



## Episode 52: “Essential Updates for Your 2023 Employee Handbook,” With Rosemary Enright

Speakers: Ari Kwiatkowski and Rosemary Enright, Barclay Damon

**[Ari Kwiatkowski]:** Hi, everyone, this is a *Barclay Damon Live* broadcast where we discuss all things L&E, labor and employment. I’m Ari. Let’s dig in.

**[Ari]:** Hey, everyone. Welcome to episode 52, “Essential Updates for Your 2023 Employee Handbook.” I am thrilled to welcome back to the podcast today a repeat guest, but who has not been on for a few months, Rosemary Enright. As our listeners probably know, Rosemary is the practice group leader of the Labor & Employment Practice Group at Barclay Damon, and she brings with her years of experience on the management side and basically just representing employers in any capacity you can think of. So, Rosemary, with that long introduction, welcome.

**[Rosemary]:** Well, thank you, Ari. I am thrilled to be back. You’re right. It’s been months. I was starting to get a complex.

**[Ari]:** Well, I’m glad you’re back, Ro. And, you know, as you know and our listeners know, every week I ask our guests to share a fun fact about themselves. And I’m going to insist because, you know, in another life, I would love to have a travel-related podcast, but I’m going to insist that you... your fun fact be a travel-related story because you always have the best ones when you come on. So I’m going to turn it over to you for that.

**[Rosemary]:** All right. Well, you know, I was thinking about it, and I’m in my home office today—and we joke and call it Studio B—so here I am in Studio B and over my shoulder, I don’t know if it would be my right or left shoulder for our viewers, but you’ll see there’s... this is a photograph and it is a bamboo forest in Thailand. Now, I can’t take credit for the photo. I bought it here at the Allentown Art Festival, which—plug for the Allentown Art Festival. If you’ve never been. You should go, to all of our listeners—but anyway, I always did an around-the-world trip, so we took, I think, eight or nine weeks and went around the world and this was one of the stops. So I can talk about other stops, if I’m lucky enough to be invited back, was in Thailand. And so we were in Phuket and spent quite a bit of time there. And the fun thing about Phuket is that is where they actually filmed a lot of the James Bond when there’s like, you know, he’s on the speedboat racing and you’re like, look at that water and there’s big rocks out of the water and that it’s there. It’s in that Phuket area. And so the resort where we were staying, they would take you out on a daylong cruise. So we went out and it just happened to be the two of us on this boat. And they took us out and showed us and were saying, this is where this was filmed, this was where that was filmed. So that was a lot. So, yeah, Thailand’s a beautiful place.

**[Ari]:** I have not been, but it’s definitely on my list, so we’ll have to chat about that offline for sure.

**[Rosemary]:** But yeah.

**[Ari]:** All right. So as I mentioned, this is not a travel-related podcast, so let’s get down to it. Reminder to our listeners: last year, Rosemary joined us and we chatted about essential updates for your employee handbooks in 2022. And Rosemary is back to go through what you need to know about 2023. So Rosemary, I think the first thing that you were going to tell us about were some changes to the New York State Paid Family Leave law, right?

**[Rosemary]:** Exactly. Yeah. Well, it's interesting, Ari, because, you know, when we talked about doing this, you know, this episode with, you know, we were thinking, what are all the changes? What you know, what's coming up in 2023? And interestingly, while there is a lot, there isn't necessarily changes that might affect that handbook, right? So there's really two I mean, there's some others we're going to talk about that, yeah, you may want to think about including them, but really, at the end of the day, there's two. And the first is, as you correctly stated, Ari, the New York State Paid Family Leave. And let's just make sure everybody's clear. We're not talking about sick leave. A lot of people get confused. Right, Ari? You know, how many calls do we get with somebody talking about my employee's taking leave, they're sick and they'll call it "paid leave" or "paid family leave," and we have to stop them. So we're not talking about New York State's sick leave. You know, you accrue one hour for every 30 hours work. We're talking about the paid family leave. So New York's version of basically FMLA.

