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HR GUIDE

FOR SMALL BUSINESSES

2023



INTRODUCTION TO HUMAN RESOURCES

Human Resources is probably one of the more complicated aspects of running a small business. The complexities of working with people don't fit nicely on a spreadsheet. Yet HR is incredibly important; employee salaries and benefits make up a huge chunk of your operating expenses.

Your employees are one of your greatest assets. You must protect and manage that asset.

WHAT IS HUMAN RESOURCE MANAGEMENT?

Human Resource Management (HRM) deals with your employees, whether in regards to recruitment, management, or other forms of direction and assistance. HR will often be in charge of (among other things):

- Hiring
- Performance management and reviews
- Employee development, motivation, and training
- Safety and wellness
- Compensation and benefits
- Diversity and inclusion
- Communication between employees and/or management

HR carries a big responsibility. They have a huge effect on the culture and environment in your workplace, setting the tone for how employees communicate, settle disputes, and work with each other.

This guide will teach you everything you need to know about human resources.

HUMAN RESOURCES: THE THREE BASICS

HR is rife with laws and regulations, which is part of why small businesses often put off dealing with it. Generally, for businesses with fewer than 50 employees, there are three basic things you must implement to cover the bases, according to HR expert Jack Hayhow.

1 Employee Files

You must keep three specific files for each employee in your business. These files are:

- **I-9 File:** This form is used by the U.S. Government to identify and verify that your employees are eligible to work in the U.S. Keep all of your employee I-9 files together, in one file, instead of under individual employee names.
- **Employee General File:** This is a file you create for your own benefit. It contains any documentation associated with that employee that you've collected during their time with you. This includes resumes, reviews, disciplinary action, training verification, evaluations, W-4 forms, payroll details, and so on. You'll use this file often.
- **Employee Medical File:** These files will contain notes from doctors, disability information, and any medical information that you have on an employee. Because you are dealing with medical information, you must protect and secure these files from others. That is why these are separate from general files. Be sure to keep them in a locked and secure place.



2 Employee Handbook

Having an employee handbook is a must. Your handbook serves two important purposes: letting your employees know what you expect of them, and protecting your business in case there is a dispute. An employee handbook can be as simple or as complex as you want, but there are some general approaches, depending upon the nature of your business, that you need to consider. According to the [Small Business Administration](#), your handbook might include:

- **NDA:** Some industries will benefit from having employees sign non-disclosure agreements, but it isn't applicable to all businesses. If you have trade secrets to protect, use it.
- **Anti-Discrimination Policies:** If your business is in the U.S., discuss how you will comply with the [Americans With Disabilities Act](#), as well as with other [employment discrimination laws](#).
- **Safety and Security:** Lay out your policies on how you will keep employees feeling safe at work, both physically and emotionally. U.S. businesses should discuss compliance with [OSHA](#), as well as your own policies on bad weather and emergency situations, video surveillance, and so on. You should also include what you expect from your employees in this regard, including using passwords on computers, locking doors, using mobile devices to take photos of co-workers or in the office and publishing those photos online, or reporting threatening behavior.
- **Compensation and Benefits:** Define the benefits that you provide your employees, both those [required by law](#) and others that are unique to your business. Let them know how to receive the benefits, and what is required of them. Outline salary or compensation levels, and what it takes to get there.
- **Work Schedules, Vacation, and Leave:** Outline your business's policy on schedules, absences, lateness, vacation and leave, absenteeism, and special requests. If you allow work from home/telecommuting, indicate clearly what is acceptable. Even if you have a "flexible" work schedule, you need to write down any expectations you have of your employees.
- **Standards of Conduct:** This might include dress code, behavior, online and computer use during work hours, use of mobile devices during work hours, ethics, legal aspects, and other similar topics. Outline the repercussions of breaking the standard of conduct so employees see it in writing. This is necessary if an issue arises later.
- **General Employment Information:** Your business will have its own policies and procedures apart from what the law requires. Clearly define what your policies are on work ethic, promotions, employee reviews, termination, referrals, employee records, and so on.

Be sure your employee has received a copy, reads it, and signs a statement acknowledging that they received, read, and understand the employee handbook. Put that statement in their file. Make a copy of the handbook, either digital or paper, readily available to all employees for reference when they need it.



3 Display Required Posters

Depending on the laws of the country and/or state your business is in, you may be required to post information in an easily accessible place. These vary from place to place, so you will want to work with a local government agency or legal counsel to make sure you have met the requirements.



5 HR MISTAKES TO AVOID

There are five common HR mistakes businesses make. These mistakes can cost your small business in the long run, both in money and wasted time.

1

Wrong Hire

Small businesses fall victim to filling open positions with any person they can. They don't have the money or ability to do extensive background checks or hiring procedures. There's no other way around it: the wrong person will cause problems and eventually have to be replaced.

2

No Job Definitions

Business culture now seems to like the idea of "open ended" job descriptions, but you're better off telling your employees specifically what you expect of them. You can't possibly hire the right person if you don't know the specific job you want them to do.

3

No Performance Documentation

All performance reviews, meetings, and issues need to be documented, whether good or bad. If there are performance problems, discuss it with the employee, outline an improvement plan, and document it. You'll need this if you end up firing an employee, or you put yourself at risk for legal action.

4

Ignoring Employment Laws

You are responsible for following the employment laws where your business is located. Ignorance or purposeful disregard will not protect you from legal action or problems that may arise.

5

Improper Classification

Does your small business use [contract employees](#)? Are you sure you are complying with the laws in regards to how you've classified them? Many businesses use contract employees to save money and headache, but actually treat them as if they were full or part time employees. The [IRS has strict guidelines](#) that could come back and haunt you.

Mistakes like these set you apart on a serious path towards big problems.

Having your HR program and policies in order as early as possible sets you up to deal with the inevitable problems that arise as your business grows. [Employee complaints](#), legal issues, and clear communication all depend on HR to sort things out.



