



ZASHIN & RICH

**TOP EMPLOYMENT HANDBOOK POLICIES
FOR 2019**

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- 20 years of experience as an employment lawyer and human resources professional.
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- Assists clients with HR compliance, including day-to-day discipline, handbook policies, job descriptions, leave issues, FLSA compliance, salary HR audits.
- OSBA Certified Specialist in Labor and Employment Law.
- Selected to "Super Lawyers" each year since 2015.
- Listed in Best Lawyers in America for Employment Law- Management.



OSBA Certified Specialist
in Labor and Employment Law



2

TOP EMPLOYMENT HANDBOOK POLICIES

- ✦ **Guns** –
 - ✦ Ohio's CCW "Parking Lot" Law
- ✦ **Marijuana** –
 - ✦ Ohio's Medical Marijuana Law
- ✦ **Workplace Accommodations**
- ✦ **Pregnancy-Related Policies**
 - ✦ Including light duty, lactation breaks
- ✦ **Workplace Violence and Bullying**

AGENDA



3

**Dealing with Guns in the Workplace
After Ohio Passed the "Parking Lot" Law**



- ✦ **Became effective March 2017.**
- ✦ Policies cannot restrict CCW holders from transporting their firearm and ammunition in their personal vehicles.
- ✦ What is the general rule?



4

**Dealing with Guns in the Workplace
After Ohio Passed the "Parking Lot" Law**



- ✦ CANT prohibit CCW holders from having guns in their private vehicle while on employer parking lots.
- ✦ Once employee leaves vehicle, the gun (and ammo) must be locked in glovebox, trunk or other enclosed and locked container in the car.
- ✦ What can be limited?



5

**Dealing with Guns in the Workplace
After Ohio Passed the "Parking Lot" Law**

- ✦ CAN prohibit removing from personal vehicle.
- ✦ CAN prohibit carrying the guns into employer buildings.
- ✦ CAN prohibit carrying in Employer-owned vehicles.
- ✦ TRICKIER – use of personal vehicle while performing work for Employer??
 - ✦ Law says CCW holders may "transport" in their personal vehicle and also says employer cannot pass policies that "have the effect" of prohibiting such transport.
 - ✦ But what about a case worker who has to transport a child in her personal vehicle?



6

Dealing with Guns in the Workplace After Ohio Passed the "Parking Lot" Law

✦ **IMMUNITY?**: Statute says employer not liable in a civil action for harm arising out of another's actions "involving a firearm transported or stored pursuant to" the statute unless the employer "intentionally solicited or procured the other person's injurious actions."

✦ But this does not address potential liability for another's actions involving a firearm that was not stored "pursuant to the statute" (e.g., in an unlocked vehicle).

7



Dealing with Guns in the Workplace -Policies Impacted

- ✦ Update Weapons Policies to be in compliance
- ✦ Update Employer Property policies to the extent they prohibit CCW holders from bringing weapons onto employer property.
 - ✦ Make it clear that CCW holders may store gun and ammunition in their private vehicle while in parking lot
 - ✦ May want to include active military personnel with valid military I.D. - even without a CCW license (the law makes an exception for them)
- ✦ Use of Vehicles Policy should be updated
 - ✦ Can prohibit in employer owned vehicles
 - ✦ Risk is there for limiting "transport" in personal vehicle used for employer-purposes

8



Dealing with Medical Marijuana



9



Dealing with Medical Marijuana

- **Drug-free workplace policies are still permitted**
 - Should revise nonetheless to make it clear that marijuana still prohibited regardless of Ohio marijuana law.
- **Still permitted to remove employees for violating drug-free workplace policy (even for possession or distribution)**
 - Will still be deemed “just cause” under Ohio Unemployment Compensation Law.
- **Workers Compensation still denied if injury due to use of marijuana.**
 - Safe workplace/workplace injury policy should specify this.




