



# BEST PRACTICES FOR UPDATING THE EMPLOYEE HANDBOOK IN A PANDEMIC

Written by Philip Qualo, J.D.

# F

or many employers, the start of the holiday season usually brings forth the time of year to brush the dust off of the employee handbook and determine what changes are desired, and required, for the upcoming year.

Although employers have generally been quick to adopt and enforce policies addressing COVID-19, the rapidly changing guidance and onslaught of personal and professional restrictions necessitate swift revisions as best practices and requirements continue to change from day to day.

In general, employers should review and revise their employee handbooks at least annually to account for changes in local, state, and federal laws and workplace safety requirements.

After an unprecedented year that unleashed a pandemic on the world, however, employers and their compliance teams are scanning their employee handbooks, scratching their heads, and wondering where to begin.



- Consulting
- Case Management
- Big and Small Data Analysis & Predictive Modeling
- Claims Audits
- Risk Management



customerservice@arataiinternational.com  
www.arataiinternational.com

**Call Us Toll Free: (888) 448-2470**

Aratai International provides services to build and develop cost-effective and high quality healthcare strategies. We invest time in understanding your business goals, and we develop programs to help you reach them. We are committed to developing strong business relationships by exceeding your expectations.

MEDICAL LEGAL | CONSULTING | MANAGEMENT | DATA ANALYSIS



In order to avoid the challenge of updating and re-distributing an employee handbook multiple times within a single year, it may be helpful to limit specific references to COVID-19.

For example, I chose to use terms such as “Public Health Emergency” and “Pandemic” where possible. If COVID-19 has taught us anything, it is that life is unpredictable.

Now that we have collectively experienced and continue to endure this pandemic, we now know that public health emergencies and pandemics can happen to us... yes, even to us.

In finalizing our own employee handbook for a hopefully better 2021, I thought it would be helpful to share some lessons I learned on updating an employee handbook in challenging times.

## **AVOID NON-STATIC COVID-19 PROVISIONS**

As updating an employee handbook multiple times within a fiscal year can be an administratively burdensome task, a best practice is to ensure all policies included or updated in the handbook are relevant, as well as static, for the duration of the applicable fiscal year.

This has been simple in most years, however, in response to the COVID-19 pandemic, the federal government passed a series of comprehensive laws, with rapidly approaching expiration dates, aimed at protecting American workers by regulating group health plans and imposing new leave paid entitlements on covered employers, such as the Families First Coronavirus Response Act (FFCRA).

In addition to the FFCRA, state and local laws guidance continue to be updated at an unpredictable frequency that often necessitates a quick and temporary change to workplace rules in order to comply safety requirements.

For employers that sponsor self-funded plans, it is also important to keep in mind that for any newly enacted leave entitlements that continue coverage, the applicable Plan Document should be amended to reflect this continuation of coverage and communicated to the stop-loss carrier so ensure no gaps in coverage.

As such, including language in an employee handbook referencing an employer’s responsibility to contain a public health emergency or pandemic would apply to COVID-19 and other critical health crisis that poses a threat to workplace safety.

For policies with an approaching expiration date, or that are likely to change frequently based on changing guidance, it may be helpful to generally reference them in the employee handbook and detail them in a separate platform or notice that can be updated and re-distributed with ease.

For example, we use an intranet platform to house our most up to date COVID-19 policies. This allows for quick enhancements of relevant policies and immediate notification to employees. Although any platform accessible to all employees may be appropriate, an employer should take the additional step of distributing, announcing, or where

applicable, requiring sign-off for each and every change to document compliance with notification requirements.

In this case, I expanded the handbook to include language that referenced the “Direct Threat Exception” to Americans with Disabilities Act (ADA) limitations to explain my employer’s ability to temperature check and inquire about health status.

In this provision, I chose to leave out the term “COVID-19” because the direct threat exception would likely apply to any other declared public health emergency that may arise. The temperature check policies, on the other hand, may not be applicable in a different type of pandemic.

### SO YOU’RE SAYING NOT TO INCLUDE ANY COVID-19 LANGUAGE?

Employee handbooks are more than just a collection of policies for most employers, they are a snapshot of that year, a yearbook of sorts.

Although some memories are better left ... *not* remembered...employers may one day want to reminisce on challenging year.