RECRUITMENT & SELECTION

Finding and hiring the right talent has never been more difficult. The skills shortage, increased job market competition and diversity in the expectations of prospective job candidates have highly complicated the recruitment and selection process for employers.

Recruitment represents a great area of opportunity for business owners if done correctly. In fact, selecting the right people for your business can bring about a wealth of benefits including a more engaged and productive workforce and ensure long term success and sustainability of your business.

6 techniques we recommend any business to use to ensure a successful recruitment and selection process.

1. EMPHASIS ON CULTURE

Make sure to introduce candidates to your company culture by developing a strong employer branding strategy. This strategy will expose job seekers to what your company is about, and this even before they submit their application. Even better, you can leverage culture as a tool to attract the right sort of talent.

By emphasizing on what your company stands for, your message is likely to resonate to the ears of candidates who are simply more likely to enjoy working for your organization. Having a new recruit only discover your company culture once they take their first steps in the organization can have disastrous consequences for both parties. Therefore, you should bring forth the company's mission, core values and traditions during all the steps of the recruitment process to have future employees understand what it is they're stepping foot into and whether it's the right path for them or not.



2. PROVIDE THOROUGH JOB DESCRIPTIONS

Attracting the best talent means you need to list job responsibilities with key competencies or required qualifications for each role. This overview allows job candidates to screen themselves. New hires can learn and grow into their responsibilities to some extent, but they should have the qualifications to apply. If you only list job responsibilities, you risk losing well-qualified applicants because they might be concerned about their responsibilities. Listing key competencies guides potential applicants to focus on their qualifications to perform tasks related to the role.

For example, you can train someone to write grants, but you cannot teach someone to have strong writing skills. You also need to include clear salary information. Many qualified candidates skip over listings or filter job listings that do not provide a starting salary and information about benefits. You can buy or conduct a salary survey to ensure your descriptions match your starting salary and benefits.

3. IDENTIFY YOUR BEST SOURCE OF TALENT

To optimize your sourcing of candidates, it's important to identify where the best candidates are coming from. You should track and regularly review the source of hire (SoH) for successful candidates who became high-performing, value-adding employees. SoH will tell you which sources - for example, your career site, job boards, social media postings and employee referrals -- candidates and current employees come from. You can track this metric for different types of candidates -- such as unsuccessful candidates, successful hires and passive candidates -- and for different geographies and jobs.

By using SoH, you will get a good idea of where to focus your talent acquisition resources and attention. SoH will help you understand why those sources work well for you and how you can improve your approach on sites where the sourcing return is low. You might also decide to drop some of the low-performing sources from future postings and look for new sources to add.

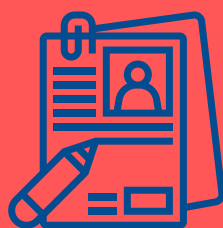


4. SKILLS-BASED HIRING

Skilled-based hiring is becoming more prevalent again, largely due to AI-based technology that is improving the accuracy of skills identification and matching. Many employers are moving away from using academic degrees as a way of measuring the skills of candidates and instead using skills-based methods.

Using skills to identify the job requirements for a position can help attract suitable candidates who may be put off by educational requirements they don't meet even though they have the skill set to do the job well. Soft skills like communication, problem solving and critical thinking are crucially important to many roles and not easily demonstrated through holding a degree.

A skills-based hiring process can improve sourcing, screening and matching of candidates. The technique has been used in some talent management processes for quite some time, particularly in succession planning and career development planning. To identify soft skills, you can use behavioral and situational questions through a questionnaire or an interview to understand the candidate's soft skills.



5. LEVERAGE SOCIAL MEDIA PLATFORMS

While the use of social media remains a top concern for business owners, social media can help you attract and reach a larger pool of talent. Corporate career boards and online job boards are far from being enough to expose current vacancies available in your company. Posting job openings on sites like Facebook, Instagram or LinkedIn is only a first step. It's even better if you're able to create engagement on those platforms to drive interest and referrals.

6. ADOPT AGILE HIRING METHODS

With the diversification of work – think remote workers or millennials for example – it's important to adopt a flexible recruitment and selection process. An increasingly mobile workforce is a chance for business owners to broaden their talent pool and capture candidates that they would not have had access to in the past. Allow for virtual interviews and be more flexible with the times at which you set them to cater for time differences. Also, a lengthy recruitment process can have negative results if not clearly explained. Asking candidates to complete tasks and projects is of course a great way to test skills and abilities, but be reasonable with what you ask. Consider the needs and expectations of your candidates to develop a range of benefits programs that will suit a larger number of personas and increase your attractiveness as an employer.



7. ELIMINATE BIAS IN THE HIRING PROCESS

If there's anywhere bias should not be present, it's in the screening and hiring process. Analyze your interview questions. Companies should be looking beyond diversity as a quota to meet and focus more on creating a culture where diversity can thrive.



EMPLOYEE COMPENSATION & BENEFITS

To say that employees are motivated by compensation is an understatement. But how does one put together a compensation package that attracts competent employees, rewards hard work, and helps retain talent without breaking the bank?

THE DOLLARS AND CENTS OF EMPLOYEE PAY

The biggest and most obvious element in employee compensation is employee pay. Your employees are extremely aware of the dollar amount of their paychecks. They see it every payday. It's the most prominent (and difficult) part of landing talent. As a result, you have to get this right to attract and keep talented employees.

The first thing to do is establish a pay philosophy. Ask yourself do you want to lead, match or lag the market? Elements that should go into your company's pay philosophy include:

- pay relative to the competition;
- pay-to-benefits ratio (i.e. more pay and fewer benefits, or less pay and greater benefits?);
- incentives for performance; and
- whether the pay philosophy applies to owners as well.

Next, determine what your competition is paying. At this stage, be sure to keep in mind the competition for your talent. This may not necessarily be the same organizations as the competition for your business.

