

Handbook revisions you can't do without for 2021

It's tempting to write off 2020 as the year we were all been forced to work in crisis mode. Don't let that deter you from making essential handbook revisions you can't do without. 2021 will likely include a return to something resembling normality. If you neglect basics now like adding new federal discrimination rights to your handbook, 2021 may instead usher in lawsuits. The big Supreme Court sexual orientation decision came during the pandemic and many companies haven't revised their policies yet.

There's also been an increase in U.S. Department of Labor (DOL) enforcement action on the new temporary paid leave provisions. Workers and their attorneys have been busy filing lawsuits too. And the first piece of evidence cited in litigation over FFCRA leave or sexual orientation discrimination? Handbooks – or lack thereof.

Supplemental COVID leave handbook provisions

If you haven't yet put together a temporary COVID pandemic handbook, do it now. This is especially true if you're an employer with fewer than 50 employees and not otherwise FMLA covered. Now, you must provide limited paid COVID-related and emergency FMLA leave – temporarily. Essentially, all private sector employers with fewer than 500 employees are covered employers. So are almost all public sector employers regardless of size. There are limited exceptions for small employers and some federal workers. Your organization will need handbook rules that educate workers about their paid leave rights.

Here's what your supplemental COVID handbook should include:

Temporary notice: Because the Families First Coronavirus Response Act (FFCRA) is set to expire on December 31, 2020, make the supplemental handbook temporary. Include a statement above the acknowledgment signature line. It should say something like, "The FFCRA sunsets (expires) on 12/31/2020 unless Congress extends it. The FFCRA provisions in this supplemental handbook end when the FFCRA ends. At that time, employees are no longer eligible for FFCRA emergency paid sick leave or emergency family and medical leave."



Families First Coronavirus Relief Act Poster

The DOL requires that covered employers post FFCRA rights in the workplace. The easiest approach is to use the FFCRA rights poster DOL has created. It is [available here](#) at the DOL website. It is available in multiple languages, including English, Spanish, Chinese, Hmong, Korean, Polish, Russian, Portuguese, Tagalog, Thai and Vietnamese. If you are a federal employers, the rules are slightly different. You will have to use a modified poster such as [this one](#).

The poster should be placed in a highly visible workplace location and on your Human Resource website. It should also be included in your supplemental handbook. It provides a complete overview of the new paid leave in an easy-to-understand format. You should also include specific instructions on how employees should ask for the paid time off. There are no DOL forms for making the request, so you will have to come up with your own.

FFRCA Emergency sick and family leave

The FFCRA is the first federal law providing paid leave to private sector workers and most public employees. Previously, Congress provided limited paid family leave for federal workers only. Some employees are entitled to their full pay for up to 80 hours. Others receive partial pay. But the new law is limited in scope as well as time. It is only available during the current national pandemic emergency. It provides paid time off for COVID quarantine, diagnosis and treatment. It also allows parents paid time off when COVID shuts down schools or child care centers.

Your temporary handbook should outline the benefit as follows:

1. Employees receive up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage.
2. Employees receive the benefit at 100% of pay if ordered into COVID quarantine by a government official, at the suggestion of a health care provider or because they have symptoms and are seeking a test or treatment, up to \$511 daily and \$5,110 total.

3. Employees receive 2/3 of their pay, up to \$200 daily and \$2,000 total if caring for a family member with COVID or to care for a child at home due to COVID-related school or daycare closures.
4. Employees receive up to a total of 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for up to \$200 daily and \$12,000 total.
5. A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.



Sexual orientation and gender identity provisions

Employers must also revise their regular handbooks to reflect the major Supreme Court decision this summer on sex discrimination. The court ruled 6-3 that Title VII's sex discrimination provision applies equally to discrimination based on sexual orientation and gender identity. You should amend your handbook's equal opportunity statement as follows:

Our company does not discriminate in employment opportunities or practices on the basis of race, color, religion, sex **including sexual orientation, gender identity or status as transgender**, national origin, age, disability, military service, genetic information or any other characteristic protected by federal, state or local law.

You should also go through your handbook, policies and training materials, looking for rules that conflict with the new statement. Then change all those to reflect expanded sex discrimination protections. For example, you likely will have to revise handbook grooming and dress code rules. Some common handbook rules requiring men to wear suits and women to wear skirts or dresses must be removed. The same is true for gendered hair style rules. Simply delete these sex-based rules entirely or modify to reflect workers must wear clean and appropriate for the workplace clothing. Here's an example of a revised dress code:

All employees must dress for their position and must be **clean, neat in appearance** and free of any distractions that may impair health or safety in the workplace. Employees with questions about what is acceptable may contact the HR office for guidance. Our company remains committed to supporting our employees' religious, ethnic and cultural beliefs and will modify the dress code accordingly. **Our company does not enforce the dress code in a way that reinforces stereotypes about how a particular gender**

should look and dress.

Also review your anti-harassment policies. Handbook revisions must include a prohibition against harassment based on sexual orientation or gender identity. Your anti-harassment policy should be inclusive and state:

We do not tolerate harassment of any type, whether based on sex, **sexual orientation, gender identity**, race, color, national origins, religion, age, military service, disability, genetic information or any other characteristic protected by federal, state or local laws. Employees who feel they have been harassed, are working in a hostile environment or have observed harassing behavior at work are encouraged to contact the HR office. Supervisors who observe harassment or discrimination, including based on **sexual orientation or gender identity**, must report this to the HR office.



rules

One of your essential handbook revisions should be an emergency policy. Employees should know exactly what to do when an emergency hits – whether it's a pandemic, natural disaster or something else. Your emergency rules should include:

Telework

If we've learned anything this year, it is that telework is essential for business continuity during a crisis. Set the basic rules and include them in your handbook. For example, let workers know whether their position is approved for telework during a winter storm or other forced closing.

Include emergency

Violence or unrest

Your handbook revisions should also include information on responding to threats like a violent employee, customer belligerence or outside unrest. Start by identifying an emergency response team in each facility. Include specific rules for workers to follow during a crisis. Supplement the handbook rules with training programs in de-escalation, emergency first aid and building evacuation.

Final note: Making sensible and essential handbook revisions now will protect your organization from needless litigation later. For example, there have already been twenty-two employee lawsuits filed over denied FFCRA leave. There's also been a big uptick in lawsuits over sexual orientation and gender identity discrimination since the summer. Plus, the EEOC is pushing forward with related lawsuits testing the limits of the Supreme Court decision.