



A Program Prepared for:



Society of Louisiana CPAs

2025 Human Resources Updates:


Handbooks, Laws, and New Practices



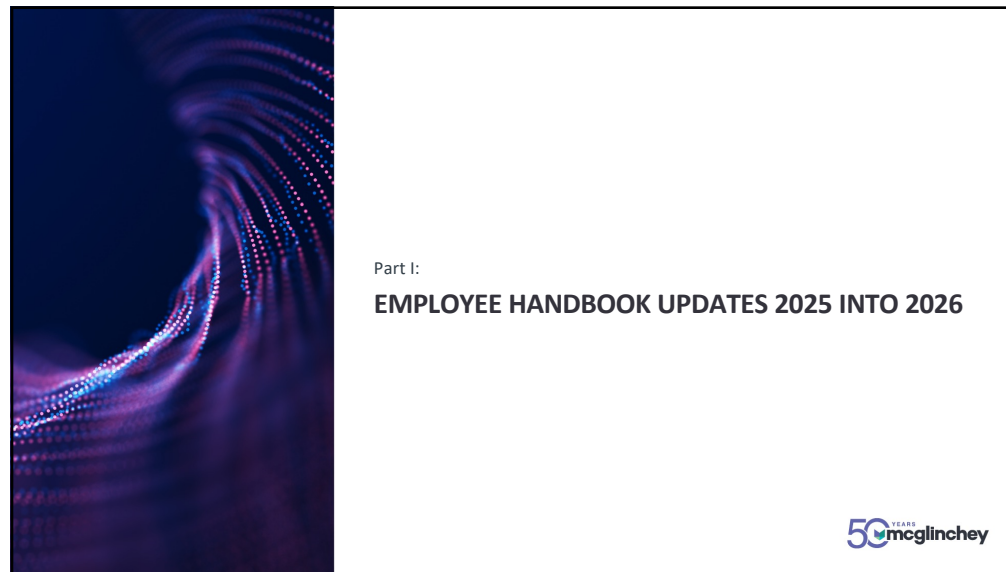
1

Disclaimer

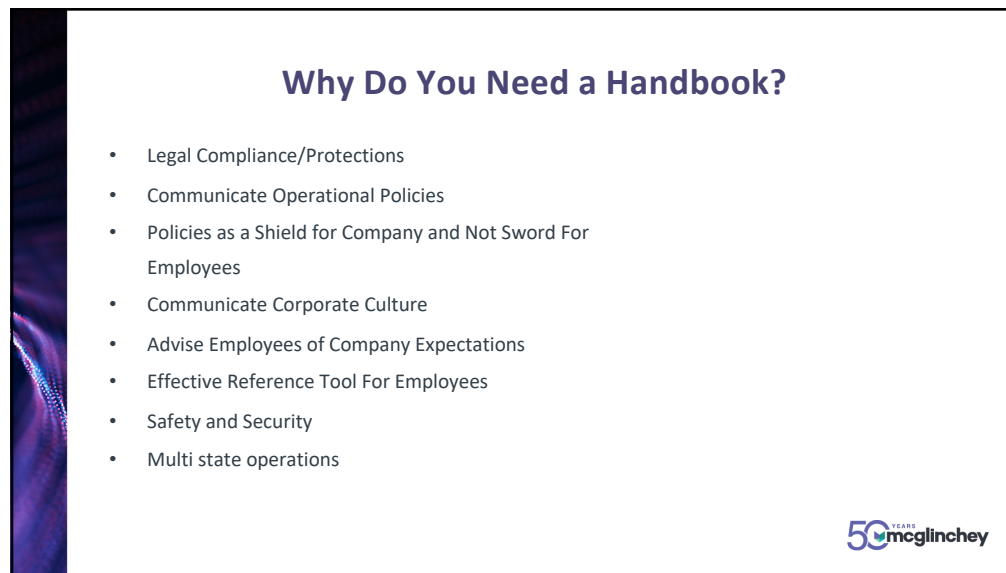
This presentation was prepared by McGlinchey Stafford, PLLC for informational purposes only and does not constitute legal advice. The information included in this presentation is not intended to create, and receipt of it does not constitute, a lawyer client relationship. Readers should not act upon the information contained in this presentation without seeking advice from legal counsel.



