

GUIDE TO HIRING EMPLOYEES

Hiring employees is an inevitability most small businesses encounter. In the process, employers face a myriad of state and federal regulations controlling the hiring, treatment, compensation, and termination of employees. Some of these rules and regulations are outlined in the following guidelines employers should follow when hiring an employee.

Determine Whether the Worker is an Independent Contractor or an Employee

Employers must be very cautious when hiring independent contractors since they are often reclassified as employees by federal and state taxing authorities. The IRS's Three Categories of Evidence, which place emphasis on the level of control the employer is able to exert on the worker, can be used to make this determination. Alternatively, the employer can request an IRS determination of status by filing Form SS-8.



Comply with Applicable Federal and State Labor Laws:

Fair Labor Standards Act (FLSA), often referred to as the "Wage and Hour Law," regulates the minimum wage, overtime pay, record keeping requirements, and child labor standards for certain employees. Stiff civil and criminal penalties for noncompliance can result for each offense or willful violation. In addition to federal standards, an employer should check with the individual state labor department for information regarding state labor standards. FLSA sets the requirements for minimum wage, as well as the rules governing overtime pay. Some states have minimum hourly rates that exceed the federal rate. Federal Child Labor Law allows those who are at least 18 to work at any job for any length of time. Those age 16 or 17 may work unlimited hours in non-hazardous jobs. Those age 14 and 15 are normally restricted both on hours and the type of work they perform. Most states also have child labor laws.



Occupational Safety and Health Administration (OSHA), in association with state labor departments, monitors and regulates working conditions of employees across the country. If an employee feels that working conditions are dangerous, he/she may file a complaint with OSHA and request an inspection. OSHA covers employers with at least one employee doing business in interstate commerce (which is broadly defined), but if they have 10 or fewer employees (including part-time) on each workday of the prior calendar year they do not need to keep OSHA records. In addition, most states have worker safety laws that apply to new employees.

Equal Employment Opportunity Commission (EEOC) is the federal agency that regulates and monitors employer compliance with discrimination laws and Affirmative Action guidelines. Most states have similar statutes, many with a wider scope than the federal laws. EEOC guidelines under the Americans with Disabilities Act (ADA) outline job interview questions employers may or may not ask. The ADA applies to employers with 15 or more employees during each working day for at least 20 weeks during the current or preceding calendar year.

Display Required Federal and State Posters

Various posters must be displayed for all applicants to view. Employers must also provide notices to employees concerning job safety and health and federal minimum wage and overtime requirements. Most states also require one or more notices to be posted. Failure to post a required notice can influence how long an applicant has to file a lawsuit related to the company's hiring process.

**Complete Form I-9,
Employment Eligibility Verification**

The *Immigration Reform and Control Act* requires employers to verify an employee's eligibility to work in the United States by completing Form I-9 within 3 days of hiring. Form I-9 can be downloaded at www.uscis.gov. Be sure to always use a current version of the form, which is updated annually.

In addition to using Form I-9, employers may use the Department of Homeland Security's free *E-Verify* program to electronically verify the employment eligibility of all newly hired employees, including U.S. and non-U.S. citizens. The *E-Verify* program, accessed at www.dhs.gov/E-Verify, compares employee I-9 information with various government databases.

**Notify the Appropriate State Agency
that an Employee Has Been Hired**

Welfare legislation requires employers to furnish W-4 information on all new hires to each state in which a newly hired worker works. The purpose of this program is to assist child support enforcement agencies to locate, establish and enforce child support obligations. Employers may fulfill the information requirements by submitting the new employee's W-4 either on paper or electronically no later than 20 days after the date of hire. *Caution:* Many states have adopted time frames shorter than 20 days. Employers must adhere to the reporting time frame of the state to which they report. Be sure to check with your state contact to learn your state's requirements.

Employees in the Home

Many people fail to consider their own household when thinking about employees. But employees can be anywhere, even at home. All it takes is a household employee, such as a maid, cook or gardener.

The primary difference between a household employee and someone placed by an employment service that provides household help is the degree of control. A service usually controls what work is done and how it is done, provides needed tools, and pays the workers. However, when homeowners hire maids -- or babysitters, cooks or gardeners -- and can fire them, too; when they can control what work is done and how it is done, they become household employers.

Employers have tax responsibilities that other people do not. They need an employer identification number. They also must usually keep a record of the name and taxpayer identification number of each employee for tax purposes. Household employers may have to withhold FICA tax from employee wages, as well as pay an equal amount from their own funds. Federal income tax must be withheld if the employee asks for it and the employer agrees. Finally, household employers may have to pay Federal Unemployment Tax, or advance payment of the earned income tax credit.

**Have the Employee Complete and Sign
Form W-4, Employee's Withholding
Allowance Certificate**

This form determines the amount of federal income tax to withhold from wages. If no W-4 is on file, the employer must withhold at the single/zero withholding allowance rate. The employer is no longer required to submit copies of potentially questionable Forms W-4 to the IRS unless directed to do so by written notice from the IRS. Most states require a similar form to be completed by the employee.

**Secure Necessary Workers' Compensation
& Employer Liability Insurance Coverage**

Workers' compensation laws, legislated and regulated by each individual state, require employers to furnish standardized insurance coverage that will provide compensation in the event of a job-related injury, illness, or death of an employee. Carefully review the policy to make certain that the employee is properly classified, as an improper classification may result in higher cost of coverage. Generally, worker's compensation insurance is obtained through private insurance companies.