

[Rosemary Enright]: Welcome, everybody, to episode three of Barclay Damon’s *Labor & Employment Podcast*. I’m Rosemary Enright, filming live from Studio B, and I’m joined by my dear friend and colleague Mike Sciotti.

[Mike]: Hello, Rosemary.

[Rosemary]: And Mike is in... Studio S just doesn’t have the same ring to it, Mike, you know...

[Mike]: We are in Mike’s office. All right.

[Rosemary]: That’s right. We’re in Mike’s office in Syracuse, New York. That’s right. So as I said, everyone, on episode three today we’re going to be talking about employee handbooks. It’s that time of year. So, you know, episode one, we talked about what’s happening with the minimum wage and salary thresholds. Episode two, we hit on the Trapped at Work Act, which was new. We were actually going to do employee handbooks, but we thought, wow, lots of questions coming in. It only been in effect a few weeks, so we thought we’d better cover that. So now we’re going back to, employee handbooks because start of the year, new year, new handbook maybe. So we’ll chat about that. And Mike and I expect this to be two, possibly three episodes. We’ll see. But before we start, Mike, we’ve got the infamous question. So are you ready?

[Mike]: I’m ready.

[Rosemary]: All right. So the question today is, your most memorable meal.

[Mike]: I know this. The first time I had wagyu steak out to dinner once. I had never ordered \$100 piece of meat before to eat, and it was worth every penny.

[Rosemary]: Really? Did it just melt in your mouth, Mike?

[Mike]: Yes, it did. It was, the waiter talked me into it because I was hemming and hawing, and it’s like, no, no, no, he said, you need to try this. And he said, not just because it’s the most expensive thing on the menu, which it was. But he said, you will understand why it costs so much once you have it. Amazing.

[Rosemary]: Wow. All right. Well, that sounds awesome. Well, I’ll tell you quickly what my most memorable. So it’s kind of.. in the it’s in the meat front also beef but it was, I was in South Africa, and we were doing a safari on foot. So they take you out into the, I think they call it the veld. V-e-l-d. So it took us 150 miles out and left us out there. We had a, gentleman who was the cook, and then we had the tracker, and there was another gentleman who had the gun. And then there was a group of ten of us, and, there no running water, no electricity. And the cook, the chef, prepared the first night, oxtail stew. So I had never had oxtail in my life. Mike, by the way. Delicious. I’m sure it’s nothing like your \$100 steak. It’s an ox’s tail. So let’s be honest. But it was, there was something about watching him cooking this entire meal over the fire. And then we all just sat in these, like, wooden chairs with our, you know, plates of oxtail stew. And I tell you, it was one the... under the stars because you’re out in the middle of nowhere. It was just it was, well, one of the probably one of the most memorable. Yeah, it was fun.

[Mike]: That’s awesome.

[Rosemary]: It was fun. So, anyway, so hopefully we'll get all of you thinking about that too, about your most memorable meal. So with that said, Mike, let's jump in. So 2026, you know, I got to tell you, Mike, I don't really think there's anything new that our, our dear listeners have to worry about or not worry about, but that they need to be adding to their handbook per se.

[Mike]: Yeah, I agree, nothing yet. That is going to be new for 2026 and even 2025, Rosemary, was pretty quiet year. Because I think it was just the prenatal leave that we... it was a recommended policy, that you add, I will warn everyone, the New York State mandatory sexual harassment prevention policy. There's a provision in the law that says to the Department of Labor, you must review it every four years. So it came out in 2018. We saw the First Amendment in 2022. Here we are. It's four years later, 2026... doesn't mean they will revise anything. But I think towards the summer, and the fall, we need to be on the lookout for revisions to that sexual harassment prevention policy, potentially. Maybe changes in the training requirements, changes in the complaint form. And obviously we'll be doing a podcast if that occurs. But that's what I see on the horizon as, as of right now.

[Rosemary]: Yeah. And you know, I, I'd like to add or build on that, Mike with the, sexual harassment policy and that is I've noticed I've already gotten a couple of handbooks that, my clients have asked me to look at, and I've seen in their handbooks, quite a few have the sexual harassment policy from 2022. And the response is, well, actually, no, we got to go back. So what about the one before that? Right. The one before that. Yeah. And, and they're like, well, you know, it's basically the same... it's from New York State, Rosemary. And yeah, you know, for our listeners, if you can see, Mike's shaking his head. Very different.