2



3



4

What NOT to Include in a Handbook

- A bad handbook or one that is misapplied may do more harm than good
- If not strictly followed, a handbook may give rise to breach of express or implied contract, misrepresentation or promissory estoppel claims
- Failure to apply handbook policies uniformly may support claims of discrimination or retaliation
- Can create legal rights where none exist
- Outdated information



5

Advantages of Employee Handbooks

- » Valuable in introducing new employees to the organization
- » Helps ensure consistency in treatment
- » Reduces misunderstanding and confusion about practices and expectations
- » Aids in defending adverse action when responding to complaints or agency investigations
- » Identifies proactive culture particularly in today's changing world



6

Implied Contract

- Progressive discipline procedures in a handbook can form an implied contract. *See Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708 (Colo. 1987).
- A properly written contract disclaimer may prevent a handbook from being enforced as a contract. *Therrien v. United Air Lines, Inc.*, 670 F. Supp. 1517, 1520-1523 (D. Colo. 1987); *Ferrera v. Nielsen*, 799 P.2d 458, 461 (Colo. App. 1990).
- Failure to follow a stated progressive discipline policy *even with* discretionary language may be evidence in an employee's favor when establishing motivation for an employment decision. *Cox v. Mignon Faget, Ltd.*, No. CV 24-1068, 2025 WL 1810160 (E.D. La. July 1, 2025)



7

Key Handbook Components

- Welcome Letter
- Introductory Statements and Disclaimers
- Employment at Will
- Code of Conduct
- Right to Interpret and Change Policies
- Preeminent Employment Policies
- Disciplinary Actions
- Benefits
- Leave Policies
- Separation from Employment
- Acknowledgment of Receipt



8

Introductory Statement

- Welcome Statement
- Company history and culture
- DISCLAIMER – note state law tangents
- At-Will Employment
- Handbook is not a contract
- Handbook contains guidelines only
- All policies subject to change at company's sole discretion
- Official Documents Prevail



9

Legal Compliance

- Disclaimer -- maintain "at will" status
- Harassment Policies
- EEO Policies
- FMLA Policy (if Applicable)
- FLSA Safe Harbor Policy
- Vacation Pay Policy
- Sick/Personal Day Policies
- Review Applicable state, federal and local laws
- Right to modify handbook



10

Equal Employment Opportunity

- National/Federal Protected Classes

- » Race
- » Color
- » Religion
- » Creed
- » National Origin/Ancestry
- » Ethnicity
- » Sex (including gender, pregnancy, sexual orientation, gender identity)
- » Include Catch-All Language
- » Consider state-specific protected classes
- » Age
- » Disability
- » Physical or Mental Disability
- » Citizenship
- » Service in Uniformed Services
- » Genetic Information



11

Family and Medical Leave

- Applies to employers with 50 employees within a 75 mile radius
- Applies to employers who have been there over one year and worked over 1250 hours.
- Louisiana Law: Unpaid Family Leave
 - 6 weeks for a normal pregnancy and childbirth, plus 4 months to recover



12

Employee Leave and Reasonable Accommodation Policies

- Certain federal laws require employers to engage in an interactive process with employees regarding disabilities, both long- and short-term.
- FMLA
- Americans with Disabilities Act (ADA)
- Pregnant Workers Fairness Act (PWFA)
- State and local leave laws



50 YEARS
mcglinchey

13

Americans with Disabilities Act (ADA)

- Discrimination includes failure to make a reasonable accommodation for a qualified individual with a disability.
 - » Employee only has to give enough information to put the employer on notice of the need for accommodation
- Employer must engage in an “interactive process” in good faith with the employee and the two will work together to determine a reasonable accommodation.
- The accommodation must be effective, BUT it need not be the best accommodation nor the most expensive accommodation.

50 YEARS
mcglinchey

14

Identifying Accommodations

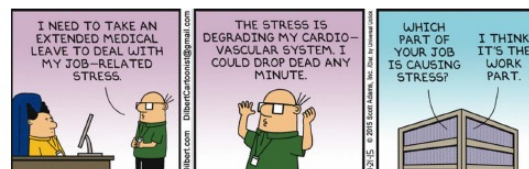
- No “Magic Words”
 - » “Qualifying individuals” must be able to perform the “essential functions” of the position
 - » A “disability” must limit one or more major life activities
 - » Includes individuals who are “regarded as” having an impairment.
- Reasonable accommodations may include:
 - » Making existing facilities used by employees readily accessible
 - » Restructuring job duties
 - » Adjusting work schedules
 - » Reassignment
 - » Modifying equipment or devices



15

Leave as An Accommodation

- Generally, employer must consider providing unpaid leave as a reasonable accommodation if:
 - it does not offer leave as an employee benefit;
 - the employee is ineligible for leave under the employer’s policy; or
 - the employee has exhausted his or her leave under the policy or applicable law.