As job titles vary, it is important - even vital - to put together a proper job description. When doing so, think about the following:

- Scope and responsibilities of the position
- Complexity of the position and its impact upon the company
- Required skills, knowledge, and competencies for the position
- Education and experience level required

Once you have a complete job description, the next step is to conduct research. This can be accomplished in three ways:

- Discuss with others in the industry, possibly through trade groups
- Using sites like Indeed and Salary.com to determine the pay rates in your area
- Google salary surveys for your industry

For smaller companies without dedicated HR departments, it may make more sense to hire outside vendors to obtain these ranges. In any event, these resources should give you a range for the position in question. At that point you're ready to set the salary.



PERFORMANCE EVALUATION STRUCTURE

At this juncture, it's time to determine what, if any, performance evaluation structure you should adopt. The key to developing an effective bonus system is establishing the right criteria for use in determining when a bonus should be awarded. Some of the criteria that may be used include:

- **improvement of a process or improvement of results;**
- **improved customer satisfaction;**
- **development and implementation of a new product or service;**
- **improvement of an existing product or service; and**
- **performing at a higher level during a time of higher or more difficult workloads.**

It is important to have an incentive program in place that sets annual goals and performance appraisals for employees, establishes coaching and mentoring of younger employees, and fosters engagement and productivity.

Setting the pay rate at an appropriate level is important, but it is just as important to make necessary increases in pay and respond to economic realities like inflation. Top talent will start sending out résumés as soon as they think their pay is no longer appropriate for the position and responsibilities they have been given.

In order to address this, the first step is to ensure that job descriptions are up to date and to then determine whether the ranges are still accurate or require an increase. Once you've determined that the pay ranges are correct (or have corrected them if they need it), you should next check to make sure pay ranges are appropriate internally, too.

The easiest and best way to do this is to rank employees by performance and see whether their pay reflects their position in the company or department. If not, then you'll want to adjust pay accordingly.

It's important to make sure raises are done at or around the time performance reviews are held to make it clear that the raises are being carried out for performance reasons and are not just arbitrary.

Pay raises are generally done by percentage, not by a dollar amount. A raise of up to five percent is appropriate in most cases, though there are a few companies who may go as high as ten percent if increased responsibilities are added.



HOW TO BENEFIT FROM BENEFITS

Back in the old days, the only thing you needed in order to keep good talent around was a competitive wage. However, because of wage controls implemented during the Great Depression, companies developed other ways to compensate their employees. Many of these non-monetary incentives are now commonplace and not only help you recruit and retain employees but are also tax deductible to the employer.

The first thing to determine is what percentage of your payroll expenses should be used on non-monetary benefits. Once you've determined this, decide what portion of that percentage to allot to each individual benefit. Having these numbers in mind will help to control payroll costs.

Healthcare benefits are the biggest and most expensive category of employment benefits. There have been several new developments in the area of health insurance that are important to know about, even for small businesses.

There is no easy way to know how much health care will cost, but most estimates for small businesses place the range somewhere between 7.5% and 15% of their overall payroll costs.

As a result of the [Affordable Care Act](#), businesses with fifty or more full-time equivalent employees (FTE) must either provide health care to their employees or pay a penalty per employee. This is what is known as the Employer Mandate, and to determine whether your business is subject to it, you must first determine how many FTEs you employ.

The number of FTEs you employ may not be the same as the number of employees you have. The equation for determining your business' FTEs is to take the number of full-time (30+ hours per week) employees you have and add to it the number of part-time employee hours divided by 30. Do not include seasonal employees, contractors, or business owners in this number.

Your business will fall into one of these four categories:

- Self employed
- Less than 25 FTEs
- 25 - 50 FTEs
- More than 50 FTEs

Individuals who are self employed may obtain coverage under their state's [individual marketplace](#).

Businesses that employ less than 25 FTEs

are exempt from the employer mandate. Those businesses are required to offer full time employees coverage under the [Small Business Health Options Program \(SHOP\)](#). Employers may choose from among four types of plans: Bronze, Silver, Gold, and Platinum. The main differences among the plans are how much the employee pays out of pocket for medical care and the amount of the premium paid by the employer.

Businesses that employ between 25 and 50 FTEs

are also exempt from the Employer Mandate, but their tax credits are different than those for smaller businesses. In order to determine what your tax credit situation is [use this calculator](#). Such businesses may still participate in the SHOP, and if your business does \$500,000 in annual volume of business, you are required to notify them about their eligibility for the Health Insurance Marketplace.

Businesses that employ more than 50 FTEs

are subject to the Employer Mandate, which means that they will also be subject to a penalty of \$2,000 per employee after the first 30 employees or \$3,000 for each employee who utilizes the healthcare exchange with premium credits.



HEALTHCARE PLANS

In today's insurance marketplace there are four major types of healthcare plans:

PPO

A Preferred Provider Organization (PPO) plan is the most common kind of plan. In a PPO, the insured must use healthcare providers that are on the insurance company's preferred provider list. Services rendered by providers not on the list may be covered at a lower level or may not be covered by the insurance company at all. These programs are best for participants whose doctors are part of the network or who don't mind working with doctors in that network.

HMO

A Health Maintenance Organization (HMO) plan is one that covers services by providers that contract exclusively with the HMO. The insured individual designates a primary care physician (PCP) and obtains most of his or her health care through that doctor.

Services rendered outside the HMO are generally not covered except in the case of emergency. These plans are good for those who are willing to coordinate their health care through a PCP. Also, HMOs tend to cover more preventative medicine than other plans.

HSA-ELIGIBLE PLANS

HSA-eligible plans are PPO plans that work in conjunction with a Health Savings Account (HSA). The HSA is a pre-tax medical savings account that, when combined with a high-deductible health plan, may yield more favorable tax consequences for the participant. These plans are most suited for the young and healthy and those who don't mind paying higher premiums for unexpected illness or injury.

INDEMNITY

An indemnity plan is a plan where the participant pays for all the healthcare services and is reimbursed afterward by the insurance company. These plans offer the most freedom but are also typically among the most expensive. They are best for those who want complete freedom in choosing their doctor(s) but who are comfortable with coordinating the insurance billing themselves.