[Mike]: No. Very different. Yes. Different. Yeah. And the, the 2022 version, added things such as bystander, you know, intervention, and other bells and whistles. It is different. It is broader. There is more to it. And it gave other examples, of things that, you know, that could be deemed harassment under New York state law that are simply broader than what you would normally think of as sexual harassment. You know, I know one of the examples they added was a room full of men salesmen. And there's one woman salesman. And the head salesman tells the woman, hey, go get coffee for all of us. And that is sexual harassment under the policy. And that wasn't in the first version of the draft of the first version that they published in 2018. So every time this comes out, I take the position, adopt the state's policy. I don't want you goofing around and trying to edit it down. And make it an appendix to your handbook, as opposed to clogging up 15 pages in your handbook with it. Have it as an appendix. So whenever it's revised, you simply go in and put the new version in. Now I have seen this more times than I can count. They put out there... the new version in Word, and the company downloads it and puts it in their handbook. But there's only one problem. They didn't revise it. They didn't put their company name in it. Any contacts. And, they didn't own it. And you have to own it because the state gives you a generic policy, which you then have to revise and make your own. It's not simply a cut and paste; it is a cut and paste, but then you have to edit. So just be on the lookout, for that. But it does make a difference. And I also think, Rosemary, the Division of Human Rights or the Department of Labor, if they see the old policy, would say you're not in compliance. And my concern would be in a sexual harassment case, does the fact that you're using an old policy that is not currently in compliance with the law, does that create a material question of fact to get a case automatically to a jury? I'm... from a Division of Human Rights perspective, I think they're going to find probable cause and kick it to a hearing. So be careful. We got to keep the handbook is something, Rosemary, that needs to be reviewed and if needed, revised yearly. It also needs to be redistributed yearly. And the reason I make that last comment, is the New York blood donation leave law and regulations, and guidance, state that you must redistribute the policy every year. So if you have to do it for that policy, do it for all of them and keep getting the sign offs, which we're going to talk about, especially the recalcitrant employee who just refuses to sign, get those signoffs yearly. This is... the handbook I preach is your front line of defense. And if it's not correct, you're going to have issues. Now, what those issues are and how it rolls, it will depend on what the claim is. But, we have to get it right.

[Rosemary]: Yeah. And I want to add I want to make two points and, and so just two points and feel free to comment on these, Mike. The first is I just want to make sure everybody's clear when Mike says you've got to revise or own, make it your own, the sexual harassment policy. I'm going to put a finer point on that. What he's saying is if you look at the model policy, it'll have a... it'll have a field and it'll say company name. And in parentheses. So I like you, Mike, have seen many of these where they say here's our policy and it says company name, blah blah blah blah. And then it says insert name of person. Okay. Well again the DHR is going to say you're not taking it seriously. What is an employee supposed to do or an intern or a volunteer when they see this they don't know who to go to. You need the name. So when we say make it your own, revise it. That's what we're talking about. Fill in those parentheticals and you know, whatever your process is, go to this person, do that. You know, that's what has to go in there. So... but don't change any of the other language. That's a model policy for a reason. The second point I want to make, and I'd be curious, Mike, and your opinion on this. So I agree with Mike. Put it as an appendix. So it right now I think the current length is 12 pages. Right? Mike? I think it's I think yeah, I think the model policy is 12 pages. So all of a sudden in the middle of your handbook, you've got these 12 pages. So I like the idea of putting it in as an appendix, but you need to have a reference in the actual in the body of the handbook that says, you know, sexual harassment and you've got something there. And so what I always say, Mike, is state: it's a violation of, you know, company policy, state and federal law. And you don't have to get into all the definitions, you know. So it's two or three sentences that just kind of encapsulates what we're talking about. And then we refer them to the appendix. Because again, if there's no necessarily... if it's not in the section where you've got your discrimination, you know, for the reproductive rights and the general discrimination policy and harassment policy in that section. And they're asking, well, somebody might not know, where do I find it? And crazy as it sounds, I mean, your employees, if you give them a big handbook, they may not even realize there's an appendix or they may not look at the appendix. So that's generally what I advise. Mike, I don't know if you agree with that.

[Mike]: I agree and would add the following just to sort of put a finer point, on the policy, don't try to make the sexual harassment prevention policy cover all types of harassment. Leave it. Leave it as sexual harassment prevention.

[Rosemary]: Standalone.

