

## 2016 Sample Handbook Changes

### FEHA Regulations Changes effective April 1, 2016

#### Discrimination and Harassment Free Workplace

<b>This Section is Required</b>
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We have a strict policy against discrimination and harassment of any type and our goal is to provide a work environment free from harassment. Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting, such as during business trips, business meetings and business-related social events. This policy covers harassment of any employee, unpaid intern, volunteer, applicant, contractor, or any person who has a business, service or a professional relationship with us. Employees should immediately report any incidents of harassment, discrimination, Workers Compensation abuse, potential workplace violence situations or any workplace ethic violations by contacting your Supervisor. This includes harassment based on race, color, religion, national origin, age, medical condition, disability, marital status, sex (including sexual harassment), sexual orientation, ancestry, genetic information, gender, gender identity, gender expression, military and/or veteran status, or any other characteristic or activity protected by law. Although the following section addresses the sexual harassment issues of the policy, its reporting, investigation and disciplinary provisions also apply to all other forms of harassment as well as discrimination.

#### Definition

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment, even if there are no tangible or economic job consequences.

The term "sexual harassment" includes many forms of offensive behavior. Here are some types of behaviors that may be violations of this policy:

- Making sexually suggestive comments, jokes, advances or offering employment benefits in exchange for sexual favors
- Teasing, bullying, making fun of or making derogatory remarks about someone's age, race, sexual orientation, disability or gender.
- Posting, passing around or displaying sexually suggestive or obscene printed materials or objects
- Gender-based harassment including harassment by someone of the same sex as the victim

Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal, visual or physical conduct that denigrates or shows hostility or aversion toward an individual because of a characteristic or activity discussed in the first paragraph above that: (1) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes and display or circulation in the workplace of written or graphic material that denigrates or shows hostility or aversion toward an individual or group (including through e-mail).

Sexual harassment is considered to be sex discrimination in violation of federal and state law.

Additionally, abusive conduct, defined as any conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests will not be tolerated.

### **Non-Retaliation**

It also is prohibited for supervisors, managers and co-workers, as well as third parties such as vendors or customers, to retaliate against an employee because the employee has complained about harassment, discrimination, retaliation, abusive conduct, or participated in an investigation, proceeding or hearing based on such a complaint and is a serious violation of this policy.

### **Complaint Procedure**

All employees are responsible for creating and maintaining a positive work environment. If you believe you have been a victim of harassment, sexual harassment, discrimination, retaliation, or if you have witnessed harassment, sexual harassment or discrimination that violates our policy, it is important that you take steps to address it immediately.

- First, if you are comfortable doing so, talk to the person whose behavior is bothering you and ask the person to stop.
- Next, if you are not comfortable speaking with that person, or if you asked them to stop and they have not, contact your Supervisor or any member of management or human resources.

A prompt, thorough and objective investigation of the complaint will be conducted by a qualified person. Documentation will be maintained to ensure reasonable progress. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge.

Upon completion of the investigation, and where warranted, appropriate corrective action will be taken to eliminate the sexual harassment, harassment, retaliation, or discrimination. Corrective action may include, but is not limited to, training, counseling, reassignment and/or discipline. To the extent possible, the investigation of a complaint and any subsequent action taken in response to the complaint will proceed in an atmosphere of confidentiality. Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action. Employees who have had a complaint should immediately make a further complaint should the harassment reoccur.

A complaint of sexual harassment may be filed within one year of the harassment with the California Department of Fair Employment and Housing ("DFEH"). The DFEH initially serves as a neutral fact-finder and attempts to help the parties voluntarily resolve the complaint. The DFEH can be contacted at (800) 884-1684; or for the hearing impaired, (TTY) (800) 700-2320; or visit the department's website at [www.dfeh.ca.gov](http://www.dfeh.ca.gov). A complaint of sexual harassment also may be filed within 300 days of the harassment, with the Equal Employment Opportunity Commission (EEOC), reached by calling (800) 669-4000 or for the hearing impaired, (800) 669-6820. EEOC field office information is available at [www.eeoc.gov](http://www.eeoc.gov).

