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Where We Are Going, We Need Clear Policies

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Policy Fundamentals

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What Is a Policy?

- Generally
 - A set of clear principles/guidelines for managing the employment relationship
 - Set expectations
 - Foster consistency, fairness, and compliance
- Do I want it to be an enforceable contract?
 - Probably not—if that's the case, be explicit that it's not a contract
 - Sometimes you do, but be intentional
 - Examples: confidentiality, arbitration, non-solicitation
 - Should indicate who at employer can enter into employment contracts

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Do I Need a Policy?

- Before writing a policy (or paying your lawyer to do it), ask yourself?
 - What am I trying to accomplish?
 - What work do I need it to do?
 - Is there a better way to accomplish this?
- Key Considerations
 - Does the law require me to have a policy?
 - Are we highly regulated?
 - Do we need instructions, a manual, a roadmap?

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Do I Need a Policy?

- Key Considerations cont'd
 - Will it help set expectations?
 - Will it educate/remind managers?
 - Is it a best practice?
 - Do I want to be able to reference this later, e.g., discipline?
 - Are we actually going to do this stuff?
 - Has someone else already done the work for me?

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Where Should the Policy Live?

- Employee Handbook or Manual
 - Most employment policies should live here
 - Easier to update
 - All in one place
 - Easier to use during on-boarding/orientation
- Safety policies may live elsewhere
- Many benefits policies and other frequently-changing policies should stand alone
- Consider standalone policies/agreements for confidentiality, non-competition, non-solicitation, arbitration

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Required and Commonly Used Policies

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Required

- At-Will Employment Statement
- EEO Statement
- Reasonable Accommodation (disability, religion, pregnancy) (6 or more employees)
- Lactation Accommodation
- Non-Discrimination/ Non-Harassment

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Required

- Sick Leave (10 or more, paid; less than 10, unpaid; in PDX, 6 or more paid)
- Paid Leave Oregon
- Family Medical Leave:
 - OFLA (25 or more) and/or
 - FMLA (50 or more)
- Crime Victim Leave (6 or more)
- Termination – what is due upon termination (PTO/vacation, sick, etc.)

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Required

- Work Week and Hours
- Breaks and Meal Periods
- Payday
- Holidays – Including Veterans Day

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Commonly Used

- Attendance
- Confidentiality/Work for Hire
- Use of the Company's Electronic Information System
- Social Media
- Discipline
- Drug and Alcohol Testing/Searches

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How Do I Draft a Policy?

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How to Draft a Policy

- Resources:
 - SHRM
 - Payroll services (ADP, Bamboo, Cardinal)
 - Your friendly neighborhood employment lawyers
 - Consultants
 - AI (proceed with caution!)

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How to Draft a Policy?

- Be careful with “off the shelf”/standardized form policies
- Laws can vary:
 - Different states can have different laws
 - Size of employer
- Understand how the policies fit together
 - Vacation/Sick vs PTO vs Paid Leave Oregon
 - Call in procedures and attendance policies

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How to Draft a Policy?

- Want employees to read and follow it?
 - Make it readable
 - Avoid legalese
 - Make it available
 - Electronic vs Paper
 - Keep it updated
- Want managers to read and follow it?
 - Train them
 - Consistently apply the policies

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Legal Review

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Should Legal Look At This?

- Key Considerations
 - Is the policy required by law or rule?
 - If not, does it relate to employment or other laws, e.g., reasonable accommodations, wage/hour, discipline, leave laws
 - Does it relate to the termination of employment, e.g., vesting or accrual of benefits; payout of commissions, bonuses, or accrued leave

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Efficient and Economical

- Ideally, your employment attorneys are involved in original drafting and/or review
 - Right the first time
 - Easier to update
- Sometimes starting from scratch is less expensive
- Focus on the policy's purpose and how you want to implement it
- An ounce of employment attorney's time is worth a pound of litigation attorney's time

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But What About ChatGPEsquire?

- You get what you pay for
- Experience matters
- Humans see connections the bots can't (yet)
- What happens when someone doesn't follow the policy?
- AI doesn't have malpractice insurance
- Your lawyers should be using AI, too, but the right way

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Updating and Communicating Policies

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Updating Policies

- Regularly review and update policies based on changes in law and business needs
- Annually calendar time to update policies
- OR legislative sessions, law often changes in July
 - Long sessions (odd years, e.g., 2025) - January through June/July
 - Short sessions (even years) – February through March
- Subscribe to legal updates (SHRM, Hershner Hunter)

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Communicating Policies

- Communicate updates promptly with explanations for changes
- Use multiple channels: physical copies, email, intranet , meetings, etc.
- Provide context and rationale
- Allow for Q&A
- Require employee acknowledgment that they received the new or updated policies



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