[Mike]: Yeah. And then have a non-harassment policy which covers everything else. And that one could be a lot simpler. Have the complaint procedure in there. Who to complain to. You know, this covers age-based comments, race-based comments, you know, military comments, whatever the other, protected classes are. And there's a lot of them now. So, you know, I would have to I think it's, very important not to try to combine them, because what I see is the employer tries to combine them and it waters down the policy, and sometimes I have a hard time following what it is they're talking about. Because they added two paragraphs and then suddenly all they talk about is sexual harassment. So be careful in, relative to, to that particular, policy and how you do it. And I do think you need both. I think it's, it is in 2026 it is, well, within everyone's purview. You must have both, and, if you don't, I think the division, the EEOC, a court, a judge, a plaintiff's attorney, a plaintiff, all of them will they'll notice it. And, they can... not having a policy can be used against you. Right.

[Rosemary]: Exactly. Which is why when I was saying it, I said reproductive rights, you know, nondiscrimination, and harassment. Because right there. That's exactly right, Mike. Always make them separate. Always make them separate. So we got down the sexual harassment and, you know, prevention policy, which is very important. All right. So all right, so, Mike, let's take it you know, I guess we'd say take it up several notches and let's just talk about generally a handbook itself. What are some of the general—I'm not talking policies, but things around a handbook for people to stop and think, oh, that's a good idea. I didn't think of that. I should do that or I shouldn't do that.

[Mike]: Yeah. Number one, I think in some of these real simple: page numbers. Sometimes employers don't have page numbers in their handbook. And you should. You should have an effective date that the handbook takes effect. So, either on the first page or maybe you have a footer at the bottom of every page, effective January 1, 2026. So we know exactly what version we're dealing with. And make sure you save the old versions because, you have an obligation to preserve those. A table of contents, some type of numbering system for the policies, you know, I see. Oh, section 101, 102, 103. That's fine. I don't care how you do it as long as it makes sense. And then a acknowledgment page. I have received, read, understood, and agree to follow this employee handbook. And, make sure you get that signoff, which we'll talk about in a minute. I'm sure. There's some general things that people sometimes overlook or I see problems with the handbook. And then if you're doing a cut and paste, okay, I, I get worried you're using someone else's handbook. It needs to be thoroughly edited, but you need to do your own due diligence. What laws apply to you? You know, what is your gross income? How many employees do you have this year, last year, per pay period. Do you have a union? Do you don't have a union? Do you have employment contracts? You don't have employment contracts. Are there unique employment laws that apply just to your industry? Are there unique safety rules that apply just to your industry? And, just as an aside, I'm okay with a separate safety manual. If you're like, in a highly regulated, area, in the I think the same general rules should apply because if there's ever, you know, hopefully not a death in the workplace, OSHA is going to say, where's your safety policy manual? And they're going to want to see it or your safety policies. So really owning the handbook by looking at the various coverage tests to determine what applies to me and then keeping it up to date. And one of the, one of the zingers here is where are your assets? Where are your employees? Because here in the great state of New York, we have local labor laws, you know, Buffalo, Rochester, Syracuse, New York City, Albany County, Westchester County. We have to make sure that we are not only complying with federal and state, but any local laws. And, if you have assets in another state, you have another decision to make. Do I have a master handbook and then maybe state supplements, or do I do separate handbooks for each state? I don't care. You just have to be consistent and be able to keep them up to date and, make sure the employees never have a dated handbook. So let me pause there and let you talk a little bit.

[Rosemary]: Yeah. No, that's fine, that's fine. So a couple of things, you know, to your point, Mike, when you were talking about, you know, there's an effective date on it. So I've had several employers who will, and I've gotten the handbook, and, you know, they've been doing it for years on their own. They said, hey, we thought you should maybe have a look at this. And then I see down at the bottom, "revised" or at the top for each for a policy revised on this date, this date, this date. And what they're doing is they're just...And I think you made this point, but let's just make it even clear that they're updating it. And like you said, the other version is gone. Well, you know, if this says this is version five or it was revised, you know, in 2020, 2023, '24 and '25, well, what was it in those, those prior years and what was it revised to? Yeah. You know, and so it's very important. And I know a lot of you may be thinking, oh my gosh, we got to keep all those versions. The answer is yeah. You do.