OTHER BENEFITS

Depending on the size of your company, health care may be a requirement that may use up a lot of your benefits budget. However, that doesn't mean that your company can't offer other, less expensive benefits that may be just as (or even more) appealing than the kinds of benefits bigger companies can offer. Here are a few ideas for alternative benefits that are either less expensive or completely free:

WORK FROM HOME OPTION

Due to the COVID 19 Pandemic this has led the conversation of employee benefits. In bigger cities, a commute may take up a great deal of your employees' free time, and smaller cities may also require commutes that may be just as stressful as those in their bigger counterparts. Show your employees you trust them to be independent and on task by offering to allow them to work remotely. This could be on a regular basis—such as once or twice a week—or it could be only once in a while. Allowing them to “Work from Home” will go a long way in boosting employee job satisfaction.

PROFESSIONAL DEVELOPMENT

In this day and age there are seminars and webinars on all sorts of professional topics. Show your employees that you are willing to invest in them by offering relevant opportunities for professional development. Not only will you gain happier employees, but you'll make them more valuable assets to the company.

FLEXIBLE SCHEDULE OR COMPRESSED WORK WEEK

Employees often have personal chores or errands that they need to complete, but they either have to put doing them off or take off work to complete them. A flexible schedule (usually composed of four ten-hour work days and the fifth day off or nine nine-hour days and the tenth day off) will allow those employees to manage those personal tasks, spend time with family, or just recharge by sleeping in. It's a great way to boost morale.

GYM OR HEALTH CLUB DISCOUNTS

Many gyms and health clubs offer corporate or volume discounts, so take advantage of that. Dozens of studies over the years have confirmed the fact that employees who exercise are healthier, more productive, and experience less stress on the job.



OTHER BENEFITS

COMPANY-SPONSORED RECREATIONAL SPORTS

Build your company's team dynamic by sponsoring a softball, basketball, or volleyball team.

EMPLOYEE DISCOUNTS

If your company offers a product or service that may be useful to employees, offer them a discount. Alternatively, institute early access to new products or services, or extend the employee discount to friends and family.

PAID LEAVE FOR VOLUNTEER WORK

There has been a surge in volunteer and charity work done by companies in the past several years. Offer to pay for employees to volunteer their time. The employee reaps the satisfaction from knowing he or she has helped out the community, and, in certain cases, the company may qualify for tax deductions or other tax benefits.



BENEFITS YOU SHOULD OFFER

If you're a startup or small business that is looking to attract top talent, offering "extra" employee benefits is one way to do that. These bonus benefits include:

RETIREMENT PLANS

Most small businesses will offer a contribution plan such as a 401k or 403b. This gives employees the chance to set aside their own money for retirement each pay period. Other retirement options include Simplified Employee Pensions (SEPs) and (Savings Incentive Match Plan for Employees (Simple IRAs).

When you're deciding between these three options, you need to consider the following:

- Whether or not you want to match employee contributions.
- How much you want employees to contribute to the plan (if at all).
- Tax implications of each option.

Offering retirement options is a way to show employees you care about their long-term personal goals as well as their career goals. In addition, there are also tax benefits and savings.

LEAVE BENEFITS

Traditional leave benefits aren't required by law but should be offered to employees. This includes:

- Holiday / vacation (a.k.a. PTO)
- Funeral / bereavement leave
- Sick leave
- Personal leave



MANDATORY BENEFITS

SMALL BUSINESSES MUST OFFER EMPLOYEES

The U.S. Bureau of Labor Statistics (BLS) reports that on average, employee compensation and benefits cost employers \$34.73 per hour worked, with wages of \$24.36 and benefit costs of \$10.37.

Legally required benefits make up just \$2.66 per hour, or 7.7% of those costs. Supplemental pay such as bonuses and overtime cost an additional \$1.14 per hour.

The following employee benefits are required for all employers, no matter their size.

SOCIAL SECURITY & MEDICARE

For every employee, businesses must withhold Federal Insurance Contributions Act (FICA) taxes of 1.45% for Medicare and 6.2% on the first \$137,700 of earnings for Social Security. Employers must also contribute an equal share into the funds.

On average, these taxes cost employers \$2.05 per hour worked, or 5.9% of compensation.

WORKERS' COMPENSATION

While generally not required by federal law, Louisiana employers are required to carry workers' compensation if they have 1 or more employees whether full or part time whose payroll is at least \$3,000.00 annually. On average, workers' compensation costs businesses \$0.45 per hour, or 1.3% of compensation.

UNEMPLOYMENT INSURANCE

Employers must also pay Federal Unemployment Tax Act (FUTA) taxes and state unemployment taxes. All told, unemployment insurance taxes cost employers \$0.17 per employee hour.

OVERTIME PAY

Under the FLSA, you must provide employees who earn less than \$684 per week or \$35,568 per year with overtime pay for hours worked beyond 40 in a work week. The minimum [rate for overtime is one-and-a-half times](#) the employee's usual hourly wage.

The FLSA does not require you to pay a premium for night or weekend work.

JURY DUTY LEAVE

All employers must provide unpaid leave for employees called to jury duty. Any regular full-time employee is entitled to one day full compensation for jury service.



CORONAVIRUS LEAVE

At the time of this writing, the [Families First Coronavirus Response Act \(FFCRA\)](#) is optional for certain employers to provide up to 80 hours of sick leave for employees who are stricken by COVID-19, under quarantine, caring for someone under quarantine, or caring for a child during a COVID-19-related school closure.

The law further provides up to 10 weeks of paid family and medical leave for childcare needs related to COVID-19.

Small businesses may request an exemption from provisions of the FFCRA if meeting them would pose a substantial threat to thier operations.



FEDERAL AND STATE COMPLIANCE

HR Compliance is the work of ensuring that your employment practices conform to federal, state and local laws. This requires learning which laws apply to your organization and understanding what they require you to do. It also requires knowledge, skill, and cooperation.

The work of compliance is never entirely done. Not only do new legal requirements appear regularly, but compliance obligations can often be unclear. While some compliance obligations are definitive, others are unresolved, and a good number of laws require you to make a judgement call. A lot of employment laws have standards you have to follow, but they don't tell you *how*.