16

Pregnant Workers' Fairness Act (PWFA)

- Requires covered employers to provide “reasonable accommodations” to a worker’s known limitations related to **pregnancy, childbirth, or related medical conditions**, unless the accommodation will cause the employer an “undue hardship.”
- Like the ADA, requires an interactive process.
- The PWFA went into effect on June 27, 2023. On April 15, 2024, the EEOC issued its final regulation to carry out the law.
- Employment policies should be updated to reflect new PWFA requirements.



17

Limitations Under PWFA

- Physical or mental conditions related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.
- Known limitations do not have to meet the ADA’s definition of a disability and, therefore, broaden the spectrum of what employers must accommodate.
- For example, medical conditions may include lactation, miscarriage and pregnancy loss, and fertility treatment.
- Known limitations could include postpartum depression, preeclampsia, and gestational diabetes.



18

Paid Leave

- Momentum for bipartisan support of family friendly policies and a paid leave solution.
- Could see some action on paid leave, tax incentives for businesses, and child tax credits.
- If remains at state level, expect an increase in the number of jurisdictions that will impose a paid leave requirement, monitor local and state leave laws.

19



19

Take Aways

- Expect to see an increase in the number of jurisdictions that will impose a paid leave requirement on businesses operating in their area
- As of now, except in certain industries – such as education - Louisiana does not require employers to offer paid vacation, sick, bereavement, or holiday leave
- Track local and state leave law requirements and federal legislation

20



20

AI-Based Technology In Employment Decisions

- Recruitment and Hiring
 - » Background checks
 - » Predictive analytics
- Promotions
 - » analyze performance data
 - » quantitative metrics
- Discipline and Terminations
 - » monitoring employee performance
 - » identifying underperformance

21



21

Legislative and Federal Agency Response to AI in the Workplace

- The Equal Employment Opportunity Commission (EEOC) released a technical assistance document, ["Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964,"](#) which is focused on preventing discrimination against job seekers and workers.
- The document explains the application of key established aspects of Title VII of the Civil Rights Act (Title VII) to an employer's use of automated systems, including those that incorporate artificial intelligence (AI).

22



22

Legislative and Federal Agency Response to AI in the Workplace

- The Consumer Financial Protection Bureau (CFPB) entered the fray by publishing a circular to address the issue.
- The [CFPB's circular](#) states that employers may be required to follow the Fair Credit Reporting Act (FCRA), which regulates information collected by consumer reporting agencies such as credit bureaus, medical information companies, and tenant screening services. In essence, the circular states that the FCRA applies to the use of third-party consumer reports regarding an employee's background, monitored activity, and "black box" AI or algorithmic scores.

23



23

Summary of CFPB's Circular

- NEW → Issued guidance October 24, 2024
- Employers are be required to follow Fair Credit Reporting Act (FCRA)
- Per CFPB - FCRA applies to use of third-party consumer reports regarding employee's background, monitored activity, AI or algorithmic scores
- FCRA Requirements:
 - » obtain written consent prior to obtaining a consumer report
 - » transparency about data that will be used in making adverse employment decisions
 - » have a dispute mechanism to challenge potentially inaccurate information

24



24

Types of AI Reports Subject to FRCA

- predicting worker behavior
- reassigning workers
- disciplinary actions
- evaluating social media activity

25



25

Best Practices

- Develop strong AI policy to anticipate usage and restricting usage.
- Recruiting broadly to attract a wide pool of hiring candidates.
- Create, review and maintain criteria for hiring and terms and conditions of employment.
- Evaluate handbooks, policies, training modules and communications to identify and remove biases.



26

Immigration Take Aways

- Monitor possible immigration reforms that may impact hiring and employment practices, particularly in industries relying on a foreign workforce
- Start taking measures to tighten up your employment eligibility verification process to ensure that your business is not impacted by mass deportations.
 - » This is particularly important for industries that rely heavily on an unskilled labor, but with the number of DACA and TPS workers, any industry may be effected

27



27

Independent Contractors

- Expect rescission of DOL's 2024 rule defining "independent contractors" under FLSA making it harder to classify workers as independent contractors for wage and hour purposes.
- Expect overturning of NLRB decision last year making it harder for companies to classify workers as independent contractors for labor relations purposes.
- If the 2021 Independent Contractors Rule is restored, the five-factor test will be reimplemented. The core factors previously were the nature and degree of the worker's control over the work and the workers opportunity for profit and loss.