[Mike]: You know the other thing I would find confusing is one of the things I look at handbook as if I was the government or plaintiff's attorney, how would I view a policy? And if it said four revision dates and four different years? Makes me ask a question just like you said. What were those? And you're going to open up new areas. It's best that you don't do that. Now. You can have, in human resources, like a master, master handbook that says we made these revisions on those, these dates. That's fine. I wouldn't distribute that to the rank and file. I think that's an internal management document for purposes of keeping track of the handbook, over the course of a generation, you know. And I'm fine with that, but I just think I would. I find it confusing, when I see that. And it begs a lot of questions.

[Rosemary]: Precisely. Which is why I brought it up. Because I've seen it many times. Two other things, Mike, as we're chatting. So we're talking about the acknowledgment, which we'll get to that point in a second. But, you know, we're talking about distributing. Okay. Thoughts on ...okay. So we don't have a hard copy. We want to do this electronically. Can we do that? We get that question all the time. Can we do it electronically. How do we do it electronically. You know. And so go ahead. What's your response to that.

[Mike]: Sure. And I don't care if you do it electronically or the old-fashioned way. To me it makes no difference as long as I have a John Hancock, a signature, an acknowledgment from the employee. It can be a wet signature used with his actual handwriting or an electronic signature, where they... you know, I've seen a couple different versions of, like, you know, when you check out with a credit card, you actually sign your name. That's one version and another electronic version is you type your name. And some employers have PIN numbers and, each employee is only allowed to type in their name electronically if they also type in their PIN number, which they were given by HR. All those things are good. You don't need to have paper anymore. Electronic is totally fine, in my opinion. Here's what the government requires of you: That if you do it electronically, you have to be able to one, find it, two, print it out, and three that looks like the original. And for that you were able to verify the signature. So, if you can do all those things electronically, fine. I think it makes your life, a lot easier.

[Rosemary]: Yeah, I agree. And the other thing I'd say is if you happen to be an employer and all of your employees don't have their own computers, so you've got a manufacturing plant or something. So the question is, what do we do with that? And the answer to that is you have a bunch of computers that are set up, which you should anyway, that those individuals have access to. So they can access to the points that Mike just made, they can easily access the handbook. They know I can go and use that computer that sits outside the HR office, or it's in the in the break room, or it's in both of those places and I can log on, I can access the handbook; I know how to access, and I can download it, I can print it. And so that is that is absolutely fine to do. Now what do you do about the person who, as you said, Mike, we can't get to sign the acknowledgment.

[Mike]: Yeah. So I think there's two categories, Rosemary, the new hire and the existing employee. Let's start with the new hire. I am of the belief that a new hire is not allowed to actually work until all paperwork has been completed, and that includes successfully completing the I-9 form. I know you got three days. I don't care. Every form is signed, sealed, and delivered before they go to their desk. And if they refuse to sign the handbook, I won't let them proceed. I'm going to say, sorry, you can't work here if you don't sign off on the policies. I think that's the new employee. And that's a little harsh because I know you need workers, but I think it's also a red flag that this person is going to be very difficult. And, you know, sometimes you get people that don't want to sign their withholding forms or don't want to give, identification for the I-9. Sorry, you can't work here. I think the existing employees is a little different. Not by much. You know, the HR function has to hunt down anyone that hasn't signed. And, and by that, I mean call them in your office. Say you have not signed off on the handbook. I need you to acknowledge it today. No. Okay. Here's the... And everyone laughs when I talk about this. Here's tip number one. Can you please write refuse to sign. Try to do it with a straight face. And sometimes the employee will write, refused to sign and date it. That's an acknowledgment. Then you write a little. This is Johnny Jones and Johnny Jones signed this in my presence. Usually they'll laugh at you when you say that to them. But, then you say, okay, this applies to you. You sign Johnny Jones. I'm signing on behalf of Johnny Jones. He refused to sign in my presence on such and such a date. And put it in the file. Maybe have another witness of a management employee. I've actually had some employers that have said, you don't want to sign. Okay, we're putting into you into an unpaid leave situation until you decide to, to actually acknowledge it.

[Rosemary]: Really?

[Mike]: Yeah. And they, they don't they don't mess around. And, you know, I've never thought through the legality of that. At first blush to me, it appears legal. But I think you want to think about that and be before you do that. Again, you need workers. And what are you buying? I mean, you're really now irritating the person. And he's probably never going to sign. And I've actually had one employer do this, Rosemary, again, try not to laugh. They took the handbook, send it in a plain envelope, return receipt requested delivery to the employee only, and they got the employee to sign the returned receipt card. And he opened it up. And it's a copy of the handbook because it was

[Rosemary]: My god. That's awesome.