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## SECTION 1 - WELCOME

### Violation of Policies

#### Added 2<sup>nd</sup> Paragraph:

*Nothing in this handbook is intended to unlawfully restrict an employee's right to engage in any of the rights guaranteed to them by Section 7 of the National Labor Relations Act, including but not limited to, the right to engage in concerted protected activity for the purposes of their mutual aid and/or protection. Nothing in this Handbook will be interpreted, applied, or enforced to interfere with, restrain, or coerce employees in the exercise of Section 7 rights.*

These two additions respond directly to recent NLRB rulings related to employee handbook violations

### Employment at Will

#### Added Last Paragraph:

*Nothing in this at-will statement is intended to interfere with an employee's rights to communicate or work with others toward altering the terms and conditions of his or her employment.*

### Equal Employment Opportunity

#### Revised 2<sup>nd</sup> Paragraph to Read:

We do not discriminate in employment opportunities or practices on the basis of *any protected class, including: race; religion (all aspects of religious beliefs, observance or practice, including religious dress and grooming practices); color; national origin; ancestry; physical disability; mental disability; medical condition (including cancer or a record or history of cancer); genetic information; sex (including pregnancy, childbirth, breastfeeding or related medical conditions); gender identity or expression; sexual orientation; marital status; registered domestic partner status; veteran status, current or prospective service in the uniformed services; age; or any other protected class under federal, state, or local law. Included in the definition of each protected category is the perception of membership in a protected category and an individual's association with an actual or perceived member of a protected category.*

Attorney recommended in light of the DFEH's description of protected classes.

### Non-Union Status

#### Deleted Entirely

Attorney recommended deleting this section as a potential violation of the National Labor Relations Act.

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## SECTION 1 – WELCOME (Continued)

### Employee Classifications

#### Deleted All But Definitions of Exempt, Non-Exempt and Temporary

Attorney advised to eliminate this section due to the reality that the eligibility for health benefits is constantly changing under the ACA (check with your benefits provider) and the requirement that even paid sick leave applies to temporary employees.

## SECTION 2 – WAGE AND HOUR GUIDELINES – NON-EXEMPT EMPLOYEES

### Rest Periods

#### Revised Paragraph Before Table to Read:

*All nonexempt employees are also entitled to rest break periods during their workday. You are authorized and permitted one (1) 10-minute net rest break for every four (4) hours you work (or major fraction thereof, which is defined as any amount of time over two [2] hours). A rest break need not be authorized for employees whose total daily work time is less than three and one half (3.5) hours.*

Attorney recommended rewrite and addition to make rights and obligations clear to employees.

#### Added After Table:

*You will not clock out and will be paid for all such break periods. You are required to remain on the work premises during your rest break(s) and are expected to return to work promptly at the end of any rest break.*

### Meal Periods

#### Added “uninterrupted” to 1<sup>st</sup> paragraph:

Whenever you work more than five hours in any workday, you are authorized and permitted a minimum thirty minute-unpaid, **uninterrupted** . . .

Makes it clear that meal periods are not to be interrupted.

#### Added “uninterrupted” to 4<sup>th</sup> paragraph:

You are also authorized and permitted a second unpaid, **uninterrupted** . . .

#### Added New Paragraph Between 4<sup>th</sup> and 5<sup>th</sup> Paragraphs:

*You will not be required to work during any “recovery period” mandated by any applicable statute, regulation, standard or order of OSHB or Cal/OSHA. “Recovery period” means a cooldown period afforded an employee to prevent heat illness.*

Added to comply with recent legislation.

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## SECTION 2 - WAGE AND HOUR GUIDELINES – NON-EXEMPT EMPLOYEES

### Time Clock and Time Cards

#### Revised 1<sup>st</sup> Sentence to Read:

You are required to accurately record *all* hours worked, meal periods, holiday, sick and vacation time.

#### Revised 2<sup>nd</sup> Paragraph and Deleted Bullets As Follows:

*You are not to begin work more than 5 minutes prior to the start of your shift or work beyond 5 minutes after the end of your shift without prior approval of your Supervisor.* All non-exempt employees are required to clock in and out as follows:

- ~~• Not more than five minutes prior to the start of the employee's work shift, but as close to the start time as possible.~~
- ~~• The beginning and end of meal periods.~~

~~Not more than five minutes after the end of the employee's work shift, but as close to the quit time as possible.~~

Revised paragraph to retain admonition regarding starting work early or working beyond end of shift without prior approval.

