best defense—not "Exhibit A" for your employee's attorney.

 **Paul Edwards** is the CEO of CEDR Solutions ([www.cedrsolutions.com](http://www.cedrsolutions.com)), the nation's leading provider of customized medical employee handbooks and expert HR support for practices of all sizes and specialties. He can be reached at 866-414-6056 or [pauleward@cedrsolutions.com](mailto:pauleward@cedrsolutions.com).



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