28



28

Take Aways

- Review your independent contractor classifications to determine whether they will shift under expected changing federal standards, while evaluating all work arrangements that might fall under an “employee” designation
- Prepare for potential shifts in compliance



50 YEARS
mcglinchey

29

29

Labor Relations

- Under Biden administration, labor advocates and unions have enjoyed favorable actions over the past few years –
 - » new standards make it harder for employers to enforce workplace misconduct rules
 - » change in rules to made it more difficult to decertify unions
 - » gave the green light for third parties like union representatives to accompany safety inspectors during facility walkarounds
 - » permit workers to promote political and social causes on their workplace uniforms
 - » created a new labor-friendly framework for determining when employers are required to bargain with unions without a vote by employees – just to name a few.

50 YEARS
mcglinchey

30

30

Labor Relations

- Despite Trump's campaign appeals to labor organizations, expect to see these efforts wiped clean or reversed over time between 2026 and 2028 as Republicans assume control of the Board.
- We anticipate agenda to be similar to his first administration:
 - » employers to have more leeway in labor relations
 - » overturning of recent employee-friendly decisions
 - » limitations on influence of unions
 - » appointment new NLRB General Counsel

31



31

Take Aways

- Evaluate workplace policies and training with counsel to align with the expected shift we'll soon start to see – but ensure compliance with recent NLRB decisions until then
- Make sure you are aligned with your labor counsel when it comes to possible union organizing efforts during the waning days of labor-friendly policy.

32



32

Wage & Hour Policies & Processes

- Minimum Wage and Overtime.
- Weekly Payroll Designations
- Payroll Deductions and Other Practices
- Meal and Rest Periods
- Clocking and Off
- Safe Harbors Policy
- Notices and Record-Keeping
- Exempt v. Non-Exempt



33

Miscellaneous Policies

- Confidentiality
- Social Media
- PTO
- Inspections of Desks/Offices / Electronic Equipment
- Bulletin Boards
- Health and Safety
- Dress Code
- Communications
- Performance Evaluations & Salary Review
- Conflicts of Interest
- Code of Conduct
- Workers Compensation
- Solicitations, Postings and Distributions
- Company Property
- Electronic communications and system
- Privacy of Company Access



34

Separation Of Employment

- Resignation Policy
- Exit Interviews (If applicable)
- Return Of Company Property
- Severance Pay (If applicable)
- References
- Reminder of Confidentiality
- Reminder of Non-Compete/Non-Solicitation Obligations



35

NLRB Considerations In A Handbook

- June 6, 2018 Guidance from NLRB post-Boeing
 - Rules requiring civility, and authority to speak for employee and preclude dissemination of confidential information usually ok
 - Rules regulating off duty conduct, confidentiality may require individualized scrutiny.
 - Rules against joining outside organizations or confidentiality of terms and conditions of employment are still unlawful.
- Cannot include any policy that would



36

Trump 2.0: What to Expect in D.C.

- Republicans control the White House and Congress, holding the House by a razor thin majority.
- Narrow majority will be a barrier to enacting anything that peels off even a few moderates
- Potential of Democrat filibusters on certain controversial issues could also be a barrier
- That said, there are some expected changes on the horizon in the employment context.

37



37

Diversity, Equity, and Inclusion

- The push and pull of diversity, equity and inclusion initiatives will continue in terms of federal and state legislation, executive order activity and general discourse
- Workplace Trends: Many entities are currently reevaluating with emphasis on intersectional and overlapping social identities and related social oppressions.
- Wal-Mart, Target, Lowes and McDonald's have scaled back their DEI programs but Costco and Apple have reaffirmed their commitments.

38



38

EEOC Advocates Against “Illegal DEI”... But What Does That Mean?

- EEOC has deprioritized new workplace discrimination complaints based on the executive order recognizing two immutable sexes and issued documents regarding DEI related discrimination at work.
- Executive Order mandating federal investigations into DEI initiatives across various sectors are getting push back from multiple state bars and the ABA. Multiple courts are also implementing stays and limitations.
- Several states have enacted or proposed Anti-DEI legislation: Alabama, Idaho, Iowa, Indiana, Kansas, North Carolina, Utah, Tennessee.



