

The logo for Fisher Phillips, consisting of the company name in white text on a red, trapezoidal background.

Fisher
Phillips

A stylized illustration of a prehistoric landscape. It features rolling green hills, a volcano with smoke rising from its peak, a large tree silhouette on the right, and two birds flying in the sky. The background is light green with white dots, suggesting a bright or starry sky.

**Every Adventure Pack Needs a
Dino-Mite Handbook:
Here's What to Pack into Yours**



“Travel Agent”

Jennifer Sandberg
Regional Managing Partner
Fisher Phillips | Fort Lauderdale



“Medic”

Megan Janes
Partner
Fisher Phillips | Fort Lauderdale



Welcome to the Jungle

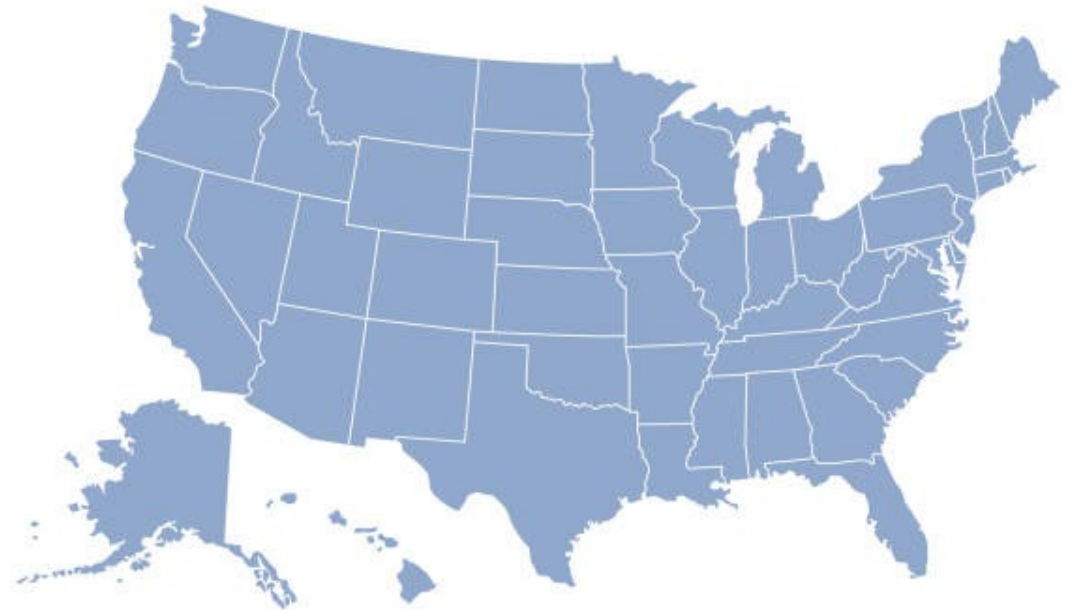


Why Did You Book This Tour?

- You know a good handbook isn't easy
- Rapidly expanding state laws
- Slowly expanding federal laws
- Shifting NLRB ideologies
- Maybe your handbook is pre-historic?

What Goes In Your Adventure Pack?

- Public employer?
- Publicly traded employer?
- Less than 50 employees?
- More than 500 employees?
- Florida based employees only?
- Employees based in multiple states?
 - Which states?
 - Employee's primary work location and/or domicile typically controls
 - Remote employee concerns



Why Does It Matter?

- Investing the proper amount of time and resources to update your handbook and educate your workforce leads to decreased litigation and higher employee retention rates.
- Court cases, statutes, and regulations explicitly reference employer policies as a determining factor in liability.
- Most employees really do want to know (and follow) the rules.

Common Pack Mistakes: Where do handbooks go wrong?



Common Handbook Mistakes

- Copying another employer's policies
- Not tailoring to your business – a custom pack is more comfortable
- Going wild in giving employees “rights”
- Trying to solve every problem
- Trying to cover everything
- Ignoring state law issues
- Losing clarity by trying to add culture vibes

Common Handbook Mistakes

- Not following the handbook
- Not using/issuing/updating the handbook
- Using handbook as procedure manual for managers
- Lack of coordination
 - Within the handbook
 - With other documents
 - With stand-alone policies



Common Handbook Mistakes

- Not Including “At-Will” Language
- Promising “Permanent” Employment
- Incomplete EEO Policy
- Ineffective No Harassment/Discrimination/Retaliation Policy
- “Reporting Procedure” Failures
- Promising Progressive Discipline
- Unlawful Leave Policies
- Incomplete Drug & Alcohol Policy
- Language that May Violate the NLRA

Packing Efficiently:

What goes in your handbook?



