

WHY EMPLOYEE-SPECIFIC POLICIES MATTER: BUILDING CLARITY, COMPLIANCE, AND TRUST TO PROTECT YOUR BUSINESS

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I. IMPORTANCE OF CREATING JOB DESCRIPTIONS

A. **Why do job descriptions matter?**

1. Define essential duties
2. Establish performance expectations
3. Clarify reporting structure
4. Identify required qualifications

B. **Essential Functions & Legal Protection**

1. Clear identification of “essential functions” is critical.
2. Clear policies are essential for:
 - a. Requests
 - b. Performance
 - c. Termination
3. Americans with Disabilities Act (“ADA”)
 - a. What employers must show
 - b. What courts and agencies look to

C. **Equal Employment Opportunity Commission (“EEOC”)**

1. Protection in EEOC Matters
2. Job descriptions help defend against claims of:
 - a. Discrimination
 - b. Failure to Accommodate
 - c. Wrongful Termination

D. Best Practices for Job Descriptions

1. Have them
2. Annual review
3. Update when duties materially change
4. Avoid vague language
5. What to include:
 - a. Physical requirements
 - b. Required certification or licenses
 - c. Supervisory Authority
 - d. Work Environment Expectations
6. Risk-Reduction Tips: Make sure that the description aligns with: (a) performance evaluations; (b) actual day-to-day responsibilities; (c) organizational chart

II. SPECIFIC POLICIES TO ENSURE COMPLIANCE

A. Immigration (I-9 Forms)

1. Federal Law
 - a. Employers' duties:
 - i. Verify the identity and employment authorization of each person they hire;
 - ii. Complete and retain an I-9 form, Employment Eligibility Verification; and
 - iii. Refrain from discriminating against individuals on the basis of national origin, citizenship or immigration status.¹
 - b. Why a Written Policy Matters
 - i. Standardizes onboarding process

¹ <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/10-why-employers-must-verify-employment-authorization-and-identity-of-new-employees>

- ii. Assigns responsibility
- iii. Establishes document retention procedures
- iv. Reduces exposure during audits by agencies

B. Background Checks

1. Federal Law

a. Fair Credit Reporting Act (“FCRA”)

- i. When employers run background checks through a company in the business of compiling background information, they must comply with FCRA
- ii. What is “background information”?
 - (A) Credit reports
 - (B) Criminal record checks
 - (C) Consumer report

b. FCRA Best Practices

- i. All applicants must sign a background check authorization form
- ii. Do not seek background information from references or prior employers prior to obtaining this authorization
- iii. Place information in personnel file, except if name of person making the reference would be disclosed

c. State-Level FCRA Issues

- i. States have enacted laws that add requirements greater than FCRA policies.
 - (A) Arizona, Georgia, California, Maine, Massachusetts, Minnesota, New Jersey, New York, Oklahoma, and Washington
- ii. Must be aware of any state-level FCRA requirements before requesting or acting on a background report
- iii. Employers must notify a job candidate before and after adverse action is taken based on information received from a consumer report
 - (A) Pre-Adverse Action Report

(B) Adverse Action Report

- d. FCRA Damages
 - i. Consumers may seek actual damages arising from a violation
 - ii. Consumers alleging a willful failure to comply with an FCRA requirement may seek actual, statutory, and punitive damages
 - iii. May recover costs and reasonable attorney's fees
2. Strong Policies Should Include:
 - a. When? Who?
 - b. Individualized Assessment Procedures
 - c. Confidentiality Safeguards
3. Why Does It Matter?

C. Non-Discrimination & Harassment Prevention

1. Statement of Non-Discrimination
 - a. Best Practices According to the EEOC²:
 - i. State that discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or transgender status), national origin, disability, age (40 or older) or genetic information (including family medical history) is illegal and will not be tolerated. Provide definitions and examples of prohibited conduct, as needed.
 - ii. State that you will provide reasonable accommodations (changes to the way things are normally done at work) to applicants and employees who need them for medical or religious reasons, as required by law.
 - iii. Explain how employees can report discrimination.
 - iv. If possible, designate more than one person to receive and respond to discrimination complaints or questions.