**[Ari]:** Yes, right.

**[Rosemary]:** So the 12 weeks and that... so just make sure, listeners, that's what we're talking about and then the change for 2023 is in the definition of what or who is a "family member." So I bet a lot of you out there took the model policy, you know, and it lays out who's eligible and the benefits and that. And it will say for purposes of this, for paid leave, this is what X is. And they defined things, and they define a "family member." And so for 2023, the family member now includes siblings. All right. So and when they say siblings, for purposes of this New York State Paid Family Leave, a sibling can be your natural, I guess you say natural-born sibling and adopted sibling, a half sibling and a step-sibling. So it's, you know, in whatever someone's family looks like. Right. Because everybody's families are different. That person who is a sibling is now covered. So what that means is that now our... an employee may take paid family leave under New York State to take care of a sibling who may be ill. So what you'll do, everybody, is just go out to your policy and drop in the word "sibling." Could you include all those definitions? Sure. You know, you could put a parenthetical and list, you know, adopted, natural, you know, half and step. Or you could just say sibling, I don't feel strongly either way. I don't know if you do, Ari.

**[Ari]:** I do not. And you anticipated my next question, Ro, which was so is this just a matter of basically adding a word.

**[Rosemary]:** Exactly.

**[Ari]:** In your handbook? All you need to do is go in there and add "sibling" and you're you should be okay.

**[Rosemary]:** Don't even have to update your table of contents, which, let's be honest, is really hard to do.

**[Ari]:** Yeah, I agree. That's probably the most onerous part of putting it together a handbook.

**[Rosemary]:** And that is right. That is right. So yeah, so that's the first, that's the first of our two. Ari.

**[Ari]:** Got it. And we'll definitely as you mentioned, Ro, talk about some other things we think employers should be aware of. But before we do for 2023, can you, can you just dive into that second or dig in, as we like to say, to that second topic that's new for handbooks?

**[Rosemary]:** Absolutely. So I'm interestingly, Ari and I have had a lot of conversations about this, because I know she's got a future podcast devoted to related topics with this. But I think a lot of you probably already have a lactation accommodation policy in your handbook. If you don't, you should. But I suspect if you've listened to our podcast, you do. And if you use any that we've provided or even some that are out on the web, like some of the model policies, they're quite good. But for 2023 it has been expanded. All right. And so now a lot of our policies will talk about, you know, the woman who's coming back, she's going to call and give five days notice that she's going to need, you know, this accommodate action. And there's an interactive process. So all of that is in that. So what changed? Well, now there's more words. You may have to update the table of contents.

**[Ari]:** Right.

**[Rosemary]:** So what they want, what you're required to do now is actually, I'd say, Ari, "describe" would you agree with that? Describe what the room looks like. So we know that we have to let employers have to permit women to take breaks, a reasonable number of breaks to express breast milk. So what you're going to do with your policy now is you're going to go in, you're going to talk about what this space will look like. So the room that you're going to provide and the requirements now in 2023 are well-lit, close to where the employee works, and private. So they don't have to worry about people intruding, coming in and out. So when you're in there, they know that it will be private. There has to be a table, an electrical outlet, and a chair. So and I think, Ari, did I mention, I don't know, the running water? I think there's also I don't know if I said that. Yeah. So basically the way I think of it, as goofy is this is going to sound, it's like when we were all in elementary school and you went to the school nurse. When you go into the school nurse, right, think about it. You go in there, there's the chair. There's also the cart, you know, and the right, you know that you right. But seriously, there's a table, there's running water, there's...It's well-lit, it's private. I mean, it's basically. So that's what New York State requires now. And you want to include all of that in your policy.

**[Ari]:** Yes.

**[Rosemary]:** So that's in your handbook describing it. So that's what that's what happens in 2023. Now, additionally, you also have to distribute a policy.