10

Dealing with Medical Marijuana

- **Cannabis products already being marketed for “wellness”**
 - “TreatWell” makes liquid forms of cannabis for humans and pets for seizures, insomnia, anxiety, and pain relief (www.treatwellhealth.com)
 - “Lord Jones” (known for edible cannabis chocolates) is making cannabis pain relief creams (www.lordjones.com)
 - “Whoopi & Maya” are providing cannabis products for women’s health and for relief during their monthly cycle – Epsom salts, salves, etc. (www.whoopiandmaya.com)
- **Matter of time before collision between cannabis “wellness” products, Employer policy and ADA**




11

ADA AND MARIJUANA

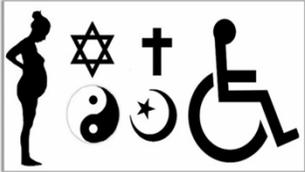
- Most courts that have addressed this issue so far have held that the ADA does not require an accommodation for the use of medical marijuana because it remains illegal under federal law.
- Ohio’s Medical Marijuana Law specifically does not require employers to provide an accommodation.
- Ohio’s law specifies that employees do not have a right to sue employers for any disciplinary action related to use of medical marijuana (whether on or off duty).
- **However** – will the increase in various “wellness products” that do not involve traditional smoking of pot and conceivably do not result in impairment change things?




12

Dealing with Accommodations in the Workplace

- Reasonable Accommodation Policy.
- What does it include?
 - Disability?
 - Pregnancy?
 - Religion?





13

Dealing with Accommodations in the Workplace

- What Process is Identified in the Policy?
 - Must be "Reasonable"
 - Employer decides what is reasonable
 - Clarify that accommodation that violates federal law is not "reasonable" (Medical marijuana)?
 - Undue Burden and Direct Threat Exceptions
 - Employee Required to Cooperate – including medical information when necessary.
 - Who to make the request?
 - Interactive Process Identified?
 - Employer discretion to provide alternative.



14

ADA and Pregnancy

- The EEOC recently updated its guidelines on pregnancy, making clear that while pregnancy itself is not a disability, pregnant employees' impairments related to pregnancy affecting major life activities are covered by the ADA.
 - Complications
 - Bed rest
 - High Blood pressure





15

ADA and Pregnancy

- **EEOC guidelines on ADA and pregnancy:**
 - Pregnancy-related impairments do **not** have to be severe or fully prevent a major life activity to be covered
 - A pregnant employee may require early leave
 - Reasonable accommodations may include allowing a pregnant employee to have a water bottle at her station, take more frequent breaks, or sit while working



16



Lactation Break Policy

- The **Patient Protection and Affordable Care Act** also requires employers to accommodate nursing mothers' need to express breast milk by providing a place to do so as often as needed.
 - Do you have a Lactation Break policy?



17



Pregnancy and Light Duty Policies

An employee, who delivers light packages for UPS, becomes pregnant. Her doctor orders her to lift no more than 20 lbs. Even though her work rarely, if ever, requires her to lift heavy packages, UPS includes lifting up to 70 lbs as an essential job function.

- Employer policy accommodates lifting restrictions with temporary assignments only when: (1) the employee suffered an on-the-job injury; (2) the employee had a disability under the ADA; or (3) a driver lost their DOT certification.

UPS requires the employee to take unpaid leave (she used all of her FMLA leave), and was reinstated after giving birth.

18



Pregnancy and Light Duty Policies

The Supreme Court decided that UPS's rule that employees could be assigned to light duty only for on-the-job injuries discriminates against pregnant women.

