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Four Ways to Update Personnel Handbooks That Need to Become Part of Your Annual Reviews

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FOUR WAYS TO UPDATE PERSONNEL HANDBOOKS THAT NEED TO BECOME PART OF YOUR ANNUAL REVIEWS

Do your clients' workplace handbooks need a makeover? We regularly review personnel policies for compliance and changes to the law. How often do we review them to ensure that employees can follow the procedures? Do employees believe they can report workplace misconduct without fear of retaliation? Workplace discrimination, sexual harassment, and retaliation not only harm the employee – but mere allegations can also be devastating to an employer's reputation and have serious financial consequences. A recent study estimated that employee misconduct cost U.S. businesses over \$20 billion in 2021.¹

The #MeToo movement exposed the pervasiveness of workplace sexual harassment. Since 2017, thousands of employees have shared stories of toxic workplace cultures riddled with employee misconduct. Between 2018 and 2021, the Equal Employment Opportunity Commission (EEOC) received over 98,000 charges of workplace harassment. Of those charges, over 28,000 alleged sexual harassment.² In a 2018 – 2021 survey, the EEOC ranked Tennessee as the state with the fifth-highest number of sexual harassment charges.

Employee handbooks provide the protocols for employees to identify, avoid, and report misconduct. As part of a comprehensive training, prevention, and retention strategy, handbooks help set the workplace culture by promoting the employer's values. In some cases, employers may even claim an affirmative defense to sexual harassment allegations if they can establish that there were reasonable policies in place, yet the employee failed to follow them.³ Employees often do not report workplace misconduct because they feel like their voices do not matter, they believe that the employer will not take their reports seriously, or they fear retaliation for reporting misconduct.⁴

Here are four ways your clients can improve their employees' ability to follow protocols and report workplace misconduct:⁵

Avoid using legalese.

The use of legal terms of art can deter an employee from seeking guidance from a personnel handbook. Consider that 54% of adult Americans read below a sixth-grade reading level and that the literacy rate for adults in Tennessee is 78%.⁶ Do your clients' policies refer to terms of art such as: "severe and pervasive" conduct, "unreasonable interference with workplace performance," or submission to "unwanted conduct as an implied or expressed term or condition of employment?" If so, try using examples instead of the terms of art, (e.g. what is an implied condition of employment; when does conduct "unreasonably" interfere with work?) The use of artificial intelligence software can help score the "grade level" of your policies and revise them to meet a sixth-grade reading level.⁷

Assume the employee is telling the truth.

Reporting workplace misconduct is not easy. Only about 25% of

workplace harassment is reported.⁸ Employees fear retaliation, they don't want to "cause trouble," and they fear that employers will not believe them. Requirements about "good faith" reporting reinforce these fears. Instead of threatening to punish employees who fail to report in good faith, employers should create a culture that believes in and supports its employees. Thank them for having the courage to report misconduct, affirm that the employer will take all reports of misconduct seriously, and welcome all reports of misconduct regardless of severity.

See something. Say something.

The responsibility to report misconduct should fall on every employee. Encourage anyone who experiences, witnesses, or knows of employee misconduct to report it. Studies show that bystander reporting can help reduce misconduct and create a better working environment.⁹

Know the workforce.

In the next 25 years, the U.S. is expected to become a majority-minority country.¹⁰ At the same time, Knoxville's non-English speaking population is growing at a fast rate.¹¹ Employers need to know the demographics of their workforce to communicate effectively. Policies and procedures should be provided in languages that reflect workplace diversity. Employers should provide a translation tool at the top of the company's website page to increase language access to workplace policies. Can employees easily access online materials at home or during breaks? If not, make print copies readily available. Lastly, employers should seek regular input from employees about the policies – ideally in the form of a focus group that can provide user-centered feedback.

¹ Edward Segal, *Workplace Misconduct Cost US Businesses \$20 Billion In the Past Year: New Study*, FORBES, (December 16, 2021), available at: <https://www.forbes.com/sites/edwardsegal/2021/12/16/workplace-misconduct-cost-us-businesses-20-billion-in-past-year-new-study/?sh=2e0ed7c46275> referring to a *Vault Platform Report*, (April 2023) available at: <https://f.hubspotusercontent20.net/hubfs/4979575/Whitepapers/The%20Trust%20Gap%20Report.pdf>

² EEOC Data Highlight, vol 2 (April 2022) available at: <https://www.eeoc.gov/sites/default/files/2022-04/Sexual%20Harassment%20Awareness%20Month%202022%20Data%20Highlight.pdf>.

³ See *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) – the employer may assert an affirmative defense if “(a) that employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise.”

⁴ *Vault Platform Report, The Trust Gap – Expectation vs Reality in Workplace Misconduct & Speak up Culture*, (April 2023), available at: <https://f.hubspotusercontent20.net/hubfs/4979575/Whitepapers/The%20Trust%20Gap%20Report.pdf>

⁵ Employee handbooks should be part of a comprehensive training and education program that involves all workers and is reinforced by management and supervisors.

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About this column: “The cobbler’s children have no shoes.” This old expression refers to the fact that a busy cobbler will be so busy making shoes for his customers that he has no time to make some for his own children. This syndrome can also apply to lawyers who are so busy providing good service to their clients that they neglect management issues in their own offices. The goal of this column is to provide timely information on management issues. If you have an idea for a future column, please contact Sam Henninger at shenninger@wmbac.com.