**[Ari]:** Yes.

**[Rosemary]:** You know, I know Ari has spoken about some of the others like, Ari. It's like the sexual harassment, right? Yeah. Yeah. So, you know, so same thing here. We're going to distribute a policy. And while it may include everything that I just talked about, you may also in that policy include, you know, when they have to punch in, punch out. New York State doesn't require that that the policy you give your employee may have more information. It may have your company's procedures. This is how we do it here.

**[Ari]:** Right.

**[Rosemary]:** In the handbook. All you really need, you don't need to talk about punching in, punching out all of that, but you need to focus on in that in the employee handbook for 2023 are the conditions that I just talked about, table, chair, electrical outlet. And one other thing, Ari, if your workplace happens to have a refrigerator, all right, somewhere. And obviously it's clean, but a refrigerator that the employees can use, the individual who may be expressing the breast milk should be given access to that in case they want to store it there. You know, you can't forbid someone from using that refrigerator. And to be crystal clear, you don't have to provide the refrigerator. It's just if you happen to have one like in our, as you know, in our law firm. Right. And in the cafeteria, we have a refrigerator.

**[Ari]:** Exactly.

**[Rosemary]:** They used to that they should be permitted to use that you can't prevent them and say, no, you can't use that.

**[Ari]:** Right? Yeah. So I think the main updates for 2023 in at least as we're talking about workers who are expressing breast milk in the workplace, is there are just more requirements in terms of what that space looks like. And I did want to ask Ro, because I think this is an important point for our listeners, and they may already know this, but this law applies to all employers in New York State, correct? Regardless of size or number of employees.

**[Rosemary]:** That's exactly right. Yes.

**[Ari]:** Great. I think that was a great overview of, you know, the new requirements under the New York state labor law. And to our listeners, as Rosemary mentioned, we'll have another podcast where we talk about the

Federal Pump Act, which is a similar piece of legislation that was recently signed into law. So we'll talk about that next week. But, Rosemary, at the beginning of the episode you mentioned there were two really new handbook-specific items, but I think there were some other updates to the law that we kind of wanted to flag for our listeners, right?

**[Rosemary]:** Yeah, exactly. Exactly. One, actually, before we even jump to those, Ari, you and I had talked, and we wanted to remind everybody that, you know, everybody's familiar because we did podcasts or episodes rather, ad nauseum on COVID, you know.

**[Ari]:** Glad they're in the past.

**[Rosemary]:** Me too. But so and we talked about the New York state vaccination leave. Yes. Now so relative to handbooks if some of you put in your handbook in your leave section or if you have a section that's called time away from work and you happen to include the New York state paid vaccination leave. All right, in your head, you were thinking, oh, well, it sunsets December 31 of 2022, but May 2023 handbook I'll take it out. Not too fast. All right. So don't you want to do that. So the vaccination leave was extended through the end of this year. So if it's in your handbook, you have to leave it. And if you have an end date in there of 2022, you'll want to update that to 2023, right? Yeah. And to be clear, Ari and I are not suggesting you should include that in your handbook, but if it is, you want to make an update because it's still enforced.

**[Ari]:** Yes.

**[Rosemary]:** Similarly, so is the New York State paid sick, you know, for COVID. Yes. The other thing, you know, I joke and when Ari and I are talking and we're talking to clients, we say, yes, there's New York State paid sick. There's also COVID paid sick.

**[Ari]:** Yes.

**[Rosemary]:** And that's still. So be careful. We've had a lot of clients call and say, you know, oh, well, my employee got COVID and I'm making them use their sick leave and wait a second. COVID's still out there. Yes, sick leave. So and there is no sunset date on that.

**[Ari]:** Yes. And I'm glad you pointed that out because that is a question we still get a lot of questions on that. So as it relates to the paid vaccination leave, if you have it in your handbook, you should update the date, should be a pretty quick update. If you don't have it in there, it's okay. You don't necessarily need to put it in there. But just as an FYI as well on the COVID paid sick leave, it's still there with no end in sight.