The EEOC's 2014 guidelines also specify that employers must accommodate pregnant employees with light duty if the same is done for employees **similar in their ability or inability to work.**

Young v. UPS, 135 S. Ct. 1338 (2015)



Pregnancy and Light Duty Policies

- Supreme Court's prima facie case for pregnancy accommodation:
 - (1) affected by pregnancy, childbirth, related medical condition; (2) requested accommodation; (3) denied accommodation; and (4) employer accommodated others similar in their ability or inability to work.
- Employer must then proffer its legitimate, nondiscriminatory reason (which cannot involve cost of including pregnant worker)
- Employee can overcome Employer's reason if she demonstrates that the employer's policies impose a "significant burden" on pregnant workers



Workplace Violence

- **Approximately 2 million American workers are victims of workplace violence each year.**
 - Ohio had 23 workplace homicides in 2014
 - Bureau of Labor Statistics
- **Workplace violence includes:**
 - Verbal threats;
 - Written threats;
 - Threatening body language;
 - Physical assault (or attempted)
 - Aggravated assaults



Workplace Violence

- **Workplace violence also includes domestic violence that carries over into the workplace.**
- **Statistics show that:**
 - Medical/mental health costs associated with domestic violence is \$5.8 million per year.
 - Employers lost 7.4 million days of productivity each year due to female employees being assaulted or stalked.
 - Monetary loss of productivity is estimated between \$2.5 and \$4.5 billion per year.

22 

Workplace Violence

- In 2010, Old Navy was sued after an employee's boyfriend entered a store in downtown Chicago, pulled out a gun and shot her before killing himself.
- Lawsuit claimed it could have been prevented because:
 - store managers were aware of threats made against the employee but failed to act.
 - Store security measures were outdated because boyfriend gained access through employee-only entrance and through a restricted area.

23 

Workplace Violence

- **Civil Protection Order (CPO) may be issued to victims**
 - When made aware, maintain privacy rights of victim
 - Do not allow employee to waive terms of CPO while at work
 - Put security policy measures in place
 - Alert security and front desk (provide photo)
 - Do not let employee be alone at work
 - Change email/phone of impacted employee
 - Refer employee to EAP

24 

Workplace Violence

Work Behaviors Indicative of Possible "Workplace Violence" Potential

- Depression and withdrawal
- Always disgruntled
- Unexplained increase in absenteeism
- Decrease in productivity
- Inability to concentrate
- Resistance and overreaction to changes in procedures
- Unwillingness to accept blame or criticism
- Repeated violations of company policies
- Feelings of personal and professional failure
- Threatens or verbally abuses others
- Explosive outbursts of anger or rage without provocation




25

Workplace Bullying

- **Workplace Bullying Targets:**
 - Disabled workers: (44%)
 - LGBT workers: (30%)
 - Female workers (34%)
 - Males workers (22%)
- **Workplace Bullying Behaviors:**
 - Falsely accused of mistakes not made: 43%
 - Comments/input ignored, dismissed: 41%
 - Different standards: 37%
 - Gossip spread about the worker: 34%
 - Constantly criticized: 32%
 - Belittling comments: 29%
 - Excluded from meetings/projects: 20%
 - Targeted for personal attributes (race, gender, etc.): 20%




26

Workplace Bullying

- **Workplace Bullying :**
 - Often bullies will target the most talented employees in an attempt to drive them out (which demoralizes those who are left)
 - May be through social media, texts, emails.
- **2013 Career Builder Survey:**
 - 32% of employees reported bullying to HR/management
 - 58% of employees say no action was ever taken
 - 49% confronted their bully
 - 45% said the bullying stopped
 - 44% said nothing changed
 - 11% said it got worse.
- **Bullying may also constitute harassment . . .**



27

Keys to Combating Violence/Bullying

• Policies

- Discrimination and Harassment
 - Prohibit
 - Define
- Complaint process
 - prompt, remedial action
- No retaliation
- Workplace Violence
 - Zero tolerance policy
 - Include threats
 - Protective Orders



28

Keys to Combat

• Policies

- Bullying Policy
 - Define
 - Merge with harassment policy?
 - Include online/social media
- Safety Reporting
- Weapons Ban (in compliance with "parking lot" law)
- Fitness for Duty Exams



29

Keys to Combat

• Workplace Security

- Restrict access
 - (digital access)
- Panic Buttons
- Security Guards
- Sign in/out
- Cameras



30

THANK YOU!

If you have questions concerning this presentation, please contact:

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31