First, when you're assessing your compliance obligations, understand that not all compliance obligations are clearly delineated or settled law. In those cases, you'll have to weigh your options and the risks involved, and then make a decision. Sometimes you may need legal advice in addition to HR guidance.

Second, document your actions and decisions. It only takes an employee filing a complaint for enforcement agencies to get involved, but you are better protected if you can quickly and clearly explain to them the reason for your actions.

Third, evaluate whether your policies, procedures, and practices are satisfactory to employees. No employment law gets written in a vacuum, and no law is truly inevitable.

Fourth, lead by example. Make good employee relations a key part of your brand and competitive advantage.



TOP 5 LEGAL TOPICS

1 WORKPLACE DISCRIMINATION LAW

Among the most important legislation to know, Equal Employment Opportunity (EEO) laws protect against the discrimination of any individual based on age, disability, genetic information, national origin, race/color, sex, pregnancy, or religion. HR professionals should be familiar with the individual laws that safeguard these protected classes of individuals such as:

- [Americans with Disabilities Act \(ADA\)](#)
- [Age Discrimination in Employment Act \(ADEA\)](#)
- [Equal Pay Act \(EPA\)](#)
- [Pregnancy Discrimination Act \(PDA\)](#)

These laws are applicable in all stages of an employee's lifecycle, from pre-hiring processes through rightful termination. Claims of discrimination can be brought even before a company brings someone in to interview, based on how job descriptions are crafted. It's important for business owners to know not just the laws, but the many ways they can be applied to avoid practices that expose an organization to unnecessary liability.

It is essential that organizations provide harassment training. It's critical to know what is legally considered [harassment](#) to help eliminate it in the workplace.

2 WORKPLACE DISCRIMINATION LAW

These laws, protecting the wages and hours of employees, are regulated by the U.S. Department of Labor. The main statute - the [Fair Labor Standards Act \(FLSA\)](#) - has a number of important functions. For example, this statute:

- Dictates the national minimum wage
- Established the 40-hour work week
- Outlines requirements for overtime pay
- Directs child labor regulations

Another critical statute in this category is the [Family Medical Leave Act \(FMLA\)](#) of 1993, which entitles eligible employees to 12 weeks of unpaid leave for certain family and medical reasons, with a continuance of healthcare coverage and job protection. In 2010, this act was amended to incorporate increased flexibility for veterans and active military in order to offer them additional protections under the law.



3 EMPLOYEE BENEFITS LAW

This category of laws helps protect employees' access to benefits. The most prominent laws include:

- The [Affordable Care Act](#), also known as "Obamacare," which was enacted to increase access to affordable healthcare for those living below poverty levels.
- The [Employee Retirement Income Security Act \(ERISA\)](#) stipulates that any organization offering pension plans must meet certain minimum standards.
- The [Consolidated Omnibus Budget Reconciliation Act \(COBRA\)](#) mandates insurance programs must provide eligible employees access to continued health insurance coverage for a period of time after leaving employment.
- The [Health Insurance Portability and Accountability Act \(HIPAA\)](#) affords employees and their dependents protection and privacy from the release of personal medical records. This law also protects employees from discrimination based on medical condition or history.



4 IMMIGRATION LAWS

Immigration laws, including the [Immigration and Nationality Act \(INA\)](#), serve to ensure that employers only hire candidates eligible to work in the U.S., including citizens, noncitizen nationals, lawful permanent residents, and aliens authorized to work. These regulations outline the use of the I-9 forms to verify compliance. Hyde says it's essential, however, that while organizations verify employment eligibility, they remain mindful of anti-discrimination laws in place.

5 WORKPLACE SAFETY LAWS

The [Occupational Safety and Health Act](#) (OSHA) was created in 1970 to ensure employees are afforded safe working conditions. Compliance of this regulation is overseen by the Occupational Safety and Health Administration, a division of the U.S. Department of Labor.

Another area of legislation designed to protect the safety of employees is [workers' compensation laws](#). These regulations outline the administration of disability programs that serve federal employees who are injured on the job. Individuals who work for private companies or state governments, however, are protected under regulations dictated by the individual [state's worker compensation boards](#).



FEDERAL LABOR LAWS BY NUMBER OF EMPLOYEES

Special Note on Health Care Reform: The Affordable Care Act includes comprehensive health insurance reforms with compliance requirements affecting employers of various sizes. For the latest information, please review the ACA Specific Documents.

1 - 14 EMPLOYEES

[Fair Labor Standards Act \(FLSA\) \(1938\)](#)

Establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private section and in federal, state, and local governments.

[Immigration Reform & Control Act \(IRCA\) \(1986\)](#)

Requires employers to collect information regarding an employee's identity and employment eligibility and document that information on Form I-9.

[Employee Polygraph Protection Act \(EPPA\) \(1988\)](#)

Prohibits employers from using lie detector tests, either for pre-employment screening or during the course of employment, with certain exemptions.

[Uniformed Services Employment & Re-employment Rights Act \(USERRA\) \(1994\)](#)

Prohibits employment discrimination against a person on the basis of past military service, current military obligations, or intent to serve. Also addresses health and pension plan coverage for service members.

[Equal Pay Act \(EPA\) \(1963\)](#)

Prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions.



1 - 14 EMPLOYEES (CONTINUED)

Consumer Credit
Protection Act (1968).

Protects employees from discharge by their employers because their wages have been garnished for any one debt, and limits the amount of an employee's earnings that may be garnished in any one week.

National Labor
Relations Act (NLRA)
(Wagner Act) (1935).

Prohibits employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective-bargaining purposes, or engaging in protected concerted activities, or refraining from any such activity.

Labor-Management
Relations Act
(Taft-Hartley Act)
(1947).

Defines certain practices by unions as unfair labor practices and regulates employer-union relations.

Employee Retirement
Income Security Act
(ERISA) (1974).