Attorney recommended deleting these provisions. This policy could be used for class action purposes to show that the company only allowed employees to clock in 5 minutes prior/after scheduled start/end times despite that the employee was required or permitted to work longer. We have defended such claims.

#### Revised 1<sup>st</sup> and 2<sup>nd</sup> Sentence of 2<sup>nd</sup> Paragraph to Read:

~~We may utilize a round up/round down rule for timecard purposes.~~ **You** are to sign your timecard to attest that the hours recorded are accurate and are the total hours that you worked.

Attorney recommended revision since rounding statement is a potentially impermissible policy.

## SECTION 3 - BENEFITS

### Paid Time Off or Vacation

#### Eligibility Based on Calendar Year

#### Deleted 2<sup>nd</sup> Paragraph:

~~If you are hired during January through June, you may take whatever vacation you earn during the second six months of the year. If you are hired from July to December, you will be allowed to carryover vacation to the next year. You are required to take all accrued vacation by the end of the first six months of the next year.~~

Attorney recommended deleting such a policy as it could be construed as a "use it or lose" provision and is difficult to administer.

### California Paid Sick Leave/Healthy Workplace, Healthy Families Act

#### Revised 2<sup>nd</sup> Sentence to Read:

Employees may begin using paid sick *leave on the 90<sup>th</sup> day after hire.*

Revised to indicate eligibility on 90<sup>th</sup> day, not "after" 90 days.

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## SECTION 3 – BENEFITS (Continued)

### California Paid Sick Leave/Healthy Workplace, Healthy Families Act

Inserted The Following After 1<sup>st</sup> Paragraph:

#### *Use*

*You will be entitled to use accrued sick days beginning on (upon accrual, on the 90<sup>th</sup> day of employment), after which you may use them as they are accrued. Any time taken for illness or injury before completing this period of continuous employment may be without pay.*

*Paid sick leave may be used in as little as two hour increments.*

*You may use up to a total of three days of paid sick leave per anniversary year. Unused paid sick leave may be carried over to the following anniversary year.*

*You may use paid sick leave for the following purposes:*

- *Diagnosis, care, or treatment of an existing health condition of, or preventive care for, you or your family member.*
- *If you are a victim of domestic violence, sexual assault, or stalking,*

*“Family member” includes:*

- *A child, which means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom you stand in loco parentis. This definition of a child is applicable regardless of age or dependency status.*
- *The biological, adoptive, or foster parent, stepparent, or legal guardian of you or your spouse or registered domestic partner, or a person who stood in loco parentis when you were a minor child.*
- *Your spouse.*
- *Your registered domestic partner.*
- *Your grandparent.*
- *Your grandchild.*
- *Your sibling.*

Moved the use and pay section to the beginning since they are the same for either plan for simplicity sake. Employers can just pick which option (accrual, lump sum) that they want to use as their option(s)

*If the need for paid sick leave is foreseeable, you must provide reasonable advance notice to your Supervisor. If the need for paid sick leave is unforeseeable, you must provide notice to your Supervisor as soon as practicable. Appointments should be scheduled either at the beginning or the end of your workday. If you become sick during the day, you must inform your Supervisor before you leave the facility.*

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## SECTION 3 – BENEFITS (Continued)

### California Paid Sick Leave/Healthy Workplace, Healthy Families Act (Continued)

*Paid sick leave is available only for days on which you would have been scheduled to work, but were unable to work because of one of the purposes described above.*

*Paid sick leave will be integrated with California State Disability Insurance (SDI) benefits and/or workers' compensation insurance benefits in such a way that the total sick leave benefits paid by the Company, and those you receive from SDI or workers' compensation insurance, will not exceed 100 percent of your regular weekly wage based on your regular straight-time hourly rate of pay.*

#### **Pay**

*You will receive your regular hourly wage when using accrued Paid Sick Leave. If in the 90 days of employment before taking accrued paid sick leave you had different hourly pay rates, you were paid a commission or piece rate, or you were a nonexempt salaried employee, then the rate of pay will be calculated by dividing your total wages, not including overtime premium pay, by your total hours worked in the full pay periods of the prior 90 days of employment.*

#### **Holidays**

##### **Revised 3<sup>rd</sup> Bullet Following Table to Read:**

- You must work the full assigned scheduled workday immediately preceding and following the holiday, unless on an authorized vacation, ***paid sick day*** or excused absence.

