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## THERE MIGHT BE A LITTLE DUST ON YOUR HANDBOOK: WHY EMPLOYERS SHOULD REVIEW AND UPDATE THEIR HANDBOOKS

American singer-songwriter David Lee Murphy once wrote that there might be a little "Dust on the Bottle." Employers should take heed: Dust may be accumulating on their employee handbooks.

With employment laws rapidly changing, employers should periodically review and revise their employee handbooks. This article focuses on four key policies employers should regularly review to ensure they comply with applicable federal, state and local laws.

### Equal Employment Opportunity (EEO) Policy

States, municipalities and other localities continue to expand equal employment opportunity protections, providing varying protections to classes of employees not covered under federal law. For example, California and New York recently passed laws that protect employees from discrimination based on natural



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hairstyles and hair textures. Moreover, while Ohio does not provide statewide protections for LGBT persons, several Ohio municipalities and some Ohio counties do.

Employers should be aware of this patchwork of state and local legislation affording employees greater protections than federal law requires.

### Paid Leave Policies

At least 11 states and many more municipalities have adopted laws requiring employers to provide paid leave, although there is no federal requirement that private-sector employers do this as of now. Most of these laws contain penalties for employers who fail to implement paid sick leave policies or fail to provide paid sick leave at the appropriate times. Many more jurisdictions have leave laws that are in limbo as the laws are contested within the court systems.

Employers in jurisdictions with paid leave laws should scrutinize their handbooks

and policies related to leave to ensure compliance. Where paid-leave laws are being considered or contested, employers should be ready to revise their handbooks in the event such policies are implemented.

### Drug and Alcohol Policy

While marijuana remains illegal at the federal level, many states have passed recreational or medicinal marijuana laws or laws permitting CBD use. Employers must educate themselves on state-specific laws governing their operations and carefully craft policies on the use of and testing for alcohol, drugs and CBD.

Generally, employers should ensure their handbooks clearly define marijuana- and CBD-related terms. Outdated policies often generally prohibit "illegal drugs" and alcohol in the workplace – definitions that are becoming unworkable where marijuana enjoys legalized or partially legalized status.

### Workplace Violence

Employers also should have policies against workplace violence, bullying and

harassment, clearly defining what behavior is unacceptable and spelling out the consequences for failing to adhere to the policies. Because bullying and harassment may occur at work or on social media, employers should tailor their social media and conduct policies to reflect these concerns and prevent escalating workplace violence or disputes.

Employers should also consider whether and to what extent they wish to provide policies and training to prepare employees or management in the event of an active shooter. Some employers are choosing to codify policies and invite vendors or law enforcement into the workplace to train employees on how to handle a potentially life-threatening situation.

### Conclusion

Employers should regularly review all policies in their handbooks with assistance from employment counsel to ensure that company policies at all times comply with applicable federal, state and local laws. ■

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## TRACKING LIABILITY: WHAT CAN EMPLOYERS DO?

According to the U.S. Department of Labor, nearly 30 percent of employees drive as part of their job duties. Because employers can be held accountable for an employee's actions, what can an employer do to protect itself from future liability?

Some employers turn to Global Positioning Systems, which collect information related to an employee's movements. The legality of such a practice, however, is unknown. Such a practice may be easier in employer-owned vehicles or on employer-owned devices, because Ohio employees have no

expectation of privacy in employer-owned spaces. If GPS tracking is used in personal vehicles or other personal devices, or if information is collected after business hours while an employee is on personal time, an employee's privacy may well be protected by the courts. For instance, in New York, a court found that installing a GPS device on a state employee's personal vehicle was an unreasonable search. In 2015, a California woman sued her employer when she was terminated for uninstalling a GPS tracking application from her company-issued smartphone.

An employer who wishes to implement a GPS tracking program should consider the following best practices:

- Have a written GPS-tracking policy outlining the business reasons for the

policy, when and how employees should be monitored and how the employer plans to use the data;

- Be familiar with state laws applicable to privacy expectations and tracking in the state where employees will be monitored;
- Only use GPS tracking in employer-owned vehicles or devices;
- Only monitor employees to the extent justified by a business need;
- Notify employees of the consequences of disabling a GPS device without permission;
- Have employees acknowledge receipt and understanding of the policy;
- Post notices in employer-owned spaces advising employees that GPS monitoring is in place;



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- Store the data securely and only monitor during work hours and for a specific business purpose to protect employee privacy;
- Monitor the storage of GPS-collected data, because such data may be discoverable in litigation and subject to existing data-retention policies. ■

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