39

Pay Equity

- EEOC announced it seeks to revive pay data collection as part of annual EEO-1 submissions
- This action would require employers to turn over information to the government about wages they pay their workers and the number of hours worked
- EEOC would use data to identify pay gaps, then target specific employers to investigate alleged pay discrimination practices
- Expect Trump administration to end this initiative before it starts



40

Take Aways

- While the pay data collection initiative won't be resurrected, many pay equity initiatives have taken hold across the country at the state level
- Louisiana does not require pay disclosures, but does prohibit pay inequity on basis of sex race, color, religion, or national origin
- Do not expect the Trump EEOC to ignore pay equality issues altogether, so take steps to ensure pay equity to avoid significant penalties

41



41

Regulatory Approaches

- NLRB will maintain a 3-2 Democratic majority until 2026 when vacancy is open to reverse the majority, expect changes in 2026
- Expect changes to OFCCP guidance and enforcement initiatives
- OSHA – expect regulatory initiatives to be withdrawn and dismantled
 - » proposed heat safety rule
 - » union walkaround rule
- EEOC – expect changes to what EEOC prioritizes, and stay tuned for executive orders, proposed legislation, agency action, and possible revocation of regulations via the Congressional Review Act (ex. recent controversial PWFA regulations)

42



42

Wage and Hour: Overtime

- Beginning July 1, 2024, the DOL increased the salary threshold, making millions of previously exempt employees nonexempt from overtime pay. The new overtime rule increased the FLSA salary threshold to \$43,888 annually (\$844 per week), up from \$35,568 (\$684 per week).
- This rule was the subject of a recent decision issued by the U.S. Court of Appeals for the Fifth Circuit in *Mayfield v. United States Department of Labor*. In the case, the Fifth Circuit held that:
 - » The DOL has the authority to set a minimum salary threshold for white-collar exemptions under the Fair Labor Standards Act (FLSA);
 - » The DOL's exercise of this authority does not violate constitutional principles; and
 - » The DOL's salary rule does not exceed its statutory authority.
- The Fifth Circuit's decision was in response to a lawsuit filed by a Texas fast-food operator, who argued that Congress did not authorize the DOL to use salary as a test for managerial duties. The court rejected this argument, noting that salary-based distinctions are consistent with the FLSA's structure.



43

43

Overtime

- The new overtime regulations include an automatic update provision so, on January 1, 2025, the salary threshold will increase to \$58,656 annually (\$1,128 per week). The COL has appealed the Texas Court's Stay and the matter remains pending.
- So here's the question: Will that threshold go into effect under the new administration?



44

44

Other Wage and Hour Issues

- Federal Minimum Wage Increase
 - » would require approval of Congress;
 - » 2024 platform supported “raising wages” so could see a push for slight increase in federal minimum wage;
 - » current rate remains \$7.25
 - » pending bill proposes increasing minimum wage incrementally to a maximum of \$17.00 by 2029 – Trump has expressed skepticism.
- No tax on tips and overtime pay.
 - » bipartisan support
 - » would require approval of Congress
 - » Included in “Big Beautiful Bill” of Summer 2025

45



45

Recent Court Ruling

- *EMD Sales v. Carrera* – Supreme Court held employers only have to establish a preponderance of evidence to show an employer meets an exemption.
- Judge Kennelly, of the Northern District of Illinois granted a preliminary injunction barring the DOL from enforcing the certification provision in the January 21, 2025 Executive Order, “ending Illegal Discrimination and Restoring Merit Based Opportunity”. The judge opined that the requirement First Amendment rights outside of the workplace and was vague and overbroad.
- On the other hand, the Fourth Circuit Court of Appeal reversed an injunction on multiple executive orders to allow the government to enforce the others while litigation continues.

46



Recent Court Rulings

- The Fifth and Sixth Circuit Courts remind us that an HCE exemption remains a highly fact-intensive analysis, noting that in addition to earning in excess of \$107,432.00 have an actual, predictable salary that is not dependent on the numbers of hours worked.



47

Take Aways

- Focus on your state and local laws in order to keep pace with any minimum wage increase
 - » As of now, same as federal minimum wage - \$7.25
- Hospitality employers should start thinking about how a change in taxes on tips could impact their wage structure, tip pooling, policies on employees reporting the tips they receive, and other pay policies
- Employers work closely with labor attorney and business accountant to stay on top of these issues



48

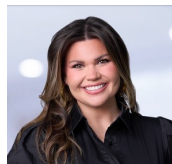
Questions?



49



Magdalen Blessey Bickford
Member, New Orleans
mbickford@mcglinchey.com



Madeline A. Earles
Associate, New Orleans
mearles@mcglinchey.com



Jayla Pruitt
Law Clerk, New Orleans
jpruitt@mcglinchey.com



50