

## 20. It's the Law!

### *Your Legal Responsibilities As An Employer*

Bureaucracy is alive and well in America! Today's business person — the employer — must not only be very good at dealing with Human Resources, and wearing a lot of other hats that go with the territory, but you also have to do all those things in compliance with Federal, State, County and City laws and ordinances. Just keeping track of your requirements can be a big chore in itself.

This section will cover those areas you may pay particular attention to relative to your Human Resource Management and Production.

#### **The IRS**

- Your first obligation as a business employer is to contact the nearest Internal Revenue Service (IRS) office to obtain a Federal Employer Identification Number (FEIN). This is the number you use when submitting Federal and state payroll taxes, Federal and state unemployment insurance (FUTA), Social Security and Medicare (FICA).

#### **Federal Withholding**

- Based on information provided on the employee's W-4 and the applicable Federal tax rates, you will withhold required payroll taxes from each employee's gross pay and remit these funds to the IRS in accordance with the applicable remittance requirements.

#### **FICA**

The Federal Insurance Contributions Act requires that you withhold a portion of your employees' wages to pay a social security tax and a Medicare insurance tax (1.45%). You also have an obligation to pay the employer's share. On a quarterly basis you must remit a total of 7.65% (effective in 2009) to the Federal Government. If you are late paying the taxes are subject to interest and penalties. Failure to pay the taxes may result in a lien on an employer's property. Employers are required to keep these records for four years.

The Federal Unemployment Tax Act (FUTA), with state unemployment tax, provides for payments of unemployment compensation to employees who have lost their jobs. Most employers pay both a Federal and state unemployment tax. Only the employer pays FUTA tax; it is not deducted from the employees' wages.

- **FUTA tax rate.** For 2009, the FUTA tax rate is 6.2% on the first \$7,000 of cash wages you pay each employee. You may receive a credit of up to 5.4% of FUTA wages for the state unemployment tax you pay. If your state tax rate (experience rate) is less than 5.4%, you are still allowed the full 5.4% credit. Therefore, your net FUTA tax rate may be as low as 0.8% (.008). FUTA tax applies, however, even if you are exempt from state unemployment tax or your employees are ineligible for unemployment compensation benefits. Sections 940 and 940-EZ take state credits into account.

### **The USCIS (United States Citizenship and Immigration)**

- When Congress passed the Immigration Reform and Control Act (IRCA) back in 1986, it shifted the burden of compliance with the law to employers. Unlike some other laws, this law applies even to companies with as few as one employee on payroll.
- Like an income tax return, you must file an affidavit with the government agency, and you are subject to penalties for deliberate misrepresentation of employee status. Penalties range from \$100 for each offer of false status per employee to \$10,000 for repeat offenses.
- The law requires you to verify a new employee's work eligibility within three days of hiring. Employers must show you one or more of the documents listed on the reverse side of Form I-9 to establish identity and employment authorization in the United States. Please visit [http://www.osha.gov/pls/epub/wageindex.download?p\\_file=F6844/19\\_Handbook.pdf](http://www.osha.gov/pls/epub/wageindex.download?p_file=F6844/19_Handbook.pdf)

### **Penalties for Discrimination**

The law was passed in addition to penalizing employers for hiring illegal aliens. Employers can also be penalized for discriminating against employees on a basis of national origin or citizenship. Penalties only apply to employees who you hire after the law was passed. Penalties are levied on employees who you hire after the law was passed on accent or appearance, for example. Violating the law and can face a stiff penalty. You are required to file Form I-9 on every new employee, even if he or she is your childhood neighbor who you grew up with.

The Occupational Safety and Health Act (OSHA) requires employers to maintain safe and healthy working conditions for their employees. Employers who ignore Federal or State OSHA regulations can receive fines and penalties.

### **The Americans with Disabilities Act**

- This law prohibits discrimination against individuals with disabilities in employment. Effective July 26, 1994 the ADA applies to all employers with 15 or more employees.