**[Rosemary]:** Yeah, none. And I don't know that it's ever going to go away. And then, of course, related to this, Ari, we have the HERO Act.

**[Ari]:** Yes.

**[Rosemary]:** Right.

**[Ari]:** And so our favorite piece of legislation well, I guess I shouldn't say new any more because it's been a while now but...

**[Rosemary]:** But it has been a while. But again, we've had a lot of people think, oh, well, the HERO Act had to do with COVID. Right. Means excuse me, it does not. It is infectious diseases, airborne infectious diseases in general. So the HERO Act doesn't go away. So just like the vaccine leave, you know, will, in theory, sunset the end of 2023. The HERO Act isn't going away. And so, I mean, what happens is with if there is an infectious disease that I can't remember the designation now, Ari, that it gets. But there's a designation I'm drawing

a blank right now. It doesn't matter for purposes of what we're talking about, but that's when you then have to enact all of your safety, your health and safety precautions and the plan that the HERO Act requires every employer to have.

**[Ari]:** Yes. Yes.

**[Rosemary]:** And now if you're freaking out thinking we have to have a safety plan, call Ari.

**[Ari]:** That's true. Well, it's true, Ro. Because what I was going to say was and if that happens again or, you know, if COVID has an uptick or there's, you know, God forbid, something else that happens, the turnaround time is very, very quick with respect to you actually enacting the plan that you—and you should already have that plan in place so that you can pull the trigger quickly.

**[Rosemary]:** Exactly. Exactly. And so related to the handbook. So this is why Ari and I wanted to bring these things up. You should, in your handbook, already have a blurb about the HERO Act. Yes. In your handbook. If you're sitting there and you're thinking, you know what, I don't think I do. Again, it's very simple. I'm looking down. I won't read it to you. But literally the... what we have drafted and given to our clients is literally like two paragraphs. It's like four or five sentences, right? It's just referencing or letting your employees know that in fact you have this health and safety plan in place. So that is required in your handbook. It was required in 2022. Still required in 2023.

**[Ari]:** Yes. Yes. So if you don't have that, don't panic. But definitely... I won't say panic, but pay some attention to that.

**[Rosemary]:** You'll want it when you're in the next month or so, when you're updating your handbook, You want to get that in there? Yeah. Yeah.

**[Ari]:** All right. Let's leave the HERO Act behind, Ro. One thing, I wanted you to get your insight on for our listeners, since we are talking about handbooks and handbooks are policies is work-from-home policies. Obviously, we thought we had a lot of questions about those in 2021, 2022. Any special considerations for employers to keep in mind where they're reviewing their handbook? You know, if they have a work-from-home policy and they've decided to include it.

**[Rosemary]:** Yeah, well, you know, it's a great question, Ari. And again, you and I were talking about this. You know, a lot of employers created a work-from-home policy. But they didn't put it in their handbook because they thought, oh, it's just for COVID. And now when everybody's working from home, when we have the whole essential business and all of that. Well, so now we've got people in this hybrid mode. So you've got some people working remotely, others not, and so forth, and you've got this remote policy and I should say the standalone remote policy. And now all of a sudden it's... you're getting out of sync here, because you've got a hybrid model, right? You've got some people at home, you've got this policy. So the first thing—and I have to give credit where credit is due, Ari, Ari said to me, you know, the first thing I always say is, you know, you need to—if you've got a policy like this, you've got to keep track of where it's I mean.

**[Ari]:** Right.

**[Rosemary]:** So and you probably want to put it in your handbook. Because they get out of sync and then you have a problem. But you know what I'd say, Ari, is, you know, if you're going to have a remote policy, you need to be crystal clear, just as you are with any other policy. All right. And you're laying out, I'll refer to them as the standards of conduct, the standards of conduct. So, you know, we expect you to be, you know, when you're on, you know, let's say client calls or customer calls or you're on a Teams call. Some companies have said if you're going to be on a Teams call with someone, we expect you to be dressed at least business casual. Maybe it's from the top up. But, you know, you have your pajama bottoms and your bunny slippers, but still, you know, if you've got certain requirements as to how you want people to present themselves when they're on camera.