Regulates employers who offer pension or welfare benefit plans for their employees. Sets minimum standards for retirement and health benefit plans in private industry. Note: The terms "spouse" and "marriage" in Title I of ERISA include legally married same- sex couples.

Federal Insurance
Contributions
Act (FICA) (1935).

Imposes payroll taxes to provide benefits for retired workers and their dependents as well as for disabled workers and their dependents.

Occupational Safety
& Health Act
(OSH Act) (1970).

Created the Occupational Safety and Health Administration (OSHA) and assigns OSHA two regulatory functions: setting standards and conducting inspections to ensure that employers are providing safe and healthful workplaces. Note: Employers with 10 or fewer employees and business establishments in certain low-hazard industries are exempt from the requirement to routinely keep OSHA injury and illness records. As of January 1, 2015, a [new rule](#) revised the list of [partially exempt](#) industries and changed the criteria for all employers covered by the OSH Act to report severe injuries.



1 - 14 EMPLOYEES (CONTINUED)

Health Insurance
Portability and
Accountability Act
(HIPAA) (1996)

Provides a number of rights and protections for participants and beneficiaries in group health plans, including with respect to discrimination based on health status and special enrollment opportunities.

Note: The terms "spouse" and "marriage" in Title I of ERISA include legally married same-sex couples. Among other provisions, Title I includes the HIPAA portability rules.

Jury System
Improvement Act
(1978)

Prohibits employers from discharging or taking certain other actions against an employee summoned to serve as a juror in any court of the United States.

Personal
Responsibility and
Work Opportunity
Reconciliation Act
(PRWORA) (1996)

Requires employers to report certain information on their newly hired employees to a designated state agency.

Fair Credit Reporting
Act (FCRA) (1970)

Protects the privacy of consumer report information and guarantees the information supplied by consumer reporting agencies is as accurate as possible. Sets forth legal obligations of employers who use consumer reports.

[Caution: Many states have laws which prohibit or limit an employer's use of consumer credit reports or criminal records checks and/or prohibit discrimination based on credit or criminal history information. Be sure to check the applicable laws in your state and consult with an employment law attorney who knows your state laws to ensure full compliance.]

Fair and Accurate
Credit Transactions
Act (FACTA) (2003)

Requires proper disposal of information in consumer reports and records to protect against unauthorized access to or use of the information.



15+ EMPLOYEES MUST ALSO COMPLY WITH:

Title VII, Civil Rights Act (1964)_(1991).

Prohibits employment discrimination based on race, color, religion, sex (including sexual orientation and gender identity), or national origin.

Title I, Americans with Disabilities Act (ADA)_(1990).

Prohibits employment discrimination against qualified individuals with disabilities. Requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

Pregnancy Discrimination Act (1978).

Prohibits sex discrimination on the basis of pregnancy, childbirth, or related medical conditions.

Genetic Information Nondiscrimination Act (GINA)_(2008).

Prohibits discrimination against applicants, employees, and former employees on the basis of genetic information.

20+ EMPLOYEES MUST ALSO COMPLY WITH:

Age Discrimination in Employment Act (ADEA)_(1967).

Prohibits employment discrimination against persons 40 years of age or older.

Consolidated Omnibus Budget Reconciliation Act (COBRA)_(1985).

Provides employees and their family members (including legally married same-sex spouses who are otherwise eligible for coverage under the plan) the right to continue group health benefits for limited periods of time under certain circumstances when coverage under the plan would otherwise end, such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events.

Note: Group health plans sponsored by employers with 20 or more employees on more than 50 percent of their typical business days in the previous calendar year are subject to COBRA (part-time employees count as a fraction of an employee, equal to the number of hours the employee worked divided by the hours an employee must work to be consolidated full time).



50+ EMPLOYEES MUST ALSO COMPLY WITH:

"Pay or Play" (Employer Shared Responsibility).

Requires applicable large employers (ALEs) to offer affordable health insurance that provides a minimum level of coverage to full-time employees and their dependents or pay a penalty tax if any full-time employee is certified to receive a premium tax credit for purchasing coverage on an Exchange.

Note: As a reminder, [transition relief](#) delayed compliance with "pay or play" until 2016 for ALEs with **50 to 99 full-time employees** (including full-time equivalents) that certified that they met certain eligibility criteria. **For ALEs with non-calendar year health plans, this transition relief continues to apply for any calendar month during the 2015 plan year that falls in 2016.**

ALE Information Reporting

Requires ALEs subject to "pay or play" to report certain information to the IRS and to their employees regarding their compliance.

Note: Self-insured employers providing minimum essential health coverage (**regardless of size**) are subject to a [separate set](#) of requirements, but employers that are subject to **both** reporting provisions (generally ALEs that sponsor self-insured group health plans) may satisfy their reporting obligations on a single return form.

Family and Medical Leave Act (FMLA) (1993).

Entitles eligible employees (including those in legal same-sex marriages) to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

Note: Private sector employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year are [subject to FMLA](#). An employee must work at a location where the company employs 50 or more employees within 75 miles (and meet certain other requirements with respect to time worked) to be eligible for FMLA leave.



100+ EMPLOYEES MUST ALSO COMPLY WITH:

Worker Adjustment & Retraining Notification Act (WARN) (1989).

Requires employers to provide notification 60 calendar days in advance of qualified plant closings and mass layoffs.

EEO-1 Report (annual filing).

Requires employers to provide a count of their employees by job category and then by ethnicity, race, and gender.

COMPLIANCE FOR FEDERAL CONTRACTORS:

EEO-1 Report (annual filing).
(50+ Employees)

Requires federal government contractors who have a contract, subcontract, or purchase order amounting to \$50,000 or more to provide a count of their employees by job category and then by ethnicity, race, and gender.

Executive Order 11246 (1965).

Prohibits federal contractors that generally have contracts that exceed \$10,000 from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin (as well as sexual orientation or gender identity, for contracts entered into or modified on or after April 8, 2015); also requires covered contractors to take affirmative action to ensure equal opportunity in all aspects of employment.