[Mike]: So, you know, there's lots of ways to skin a cat, but, I think that, those are generally just, like, employee refused to sign and don't go crazy with it. The other thing, remember, if you need to add or modify a policy, you can do so at any time during the year. And I would... I don't think it's necessary, Rosemary, to redistribute the entire handbook. You just say this is policy 101. It replaces existing policy 101, effective June 1. Please sign your acknowledgment. And I would say, give that out with the paychecks. And try to get a signature. Don't hold their paycheck. I'm not saying that, but, you know, usually you can get it, and then you have to hunt the individuals down that have refused to sign. Because I tell you, everyone that's listening in this, the people that usually refused to sign are going to be your plaintiffs and you're not going to have the signed policies. So that's why I'm paranoid about it.

[Rosemary]: Yeah, yeah, yeah, I love that story about the certified. That's awesome. That is just awesome. So so, you know, we're talking about all this, and somebody so let's say we have a listener and they're sitting there and they're thinking well you know what? Why even bother that if I... had you know, I've got to worry about somebody signing. I've got to distribute it every year. I mean, let's just skip having a handbook. I mean, is there, you know, and I get this question all the time. Is there a law, Rosemary, you know, a state or federal law that says we must have a handbook? And the answer is no. There's a law that says every employer with X number of employees must have an employee handbook, and this is what it must contain. And so the answer then that so then they'll say, well, well I don't know that I really want to do it. So what's your response to that, Mike.

[Mike]: You there's a series of policies out there that are mandatory. They don't have to be in, quote, a handbook, but you have to have them. So we've already mentioned one, the sexual harassment prevention policy. If you're FMLA covered, you must have a FMLA policy. For those of you in New York, we have the Paid Family Leave Act. You must have a policy. You must have a New York State sick and safe leave policy. So there are all these mandatory policies out there that, to me, call for, only one signoff. I would only... the reason I say put them in a handbook, you get one signature and that that takes care of them all. Otherwise, if you have ten separate policies, I'm going to ask for ten separate signoffs. And that's a lot to keep track of. So it's... the reason for it is... you're dead on. There's nothing that says you must have a handbook. What they say is you must have this policy or this policy or this policy. And then there's a second group, things that are not legally required, but highly recommended: a code of conduct. What we expect the employees, how to act and how not to act. Those of you that have had unemployment hearings, did you ever warn your employee that you expected them to show up for work on time? You know, I... the first time I heard that, I sort of chuckled. They said, seriously? Yeah. Put it in your code of conduct. And then you can say yes. And he signed off on it. So that second tier, you know, highly recommended. Because it is, as I said earlier, your front line of defense. And, let me be frank, I don't think most employees read the thing cover to cover. I just don't, and, so you can have buried in there, all your policies, procedures. This is how you complain. We can use the handbook against them in the event we get into litigation. And, and that's really to me, the litigation rationale for having a handbook, and the... I hear, Rosemary, that it sort of as a follow up to yours, why should we have a handbook? And then they'll add, I don't want to educate them. You know, I don't want to give them any ideas. Well, for the mandatory ones, you have no choice. You have to put these things in writing. But, putting ideas in their head, they already have them. You go to Google, workplace discrimination. They will be educated. We now have plaintiffs writing books, on how to sue your employer for employment discrimination. So this is the handbook is simply a way to counteract that. And yes, it's work. And yes, the HR function needs to stay on top of it, but I will swear up and down that having a handbook is better than not having one any day of the week, as long as the following occurs: It's correct. Because if you have an incorrect handbook, it's worse than not having one. And it will come back to bite you. If your handbook is bad.

[Rosemary]: That's exactly right. I couldn't agree more. And, you know, I think, Mike, that's a good place to stop for this first episode. So, Yeah. So, thank you all for joining us. As we say, at the end of, every one of these, please, please check us out on Spotify. Give us, share any of your comments, questions? Give us ideas about what you'd like to hear about. And, Mike and I will reconvene for another episode to continue our discussion on employee handbooks in 2026. Thanks, Mike.

[Mike]: Thank you. Rosemary.

[Rosemary]: The *Labor & Employment Podcast* is available on barclaydamon.com, Spotify, and all major podcast platforms. Be sure to like, follow, and stay connected for future episodes.

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