New Paid Sick Leave law is interpreted as barring such a provision as retaliatory if the employee is on leave pursuant to the Healthy Workplaces, Healthy Families Act.

#### **Paid Family Leave Benefits**

##### **Added to 1<sup>st</sup> Paragraph and Added 2<sup>nd</sup> Paragraph as Follows:**

When you stop working or reduce your work hours to care for a family member who is seriously ill or to bond with a new child, you may be eligible to receive Paid Family Leave (PFL) benefits. The PFL program is administered by the California Employment Development Department (EDD). For information about PFL (eligibility, claim filing, etc.), contact the EDD service center at 1-877-BE-THERE. ***You are responsible for filing your claim for family leave insurance benefits and other forms promptly and accurately with the Employment Development Department. All eligibility and benefit determinations are made by the Employment Development Department.***

Provides more clarity about Paid Family Leave and clearly defines employee's responsibility to work with EDD.

***The Paid Family Leave Act does not provide a right to leave, job protection or return to work rights. Further, this policy does not provide additional time off; rather, family leave insurance may provide compensation during an approved leave pursuant to any organization provided leave.***

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## SECTION 3 – BENEFITS (Continued)

### Employee Recognition Program

Deleted Entirely

Rarely used and could be used as evidence of discriminatory and retaliatory practice by the employer if not honored equally.

### Pregnancy Disability Leave

Deleted Last Paragraph:

~~Time off needed for prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, and recovery from childbirth would all be covered by your pregnancy disability leave. As an alternative, we may transfer you to a less strenuous or hazardous position or to less strenuous or hazardous duties if you so request, with the advice of your physician, if the transfer can be reasonably accommodated. We also comply with the law regarding reasonable accommodation for an employee disabled due to pregnancy, if you so request, with the advice of your physician.~~

**Added 2<sup>nd</sup> through 7<sup>th</sup> Paragraphs as Follows:**

*Leave may include, but is not limited to, additional or more frequent breaks, time for prenatal or postnatal medical appointments, doctor-ordered bed rest, severe morning sickness, gestational diabetes, pregnancy-induced hypertension, preeclampsia, recovery from childbirth or loss or end of pregnancy, and/or post-partum depression. Leave may be taken consecutively or intermittently. The amount of leave needed is determined by your health care provider's recommendation.*

*At your option, you can use any accrued paid time off as part of your pregnancy disability leave before taking the remainder of your leave on an unpaid basis. The substitution of any paid leave will not extend the duration of your pregnancy disability leave.*

*Employees who are granted leaves for pregnancy will be returned to their same or similar position to the extent required by state law. Upon the advice of your health care provider, you may also be entitled to reasonable accommodation, to the extent required by law, for conditions related to pregnancy, childbirth or related medical conditions. You should promptly notify the Company of the need for a reasonable accommodation. In addition, a transfer to a less strenuous or hazardous position or to less strenuous or hazardous duties may be available pursuant to your request, if such a transfer is medically advisable.*

*You must give the organization at least 30 days' advance notice if your need for pregnancy-related disability leave, reasonable accommodation, or transfer is foreseeable. Otherwise please give the Company notice as soon as is practicable if the need is an emergency or unforeseeable.*

Provides more detailed information so employees are clearly informed of their rights and responsibilities.



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## SECTION 3 – BENEFITS (Continued)

### Pregnancy Disability Leave (Continued)

*Prior to the start of the leave, the Company will require a written medical certification indicating that you are disabled because of pregnancy or that it is medically advisable for you to be transferred to a less strenuous or hazardous position or duties or otherwise to be reasonably accommodated. The certification should include an anticipated date when you will be able to return to your job or job duties. In the event your leave exceeds the anticipated date of return, it is your responsibility to provide further certification from your health care provider that you are unable to perform your job or job duties and the revised anticipated date of return.*

*Medical insurance and coverage will be continued on the same basis, including your requirement to make any premium contributions, as when you are actively employed.*

### School Activities

Changed Title of This Section to “*Family School Partnership Leave*”

Changed 2<sup>nd</sup> Sentence to Read:

If you are the parent or guardian of children in kindergarten through grade 12, *or a child care provider*, you may take up to 40 hours per school year *for the purpose of protected child-related activities*.

