



**Questions and Answers From the Aug. 22 ASAPro Webinar  
“The Employee Handbook—Do I Really Need One for Corporate Staff and Contract Workers?”**

**Q:** If an employer finds out after the period noted in a noncompete agreement that a former employee has been working for a competitor, what recourse does the employer have?

**A:** If someone works for a competitor after conclusion of a valid noncompete agreement, you have little to no recourse. An exception may lie in what type of information is being used. For example, use of trade secrets or confidential information, even outside a noncompete agreement, may raise issues if an independent agreement regarding use of that information exists.

If you learn after the expiration of a noncompete agreement that a former employee is working for a competitor, the issue becomes one of notice and of the phrasing of the particular law. Some statutes run from when you knew or should have known. Others are more absolute and run from a date certain. Employers should review their particular state laws for such a determination.

**Q:** If you use the word “earned” for paid time off rather than the word “accrued,” do you have to pay out upon termination?

**A:** The particular choice of words (earned vs. accrued) is not the issue. Employers should review the law of their particular state and determine when an employee is entitled to be paid, regardless of the word used. It is unlikely that an employer can avoid paying wages due merely by using a different word to describe the funds at issue.

**Q:** As a temporary staffing firm, do we need two employee handbooks—one for our in-house corporate staff and one for our temporary employees assigned to our clients?

**A:** For a staffing firm, I believe a separate handbook for temporary employees is a good idea. Often the rules and policies applied to those individuals vary so greatly from those applicable to in-house corporate staff that a separate document makes more sense. Such a handbook would not automatically be considered policy unless it specifically so states. To the contrary, as mentioned during the webinar, the introduction to that book should specifically make a disclaimer saying it is *not* creating policy.

**Q:** When you refer to state laws, if a corporate office is in one state but the company has branch offices in three states, should the company refer to those states individually or follow the laws where the corporate office sits?



A: Generally the law of the state where the employee works will be applicable. If federal law is more restrictive, it will trump all state laws. Employers also have the option of selecting the most restrictive state law and applying it across the board.

Q: Hello, we would appreciate any recommendations for policies for W-2 contractors in the staffing industry.

A: To the extent that contractors are W-2 employees, an employer needs to determine whether they will be treated the same as all other employees. Once that determination is made, the appropriate handbook can be applied.