Pack Essentials:

- At-Will
- EEO
- No Harassment/Discrimination
- Drugs and Alcohol
- Reasonable Accommodation
- Open Door/Complaint Procedure
- Inspection of Work Area
- Basic Work Rules
- State Law References
- Work Schedule
 - Absenteeism
 - Overtime
 - Timekeeping
- FMLA and Other Leaves
- Protecting Information and Property
- Electronic Communications
- NLRA “Section 7” Disclaimer

Pack Essential: Discipline

- Progressive Discipline
- Conceptually
- Point System
- How many repeats of “failure to comply with this policy may result in discipline up to and including immediate termination?”



Pack Essential: Social Media

- Start with who you are
- Keep policy current
- Be very careful about NLRA Section 7 rights



Pack Essential: Trade Secrets

- Consider your:
 - Industry
 - Workplace
 - Employees
- Handbook vs. Contract
 - Confidentiality
 - Work Product
 - Trade Secrets
 - Other Restrictions



Example: Disclaimer

- Employees are hereby notified that under the Defend Trade Secrets Act (DTSA):
 - An individual may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.
 - Further, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the employer's trade secrets to the attorney and use the trade secret information in the court proceeding if the individual: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.

What Not to Pack:

- Policies addressing anything that happens pre-employment
- Policies that apply to only a small percentage of employees
- Issues that rarely arise



Pack As Needed:

- Introductory Period
- Benefits
- Dress Code
- Vehicles and Driving
- Severe Weather
- No Dating
- Nepotism



What if Your Pack Gets Lost?

**AKA You thought you
were ready to go but you
have nothing to show for
your efforts.**



Handbook Delivery & Maintenance

- Electronic?
 - Think about YOUR workforce
- Employee Acknowledgment
 - Very important
 - Signature? DocuSign?
- Non-English speakers?
- Notice of Updates?
 - Good idea everywhere
 - Required in South Carolina
- Retain prior handbook versions
- Track re-issuance dates



State Law Challenges for Tropical (Florida) and Multi-State Adventures

Tropical Adventures

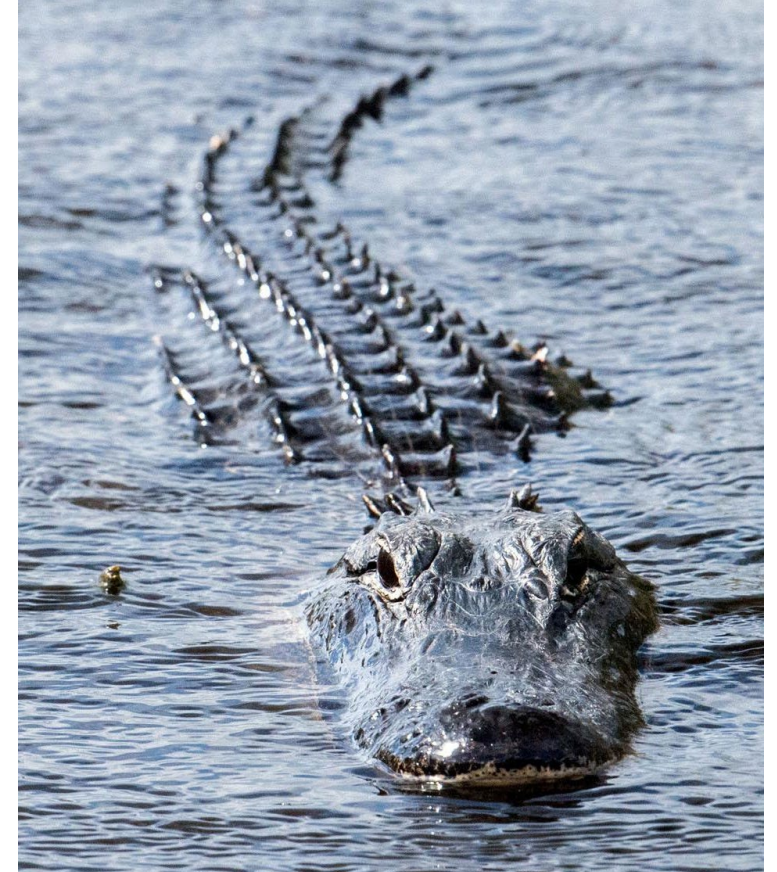
Florida Specific EEO Categories:

- Handicap
- Florida National Guard membership
- HIV, AIDS and/or AIDS-related diseases
 - unless absence of virus is a BFOQ
- Sickle-cell trait
- Marital status
- Gender expression
- Familial status



Tropical Adventures

- Florida Specific Policies
 - Paid Jury Duty in Broward and Miami-Dade Counties
 - Unpaid Domestic Violence and sexual Violence Victim Leave
 - Unpaid Grandparent Leave (FMLA) if 50+ employees in Miami-Dade County
 - Unpaid Civil Air Patrol Leave if 50 or more employees' total
 - Drug Free Workplace Program