BENCH AND BAR IN THE NEWS

How to place an announcement: If you are a KBA member in good standing and you've moved, have property to rent, or received an award, we'd like to hear from you. Talks, speeches (unless they are of international stature), CLE promotions and political announcements are not accepted. Notices must be submitted in writing and limited to 100 words. They are printed at no cost to members and are subject to editing. Email your notice to Marsha Watson at mwatson@knoxbar.org.

VIEW THE CURRENT LIST OF KBA VETERANS

The Knoxville Bar Association thanks all our Veterans for their service and dedication to our country. Review the list of members who have served in the military at www.knoxbar.org/kbaveterans. If your name is not on the flyer and you would like to be added, please contact Jonathan Guess, Membership Coordinator, by October 10. An insert is planned in the November DICTA.

BOOK TALK: *POGIEBAIT'S WAR*

KBA member Jack H. ("Nick") McCall Jr. will talk about his book, *Pogiebait's War*, which tells the story of his father's journey from a small town in Middle Tennessee to World War II combat service with the U.S. Marines. This talk will be held on October 12 at 5:30 p.m. at Union Ave Books, located at 517 Union Avenue. While open to the public, Union Ave Books requests that attendees pre-book their plans to attend, via Eventbrite. That link is here: <https://www.eventbrite.com/e/an-author-event-featuring-nick-mccall-tickets-709696028927?aff=oddttdcreator>. *Pogiebait's War* is available for purchase at Union Ave Books. Nick will be happy to autograph books.

FREE CLASSIFIEDS AVAILABLE

Did you know the Classified section on the KBA website allows you to add your resume if you are looking for a job or if you need to hire someone, you can post a job and search for candidates? Click on Public Resources and select "Career Classifieds" from the dropdown navigation. The Classifieds receive in excess of 8,000 page views each month so if you are looking for a job or a new position, make sure to check out this valuable resource.

LEGAL HISTORY VIDEOS AVAILABLE

In 2012, the KBA's Archives Committee began interviewing senior members of the local legal community to capture their stories and perspectives on life and the practice of law. With funding provided by the Knoxville Bar Foundation, the KBA has been able to preserve this history for future generations of lawyers and other interested persons. It is important not to forget the contributions of those who built the local bar and sharing milestones and stories of great lawyers and judges provides new lawyers with historical perspective and inspiration. Interviews of Tim Priest and Bob Pryor have been recently added. View the interviews online at www.knoxbar.org by clicking Member Resources and then Practice Resources.

OFFICE SPACE AVAILABLE:

- North Knoxville, right off I-640/275. Part of a larger office with an established attorney. Free Parking and Internet, access to Kitchen and Conference room. Separate entrance. Excellent set-up for a new attorney. \$500 per month. Contact Daniel Kidd, dan@danielkiddlawoffice.com.
- First class furnished individual offices for rent on the 19th floor right off the elevator in First Horizon Plaza, 800 S. Gay Street. Please contact Lance Baker at 865-310-0997 for further details if you are interested.
- Downtown Office Space for Rent - Large corner office with a view of downtown. Located in the First Horizon Building. \$900 monthly. Inquiries can be sent to jfanduzz@gmail.com.

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- 6 Think Impact Literacy Statistics (2023), available at: <https://www.thinkimpact.com/literacy-statistics/>.
- 7 Visit grammarly.com for more information.
- 8 Victoria Lipnic, *EEOC Select Task Force on the Study of Harassment at the Workplace* (June 2016), available at: https://www.eeoc.gov/select-task-force-study-harassment-workplace#_Toc453686298.
- 9 *Id.*
- 10 William Frey, *The US will become 'minority white' in 2045 Census projects*, Brookings Institute (March 2018), available at: <https://www.brookings.edu/articles/the-us-will-become-minority-white-in-2045-census-projects/>.
- 11 For a glimpse of some of the demographics of Tennessee's immigrant community (actual numbers are hard to determine due to the number of undocumented immigrants who live and work in the shadows of data collection processes), visit the American Immigration Council's Factsheet on Immigrants in Tennessee, available at: <https://www.americanimmigrationcouncil.org/research/immigrants-in-tennessee>. The number of English Language Learners (students whose primary language is not English) in Knox County Schools has almost doubled from 4.6% in 2018 to 7.9% in 2021. See Tennessee Department of Education, Report Card Data for 2018 and 2021, available at: <https://www.tn.gov/education/data/data-downloads.html>.

Address Changes

Please note the following changes in your KBA Attorneys' Directory and other office records:

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Bench & Bar Celebration

On Wednesday, September 6, the KBA membership gathered to honor our local judiciary at the Bench & Bar Celebration. The reception was a triumphant celebration of our bench and bar, with well over 250 attorneys, judges, and guests in attendance. Chief Justice Holly Kirby highlighted the recent changes on the Tennessee Supreme Court, and the Knoxville Bar showed up to express their appreciation to Justice Sharon Lee for her 19+ years of dedicated service to our state and to celebrate with Knoxville's own Justice Dwight Tarwater on his appointment to the Court. Our generous sponsors made the event possible and everyone who attended took full advantage of the opportunity to enthusiastically fellowship with friends and colleagues. Check out all the photos in the gallery on the KBA website or view high resolution photos at <https://shootingthebar.pixieset.com/benchandbarcelebration2023/>.

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