² <https://www.eeoc.gov/employers/small-business/general-non-discrimination-policy-tips>

- v. Consider permitting employees to report discrimination to any manager.
- vi. State that employees will not be punished for reporting discrimination, participating in a discrimination investigation or lawsuit or opposing discrimination.
- vii. State that you will protect the confidentiality of employees who report discrimination or participate in a discrimination investigation, to the greatest possible extent.
- viii. Require managers and other employees with human resources responsibilities to respond appropriately to discrimination or to report it to individuals who are authorized to respond.
- ix. Provide for prompt, thorough and impartial investigation of complaints.
- x. Provide for prompt and effective corrective and preventative action when necessary.
- xi. Consider requiring that employees who file internal complaints be notified about the status of their complaint, the results of the investigation and any corrective and preventative action taken.
- xii. Describe the consequences of violating the non-discrimination policy.

2. Harassment Prevention

- a. Informing employees that harassment is prohibited;
- b. Identifying who employees should contact to discuss harassment questions or concerns;
- c. Assuring employees that they will not be punished for asking questions or sharing their concerns;
- d. Responding to harassment questions or concerns and investigating harassment complaints promptly and effectively; and
- e. Ensuring that managers understand their responsibility to stop, address and prevent harassment.³
- f. Policy Tips:

³ <https://www.eeoc.gov/employers/small-business/5-how-can-i-prevent-harassment>

- i. State that harassment based on race, color, religion, sex (including pregnancy, sexual orientation, or transgender status), national origin, disability, age (40 or older) or genetic information (including family medical history) is illegal and will not be tolerated. Provide definitions and examples of prohibited conduct, as needed.
- ii. Explain how employees can report harassment.
- iii. If possible, designate at least one person outside an employee's chain of command who can receive harassment complaints.
- iv. Consider permitting employees to report harassment to any manager.
- v. State that you will protect the confidentiality of employees who report harassment or participate in a harassment investigation, to the greatest possible extent.
- vi. State that employees will not be punished for reporting harassment or participating in a harassment investigation or lawsuit.
- vii. Require managers and other employees with human resources responsibilities to respond appropriately to harassment or to report it to individuals who are authorized to respond.
- viii. Provide for prompt, thorough and impartial investigation of harassment complaints.
- ix. Provide for prompt and effective corrective and preventative action when necessary.
- x. Consider requiring that employees who file internal complaints be notified about the status of their complaint, the results of the investigation and any corrective and preventative action taken.
- xi. Describe the consequences of violating the harassment policy.⁴

III. PAID TIME OFF POLICIES AND THE MICHIGAN EARNED SICK TIME ACT

A. **PTO Policies**

1. Clarity is critical

⁴ <https://www.eeoc.gov/employers/small-business/harassment-policy-tips>

- a. With unclear policies, employers risk:
 - i. Under-accrual or over-accrual errors
 - ii. Improper denials of leave
 - iii. Retaliation claims
 - iv. Wage and hour disputes

- 2. Michigan Earned Sick Time Act (“ESTA”)
 - i. Employers covered: All MI employers that have one or more employee(s), including any person, firm, business, educational institutions, corporations, limited liability companies, government entities, excluding the US Government.
 - ii. Employees covered: individuals engaged in service to an employer in the business of the employer.
 - iii. Under ESTA, employers must
 - (A) Provide earned sick time
 - (B) Track accrual
 - (C) Allow use for qualifying reasons
 - (D) Avoid retaliation
 - iv. Common Compliance Mistakes
 - (A) Assuming a general PTO policy satisfies ESTA
 - (B) Failing to define qualifying reasons
 - (C) Not updating employee handbooks
 - (D) Inconsistent application across departments