Multiple Passport Stamps

- State Paid Sick Leave
 - Makes uniform paid sick leave challenging or impossible
 - Does not play well with “Unlimited” PTO
- State Unpaid Leave
 - Civil Air Patrol Leave
 - Election Leave
 - Bone Marrow Donation Leave
 - And so, so many more
- State Required Policy Language
 - CA and NY (among others) dictate specific No Harassment Policy language
- Unique State Provisions
 - Social Security Number Protection
 - Biometric Privacy

Litigation Hot Lava



Hot Lava Lessons Learned

- Quality content
- Version management
- Valid signature
- Policy cited in termination clearly applies
- Practicing what the handbook preaches
 - Progressive Discipline
 - Attendance or No Call, No Show
 - Harassment, Discrimination, Retaliation Reporting/Investigations



Hot Lava Considerations

- Are portions of your handbook considered confidential?
- Will a jury read your policy in a good light?
- Are the key policies easy to find?
- Are ALL complaints and investigations reliably tracked?
- Are you treating the handbook consistently in all litigation?
- Is your team overlooking risks because they are not in your handbook?



National Labor Relations Board Activity



Mired in Shifting Quicksand

- NLRB decisions vacillate and recently favor unions
- Section 7 protects “other concerted activities for the purpose of collective bargaining or other mutual aid or protection...”
- *Stericycle* Decision:
 - **If**, an employee reasonably interprets rule as coercive
 - **Then**, the rule is presumptively unlawful
 - **Unless**, it “advances a legitimate and substantial business interest” that cannot be advanced “with a more narrowly tailored rule”

Lawful Prohibitions v. Potentially Lawful

- Discriminatory or disparaging remarks
- Bullying, harassment, or retaliation
- Threats of violence
- Representing a personal opinion as official company policy
- Disclosing trade secrets and confidential business information
- Copyright infringement

• *But for all: Narrowly tailor to advance legitimate and substantial business interests*

Depending on narrowly tailored business needs:

- Making “misleading” or “inaccurate” posts
- Revealing “non-public company information”
- Non-commercial use of logo
- “Friending” co-workers without permission
- Commenting on “legal matters”
- Refusal to resolve concerns internally

Policy Language to Avoid

- Restricting discussion of wages/discipline
- Total prohibition on use of company name/logo
- Mandatory, broad advance “approval” provisions
- Prohibiting general discussions with media
- Using ambiguous terms like “unprofessional” or “inappropriate”
- Requiring all concerns to be raised with management
- Prohibiting all discussions of confidential internal investigations

Example: Violence Free Workplace Policy

The Company strives to create and promote a safe environment that is void of physical threats and/or violence of any type. You are expected to treat your co-workers, our customers and visitors in a safe, ~~non-threatening~~ and non-violent manner. Remarks or behaviors that are **physically** threatening, ~~intimidating~~, discriminatory, and/or physically abusive are never appropriate and will not be tolerated. **Fighting**, violence, or threats of violence in the workplace, or encouraging such conduct while conducting Company business is prohibited.

Example: Social Media Policy

- Employees are prohibited from using social media to post or to display comments about co-workers, customers, vendors, suppliers, members of management that are ~~disrespectful~~, ~~uncourteous~~, ~~hurtful~~, **obscene**, **abusive**, **profane**, **physically** threatening or intimidating, harassing, or constitute a violation of the Company's workplace policies against discrimination, harassment, or hostility on the account of age, race, religion, sex, ethnicity, nationality, disability, or other protected class, status, or characteristic.
- Employees are prohibited from using or disclosing ~~any information~~ **trade secret information** or **proprietary information** related to products, production processes, designs, or using or disclosing documents or information that have been designated or marked as business sensitive, confidential/private, or business use only.

Example: Cell Phone Policy

The use of cell phones and mobile electronic devices (including text, social media, games, photos, etc.) is prohibited while on Working Time.

The Company will not take any adverse action against an employee's use of a cell phone during Working Time to capture and document unsafe working conditions or potential violations of the law, including laws protecting an employee's right to engage in protected concerted activity for their mutual aid or protection. Unsafe working conditions include, but are not limited to, potential hazards, safety violations, or any other situations that could compromise the well-being of themselves or other employees.

Getting Out of the Jungle Alive With Your Pack Intact



Next Steps

- Review for:
 - Gaps
 - Potentially unlawful provisions
 - “Discouraging” language
 - “Reasonable employee” limited in discussing workplace terms and conditions
- Incorporate what you have learned today
- Monitor state law developments
- Verify handbook delivery, acknowledgment, and version control
- Ensure easy access and comprehension for all



QUESTIONS?



Jennifer Sandberg



Megan Janes





Thank you.

We hope you enjoyed your tour.