**[Ari]:** Yeah.

**[Rosemary]:** And you talk about make sure the working out the expectations and I always say and I suspect you do too, you know, there's something in there that... this is not necessarily a permanent and I always hate the word "permanent" but benefit, right, or opportunity, right? At any point if the needs of the business change or if you're not meeting our production or or qualitative and quantitative standards, we may bring you back into the workplace. So to me, you know, it's the way, you know, you're going to lay out in your policy how you want people to behave just as you do in the workplace. And they need to understand that everything that applies in the workplace applies when they're in their home office. And again, I would always keep that sentence in there or that talks about the fact that this is all based on the needs of the business.

**[Ari]:** Yes.

**[Rosemary]:** So I think that those would be my I think those would be my comments on that. Yes, of course. Go ahead. I'm sorry. Go ahead.

**[Ari]:** Oh, no, no. I was just saying I agree with everything you said. And I do think on the flip side of that coin, we've had employers who maybe want to keep the policy a little more general, at least in certain places. So there is that built-in flexibility. So kind of what you were saying in terms of like an end date or maybe not, you know, maybe as an employer, your workforce is doing fine, working predominately remotely and you're not an essential industry and maybe you don't. You're just kind of seeing how it goes, which is okay, too.

**[Rosemary]:** That's right. That's exactly right. Yeah. You know, and now and now this dovetails great very nicely. Ari, into are the requirements for New York State for the electronic posting. Yeah. You tell everybody about that.

**[Ari]:** Yes. So we also would be remiss if we did not mention because it is related, although it's not necessarily a handbook-specific law, but as our listeners might know, New York State has amended the labor law to require employers to make workplace posters or policies—so, you know, the ones we've talked about, the wage and hour posters, the anti-discrimination posters, the, you know, the EEOC know your rights poster, I think is what it's called now—that they need to be available electronically as well. So if you know, if you have, that can be and I think the law isn't exactly clear, Ro, in terms of what that means other than if you have a company website, put it on your website, you could send it out to your employees who have email, you know, those types of things. But I think it does... it's related to this and fits nicely within the episode because, you know, obviously within your handbook, you're going to have those types of policies, at least the anti-discrimination ones for sure. So yeah, we just wanted to remind our listeners that that's a new requirement, pretty new. I think it's only been in, you know, I think it was enacted toward the end of December. So.

**[Rosemary]:** That's right. Yes.

**[Ari]:** You know, something else to keep track of.

**[Rosemary]:** That's, right? There's lots to keep track of, but for sure. Yeah. Like we... like you said, I think that fit nicely with this episode because there are a lot of our employers post their handbooks electronically.

**[Ari]:** Yes.

**[Rosemary]:** So you're doing this electronic layout. And again, handbooks aren't covered under the new law, but it goes hand in hand. All right. So out here, if you've got it, your handbook out there, all the posters have got to go out there. It's the same thing.

**[Ari]:** So I think one last thing that we wanted to touch on, which again, is not doesn't apply to every employee handbook out there, but there are some updates this year or that will go into effect this year with respect to certain attendance policies, "points-based attendance policies" are what we in the legal industry call no fault

attendance policies. And I think if you could tell our listeners a little bit about that, because if you have one of these types of attendance policies, chances are it's well, it's definitely written down somewhere and it may be included in your handbook.

**[Rosemary]:** Yeah, very likely in the handbook. That's right, Ari. Well, and you know, it's when you read the law, you're like, my heavens, it's a lot as you read it and what the requirement is. But it's you can really just boil it down to this. If someone calls off and the call off is for some... falls under, some sort of protected leave. All right. So leave under FMLA. New York State paid family leave, right. Or state paid sick leave. COVID sick leave, vaccination leave. I mean, and the list goes on and also and that's intermittent leave under FMLA. So if they if a worker that calls off, or leaves work early, or reports to work late and it is because of one of those, it would fall under one of those protected leaves, it would qualify. I think that's a better way to say—it would qualify as under one of those protected leaves, you cannot as an employer assess. So I used the word point, a point against them. Yet when you read the law, they talk about demerits. I don't who gives demerits other than my grammar school. Fine.