SB 579 amended section 230.8 of the Labor Code effective January 1, 2016.

## SECTION 5 - INTEGRITY

### Conduct

Added the Following Paragraph at End of Section:

*Violations of any Company policy may lead to discipline, up to and including termination.*

### Disciplinary Practices

Deleted Entirely

Attorney recommended deleting because, despite the disclaimer, plaintiffs’ attorneys consistently rely upon such handbook policies to note that an employer should have followed the progressive discipline outlined here.

### Attendance

Deleted 1<sup>st</sup> Item Under “Absences”

~~\_\_\_\_\_ absences WITH notification in \_\_\_\_\_ will result in a written warning notice.~~

Attorney advised this could be viewed as violating ADA/FEHA for those with disabilities.

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## SECTION 5 – INTEGRITY (Continued)

### Use of Electronic Communication Devices and the Internet

In the 3<sup>rd</sup> Sentence of 2<sup>nd</sup> Paragraph Deleted the Words “malign” and “disparage”

Recent NLRB decisions indicate that “Malign” (speak about in a spitefully critical manner) and “disparage” (regard or represent as being of little worth) are both overly broad and may impact employees’ right to communicate about terms and conditions of employment.

### Dating in the Workplace/Consensual Relationships

Deleted Last Sentence of 2<sup>nd</sup> Paragraph:

~~If we learn of such a relationship, we will either reassign one of the individuals or give them the opportunity to choose which employee will resign.~~

“If we learn” encourages employees to hide such relationships.

Added Last Sentence of 2<sup>nd</sup> Paragraph as Follows:

*Employees involved in such relationships will be reassigned when possible.*

## SECTION 6 – ON THE JOB

### Job Evaluation

Deleted Entirely

Attorney recommended deleting since these sections may have pitfalls for unsuspecting employers who may not consistently engage in job evaluations, salary reviews, development and training.

### Salary and Merit Reviews

Deleted Entirely

### Staff Development and Training

Deleted Entirely

### Temporary Assignment

Deleted Entirely

Attorney advised deleting saying there is no need to include in a handbook.

### On-The-Job Illness/Injury

Added “/First Aid” to Section Title

Deleted Bulleted Items and Added to 1<sup>st</sup> Paragraph as Follows:

If you receive an injury while on the job or in the course of employment, **IMMEDIATELY** report to your Supervisor the following information; ***time of accident, location where the accident occurred, circumstances of the accident, description of the injury and any witness(es) to the accident.***

# 2016 Sample Employee Handbook Changes

## SECTION 6 – ON THE JOB (Continued)

### On-The-Job Illness/Injury (Continued)

#### Deleted Last Paragraph:

If you require a medical leave due to your illness or injury, the same procedures will be followed for on the job injury or illness. We will be working closely with the workers' compensation insurance carrier and your primary physician to ensure that you are receiving the best care possible. It is important that you keep in touch on a regular basis with your Supervisor as to when you will be able to return to work.

Already included in Workers Compensation Leave section.

### Inclement Weather

#### Added Sentence to 2<sup>nd</sup> Paragraph as Follows:

*Please see the Company's IIPP for details regarding High Heat Procedures.*

Employers in specified industries must implement high-heat procedures when the temperature equals or exceeds 95 degrees Fahrenheit. The industries subject to the high heat procedures include:

- Agriculture
- Construction
- Landscaping
- Oil and gas extraction, and
- Transportation and delivery of agricultural products, construction materials or other heavy materials, except for employees who are operating an air-conditioned vehicle and not performing loading or unloading duties.

## ACKNOWLEDGMENT OF RECEIPT OF HANDBOOK

#### Revised 1<sup>st</sup> and 2<sup>nd</sup> Sentences of 1<sup>st</sup> Paragraph as Follows:

If I am a nonexempt employee, I understand that I will be authorized and permitted to take **an unpaid, duty-free** meal period of no less than 30 minutes whenever I exceed five hours in a work day. The meal period should begin prior **to completing my fifth hour of work** ~~to the beginning of the 6th hour of work~~ unless I am scheduled to work six (6) hours or less, and we agree in writing that the meal period may be waived.

Provides more clarity on when meal period must begin.