Rehabilitation Act, Section 503 (1973).

Prohibits discrimination and requires employers with federal contracts that exceed \$10,000 to take affirmative action to hire, retain, and promote qualified individuals with disabilities.

Drug Free Workplace Act (1988).

Requires some federal contractors to provide drug-free workplaces as a precondition of receiving a contract from a federal agency. Prescribes certain actions for employers to take to comply with the Act.



COMPLIANCE FOR FEDERAL CONTRACTORS (CONTINUED):

Vietnam Era
Veterans'
Readjustment
Assistance Act
(VEVRAA) (1974).

Requires covered federal government contractors to take affirmative action to employ and advance in employment specified categories of veterans and prohibits discrimination against such veterans. Requires contractors to list employment openings with the appropriate employment service delivery system and that covered veterans receive priority in referral to such openings. Also includes annual reporting requirements.

Davis-Bacon Act
(1931).

Requires contractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works to pay laborers employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

Copeland "Anti-
Kickback" Act (1934).

Prohibits federal contractors engaged in building construction or repair from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract and requires weekly statements of compliance.

McNamara-O'Hara
Service Contract Act
(SCA) (1965).

Requires contractors performing services on covered federal contracts in excess of \$2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates contained in a predecessor contractor's collective bargaining agreement.

Walsh-Healey Public
Contracts Act (PCA)
(1936).

Requires contractors engaged in the manufacturing or furnishing of materials, supplies, articles, or equipment to the U.S. government or the District of Columbia to pay employees who produce, assemble, handle, or ship goods under contracts exceeding \$10,000 the federal minimum wage for all hours worked and time and one half their regular rate of pay for all hours worked over 40 in a workweek.



DIVERSITY & INCLUSION

We identify ourselves in a wide range of ways and no two humans are the same.

In broader terms we are diverse in nature along the lines of sexual orientation, race, gender identify, religion, age or ethnicity. We are also different in our physical abilities, strengths, weaknesses, level of education and many other factors as well. When we talk about diversity in the workplace, we mean that the workplace represents the diversity of the community it serves.

Inclusion means that each person irrespective of their personal, social, physical or other differences, is equally empowered to voice out her/his opinions and have the assurance that her/his voice will be heard. Inclusion is not merely a tolerance for diversity but actually has a wider connotation wherein it entails acceptance of each individual the way she/he is and striving towards elevating people so that they are at an equal footing with anyone else and they don't feel small in their skin.

WHY DIVERSITY AND INCLUSION ARE IMPORTANT

Diversity and Inclusion, when subjected to an incomplete analysis, seems like a concept relevant only from the HR perspective. Something to be done along the lines of morality and ethics. And that is to a great extent necessary. To build a truly ethical company, taking care of diversity and inclusion is necessary. However, that is not the only point to it. More and more companies have realized that nurturing a diverse and inclusive workforce leads to tangible benefits such as economic gains and a better brand equity. A recent McKinsey report stated that companies which strive for diversity are 35% more likely to show returns above the average for their industry.



DIVERSITY & INCLUSION

A few reasons why diversity and inclusion in the workplace are important:

IT LEADS TO A MORE CAPABLE AND QUALIFIED WORKPLACE

When a company is truly inclusive, they can tap into a much larger talent pool. This helps ensure that good people are hired no matter what background they belong to or how they identify themselves.

IT DRIVES CREATIVITY AND INNOVATION IN THE WORKPLACE

A diverse workforce makes sure that the company, as a whole, is thinking along diverse perspectives informed by those coming from varied backgrounds and possessing different perspectives. Overspecialization has always been found to be a sure way to breeding weaknesses in the workforce.

A DIVERSE WORKFORCE WILL BOOST YOUR BRAND EQUITY

It will also boost your image as an employer. As the world is moving forward and paving a path towards inclusion, a company that wholeheartedly embraces diversity can help to improve its perception amongst the external stakeholders like customers, shareholders, and potential employees.

IT IMPROVES THE COMPETITIVE EDGE OF AN ORGANIZATION

When an organization is truly inclusive, it is tapping into markets and talent pools that it would not be otherwise looking into because of biases and prejudices.

There is a need, now more than ever, that the message of cooperation and community is kept alive and healthy within the organization. Not only does this boost your employees' mental health and productivity but also helps in making sure that the organization stands true to the ethical standards of humanity. This is the time to find the right balance between your business strategy and an equally well thought out people strategy. This will help organizations to navigate the post COVID-19 world with a clear eye on the future. This vision will help them meet their strategic goals and fill in the gaps that still remain, from the perspective of diversity and inclusion in the workforce.



UNDERSTANDING EMPLOYEE DISCIPLINE

An effective discipline program is beneficial to both the employer and employee. It helps employees correct any shortcomings with the goal of becoming a valuable, contributing member of the workforce. Documentation created as a result of the discipline process can also help protect an employer in the event that a termination or other adverse employment decision becomes necessary. It is useful to view the matter of discipline as having several components: issues that must be addressed before administering discipline; methods of disciplining, including progressive discipline; how to provide employees with an opportunity to respond to discipline, such as a grievance program; and laws relevant to termination.

Matters to consider before disciplining employees include: ensuring that employees know what is and is not permitted in the workplace; how to discipline with fairness; and how to properly conduct an investigation into allegations of employee wrongdoing.

Establishing a Workplace Code of Conduct

First and foremost, employees must have fair and reasonable notice of what is expected of them. They must know the parameters of permissible and prohibited conduct in the workplace. Rules should be:

- Clearly communicated to all employees in writing.
- Compliant with state and federal laws.
- Consistently and fairly enforced.

Employer rules generally fall into one of the following categories:

- Rules governing day-to-day matters, such as attendance, tardiness, and dress.
- Rules defining what is permissible within the culture of the company (e.g., whether employees may use company phones or computers for personal calls or e-mail).
- Rules governing more serious conduct such as drug or alcohol abuse, workplace safety, or sleeping on the job.
- Rules that, if not followed, may lead to immediate suspension and/or discharge (e.g., violence in the workplace).