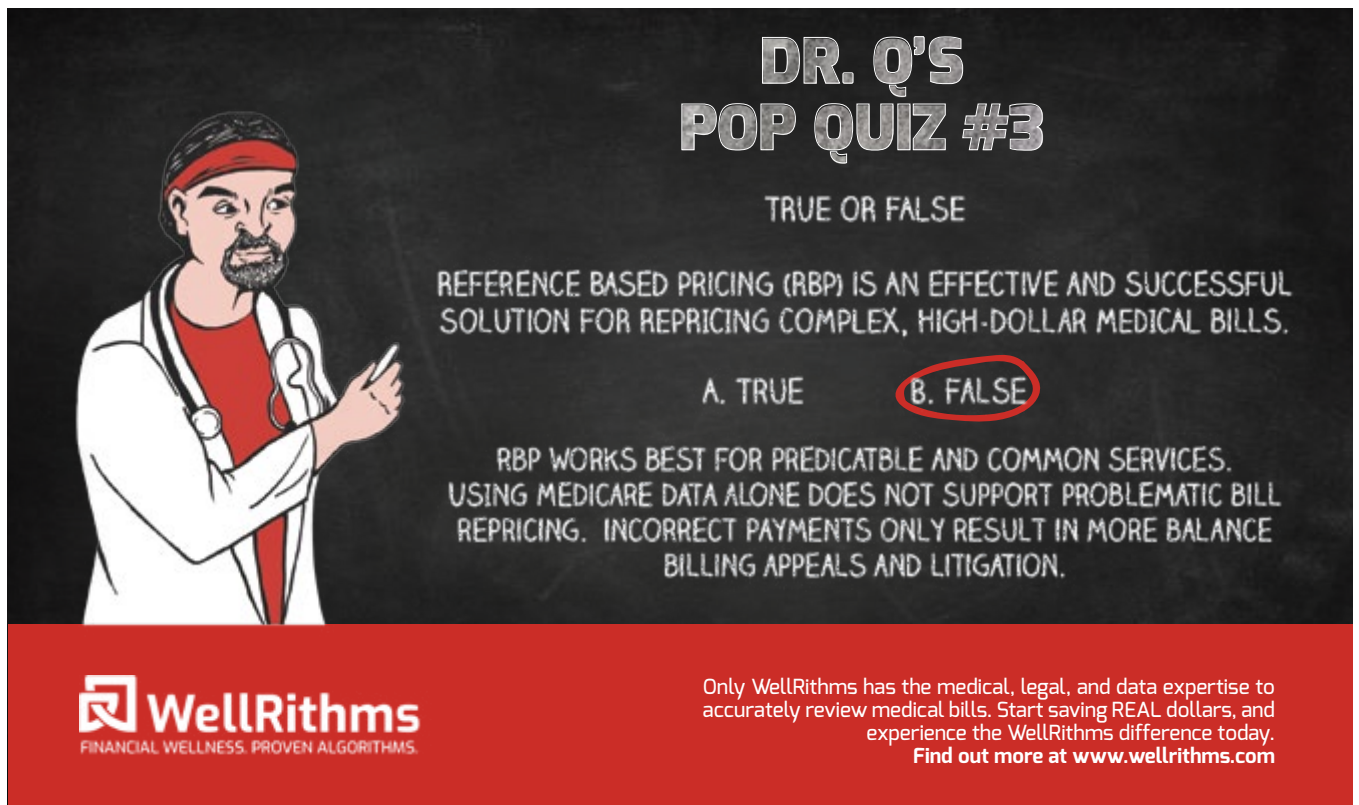
On the other hand, as COVID-19 is likely not going anywhere as soon as we hoped for, it may be a good idea to include some static references to COVID-19.

So I would *not* recommend pretending COVID-19 does not exist when it comes to the employee handbook.

For example, in our own employee handbook, I developed a paragraph that describes COVID-19, briefly, and details our companies commitment to follow all state, local, federal and Centers for Disease Control (CDC) guidance.

As this guidance is subject to change, and has from day to day since the start, I did not include specific references to our face mask policy. Is this important? – absolutely.

Is the handbook, however, the best place to house a policy that may be outdated by the time it is distributed? – probably not.



**DR. Q'S  
POP QUIZ #3**

TRUE OR FALSE

REFERENCE BASED PRICING (RBP) IS AN EFFECTIVE AND SUCCESSFUL SOLUTION FOR REPRICING COMPLEX, HIGH-DOLLAR MEDICAL BILLS.

A. TRUE      **B. FALSE**

RBP WORKS BEST FOR PREDICATBLE AND COMMON SERVICES. USING MEDICARE DATA ALONE DOES NOT SUPPORT PROBLEMATIC BILL REPRICING. INCORRECT PAYMENTS ONLY RESULT IN MORE BALANCE BILLING APPEALS AND LITIGATION.

**WellRithms**  
FINANCIAL WELLNESS. PROVEN ALGORITHMS.

Only WellRithms has the medical, legal, and data expertise to accurately review medical bills. Start saving REAL dollars, and experience the WellRithms difference today. Find out more at [www.wellrithms.com](http://www.wellrithms.com)

In summary, there are rarely two employee handbooks that are entirely alike in this world. There are not many rules surrounding what needs to go in one, or what needs to go out.

For the most part, employee handbooks are not even legally required. It is, however, a strongly recommended best practice for an employer to maintain one and ensure appropriate policies as determined by their specific compliance needs.

Therefore, employers are free to include any and every COVID-19 policy and language they desire. In minimizing the non-static language, however, employers can detail compliance with applicable rules and spare a lot of time, effort, and employee confusion on reconciling the most current workplace safety guidance. ■

Philip Qualo, J.D., joined the The Phia Group, LLC in June 2018. In his current role as a Compliance and Regulatory Affairs Consultant, Philip provides consulting services to employers, third-party administrators, brokers, and vendors on an array of topics focused on human resource and employee health benefit plan compliance. He proactively monitors the legal and regulatory environment to identify legal, regulatory and compliance-related gaps and advises internal and external stakeholders on areas of risks.

He earned his J.D. from Villanova University School of Law and his B.A. in both Philosophy and English from Loyola University Maryland. Philip's professional experience has ranged from practicing employment law, specializing in disability litigation, to managing federal grants and advocating for underserved communities on behalf of National Alliance on Mental Illness (NAMI).



**Cloud Based Compliance Software**

- Affordable Care Act**
  - Eligibility Determination & Offer Creation
  - Reporting & e-Filing (1094/95 B & C)
  - e-Filing Only Options Available
  - Dedicated Customer Support Agent
- Dependent Verification**
  - Full Audit Service or Software Only
  - User Friendly Interface
  - Secure, Direct Document Upload



**ACAGPS.com**      **470.239.5524**