**[Ari]:** Right.

**[Rosemary]:** Yeah, exactly. But. But it's points or you write them up in some way. So that is, that will be a violation of the law. You're basically making it you know I'll say an accommodation and so that goes into and I think that's...when does it is that June?

**[Ari]:** Believe in June. Yep.

**[Rosemary]:** Yeah I think that's true. You know June 2023. Yeah. So what do you do with that then?

**[Ari]:** Yeah. That was my next question. So if you have this type of, you know, say you have one of the point-based attendance policies and you're listening, what does that mean for purposes of your policy? Like what? How are you changing it or how should you change it?

**[Rosemary]:** Yeah, well, so similar to what everybody hopefully has done with, for example, their dress code policy. So with the dress code policy, you added that the sentence that would say accommodations will be made for religious, disability, you know, and so forth, reasons, you would do the same thing here. All right. So accommodations will be made. I'd have to think about the wording I'd want to use. Accommodations is the word that comes to mind right now. But accommodations will be made for any protected type of labor, you know, an absence that, but so that's how I would say in an absence that is protected by some sort of statutory leave. Right. Right. Like that. It's just a sentence. Yeah. That's all it is.

**[Ari]:** Yeah. Okay. Yeah. I think that's a I think that is an accurate description of the law and I, I'm hoping that at some point maybe there'll be some guidance issued on it, maybe just to tell us a little bit more. But it's kind of hard to predict that I feel.

**[Rosemary]:** Right. Well, yeah. And it and it's you know, it's you're right. Just like, I think just like when I'm drawing a blank now in which one and the guidance came out like six months later trying to help...

**[Ari]:** The COVID sick leave. Right. Yeah.

**[Rosemary]:** Same thing. You know, And so I think once, you know, once it's put into practice and people start to say, oh, you know what, this issue is popping up, yeah, this is problematic. That's when we'll get some sort of clarification. But the point is, right now you need to you need to pay attention as to why someone... if someone calls off or violates the attendance policy, figure out why. And if and as I said, you don't hold it against them if they take leave under FMLA or paid family leave or something. Yes. Yeah. So just pause.

**[Ari]:** Makes sense. Well, Ro, I think that's the end of our episode. I think this was a great overview of new, we'll say updates to employee handbooks, but also updates to the law, related issues. Before we break for the day, any last words of wisdom for our listeners on any of the topics we talked about or just generally.

**[Rosemary]:** Any words of wisdom? You know, I don't think I have any words of wisdom.

**[Ari]:** You shared enough today, I think.

**[Rosemary]:** Yeah, I think that's right. That's right. All right. I would wear sunscreen. Someone is someone who's at the dermatologist every few weeks. There's my random word of wisdom.

**[Ari]:** I love that. Yes, you know, maybe beyond our expertise a little. But, you know, common sense or, you know, I you know, I even wish I could give myself that advice like 20 years ago honestly. Yeah. So thank you so much for all this is great. Always a pleasure to have you on. And I'm sure I can convince you to come out again this year.

**[Rosemary]:** And I'm happy to come on.

**[Ari]:** Okay, perfect. And to our listeners, thank you so much for tuning in. Next week we will really dive into the Pump Act. It's similar to some of the increased protections we were talking about today under New York state law. But we will really dig in and tell you what you need to know. See you then.

**[Ari]:** The *Labor & Employment Podcast* is available on [barclaydamon.com](http://barclaydamon.com), YouTube, LinkedIn, Apple Podcasts, Spotify, and Google Podcasts. Like, follow, share, and continue to listen. Thanks.

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