Disciplining with Fairness

If employees believe they are being treated fairly, they are much more likely to accept the consequences of their actions. Consistent and fair discipline will also help to prevent successful claims of discrimination or other unlawful conduct.

Critical to fair and just discipline are:

- Thoroughly investigating the circumstances, including interviewing of witnesses, etc.
- Providing notice of the misconduct to the employee.
- Allowing the employee an opportunity to respond to the allegation.
- Making the "punishment fit the crime." Draconian discipline for a minor infraction is counterproductive, and modest discipline for a serious infraction is not helpful.
- Generally, an employee should have some right to appeal a disciplinary decision to some person above the rank of the one issuing the discipline who was not involved in the initial decision.
- Employers must keep a careful paper trail to document each infraction and the discipline administered.



Investigating Misconduct

Allegations of employee misconduct or wrongdoing should be carefully investigated. If an employee is accused of misconduct or a rule infraction, the employer should promptly, fairly and thoroughly conduct an investigation into the matter to make an independent determination of the facts and circumstances surrounding the alleged misconduct. When an employer fails to properly investigate, the employee may gain a resource to support a claim of discrimination or similar unlawful act.

Every employer should establish a protocol for internal investigations so that investigations can be conducted on a uniform basis. The protocol should specify both the persons to conduct the investigation and the process to be used in the investigation (such as the interviewing of alleged witnesses). The goal is to be thorough—to learn all the facts surrounding the alleged misconduct to reach an informed decision as to what occurred.

Note: Please be sure to consult with an employment law attorney or HR specialist when developing an investigation policy/process. Situations that require investigations can be very sensitive, and it is prudent to consult with a professional to obtain specific guidance to help avoid potential liability issues.

Suspension Pending Investigation

If the circumstances require an investigation that cannot be concluded in several hours, and/or if the presence of the employee who is the subject of the investigation poses a threat of any kind to other employees or to the orderly operation of the business, the employer may wish to suspend the employee pending completion of the investigation. For example, if an employee is charged with embezzlement or workplace violence, the employer may wish to remove the employee from the premises pending completion of the investigation. The suspension may be done without pay; however, if the investigation exonerates the employee, the employee should be paid for the days of suspension. If the investigation confirms the misconduct, the suspension without pay should stand.

Use Documentation

All matters involving employee discipline, discharge, injury or any other circumstance that could give rise to employer liability should be carefully and accurately documented. Months or even years after the incident, when memories have faded, the careful, thorough documentation of events will help refresh recollection and tell the story accurately.

Among the documentation that the employer should gather and retain are:

- Initial complaints, including any complaint forms.
- Witness reports.
- Written materials relevant to the investigation, including e-mails or notes.
- Meetings with the employee at issue.
- The employee's personnel file, including any previous discipline reports or investigations, and notes relating to any verbal or written warnings.
- Discipline or termination reports.
- Individual notes of supervisors or other management personnel involved.



Suspension Pending Investigation

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Using Progressive Discipline

Progressive discipline is a method of discipline that uses graduated steps for dealing with problems related to an employee's conduct or performance that do not meet clearly defined standards and policies. The ultimate objective of progressive discipline is to help employees correct conduct problems and resolve performance issues in the earliest stages.

View sample policies and a sample form in our supplemental guide:

- Progressive Discipline Policy – Single Disciplinary Process
- Progressive Discipline Policy – Varied Disciplinary Process Based on Type of Misconduct
- Written Warning

Employee Opportunities to Respond

Grievance programs and the use of one or more alternative dispute resolution methods provide a forum for employees to challenge an employment decision.

Grievance Programs

A grievance procedure allows employees a formal avenue through which to seek a forum and possible redress if the employee thinks he or she has been wronged in some way. These programs often serve a "therapeutic purpose." Even when an employee does not get the result he or she wishes, having had the opportunity to be heard may help to ease the employee's frustration or dissatisfaction.

An internal grievance program should have a minimum of two steps and probably no more than three:

- 1 The employee initiates a grievance with his or her supervisor. If the issue involves the supervisor, an alternative manager should be made available (e.g., the human resources director).
- 2 If the employee is dissatisfied with the response at the completion of Step 1, the employee should be able to request consideration of the grievance by either the employee's supervisor's immediate superior or another person ranking higher than the supervisor.
- 3 If a third step is included, the grievance might be referred to the level of a regional or divisional human resources or industrial relations director, or to an officer of the company.



Alternative Dispute Resolution

If the grievance procedure does not bring resolution of the matter, the employer may want to offer alternative dispute resolution, which includes mediation (which is nonbinding) and/or final and binding arbitration. Alternative dispute resolution is typically faster, less expensive and less formal than litigation. In simple arbitrations, the employer might choose to be represented by a manager rather than counsel, thereby saving in legal fees. (Employers should use counsel when significant amounts of money are at stake or when the issue has broad impact within the company.)

Mediation

Mediation is a voluntary process in which a trained neutral works with the parties to facilitate an agreement to resolve their dispute. A good mediator may be able to help the parties "see the forest for the trees" and realize that a compromise solution may serve all concerned. Ideally in mediation the employee grievant and the employer are actively engaged in crafting a solution, so that both have ownership of the solution. Such a mutually designed solution encourages compliance by both parties.

Mediation can stand alone, or it may be a preliminary step preceding arbitration or even litigation.

Arbitration

In arbitration, parties agree to submit their dispute to an outside third-party neutral, who renders a final and binding decision regarding the dispute. Arbitrators need not be attorneys, though many are. They may or may not insist on the traditional rules of evidence that govern litigation in courts. Arbitration proceedings are usually much less formal and expensive than litigation, affording the grievant a real opportunity to feel heard.

Arbitration decisions are generally subject only to extremely narrow review by courts, and they are rarely set aside. Another advantage of arbitration is that it is private and not public, in contrast to litigation.





STILL HAVE QUESTIONS?

**CONTACT US TODAY TO SEE
HOW WE CAN HELP YOUR
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