- Under the ADA's employment provisions, employers are required to extend equal opportunities in all aspects of employment including hiring, advancement, compensation and training to individuals with disabilities. It is against the law to discriminate against a qualified individual with a disability who can perform the essential functions of the job, with or without a reasonable accommodation which would impose an undue hardship on the business.
- You may not ask questions on your application or during your interview regarding an applicant's disabilities or general health. However, you may ask questions as to whether the applicant can perform the fundamental job duties of the job. For example, "Can you lift 50 pounds?" "Can you handle a vacuum cleaner and vacuuming all day long?" "Can you drive a car?"

### **The Civil Rights Act**

- The Federal Civil Rights Act prohibits employers with 15 or more employees. This law specifically prohibits discrimination against employees on the basis of race, color, sex, religion, national origin, disability, marital status, and veteran status. It also affects pre-employment inquiries.

### **Age Discrimination in Employment Act**

- This act generally prohibits employers from engaging in age-based discrimination against applicants who are 40 years of age or older. Employers with 20 or more employees under the ADA must employ at least 20 people.

Discrimination on the basis of age is prohibited by the Age Discrimination in Employment Act. When a Help Wanted ad contains phrases such as "recent college grad," etc., it may constitute a violation of the ADA. In addition, any questions during the interview may be considered an attempt to discriminate on the basis of age.

### **The Equal Pay Act**

- This Act prohibits employers from paying workers of one sex less than the rate paid to employees of the opposite sex for work that requires equal skill, effort, and responsibility and is performed under similar conditions.

### **The Fair Labor Standards Act**

The Fair Labor Standards Act requires employers to pay their hourly workers at least a minimum wage of \$5.15 per hour, and an overtime wage rate of at least one and one half times the employee's regular pay rate for each hour worked in excess of 40 hours in a work week. (Congress is currently considering an increase in the minimum wage).

- Under overtime pay requirements, a “work week” consists of seven consecutive days.
- Some states may set higher minimum wage standards. Check with your state.

### **The Employee Polygraph Protection Act**

- This Act restricts the use of lie detector tests in the workplace. Lie detector tests include polygraphs, voice stress analysis, and any other mechanical device used to render diagnostic opinions on an individual's honesty.
- The Act prohibits the use of lie detectors to screen job applicants or to test current employees unless the employees are “reasonably suspected” of involvement in workplace fraud or other illegal activities.

### **Records Retention**

- As an employer, you are required by various federal employment records for a specified period of time.

### **Posting Requirements**

- Various Federal laws require employers to prominently display certain posters in areas accessible to all employees. Please see the specific Federal and State posting requirements for your state.

Posting requirements for the Federal Government are required of  
Employers of Federal Government Contractors

JOBS SAFETY AND HEALTH ACT  
FEDERAL EMPLOYMENT DISCRIMINATION LAWS  
FAMILY AND MEDICAL LEAVE ACT  
MINIMUM WAGE AND OVERTIME PAY PROTECTION

### **Keep All Employees Informed**

- We have provided the Federal Laws on various Human Resource issues. However, there are also numerous states that have more stringent laws and additional regulations above and beyond what we have discussed here. Be sure to check with your state to make sure you are in compliance with applicable state law.

## Documents relating to

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Personnel Records Retention Guide  
The 5 Federally Mandated Posters  
Specific State Posting Requirement

### Important Links to Minimum Wages

State Minimum Wage Standards in the US  
<http://www.dol.gov/esa/minwage/america.htm>

Canadian Minimum Wage Standards  
<http://canadaonline.about.com/library/bl/blminwage.htm>

Minimum Wage Standards Around the World  
[http://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_minimum\\_wage](http://en.wikipedia.org/wiki/List_of_countries_by_minimum_wage)

### If you're in a country other than the United States:

While the laws and regulations discussed in this chapter relate specifically to the United States of America, your country will likely have parallel laws and regulations which you need to comply with on similar subjects covered in this section. However, many laws regulating employer-employee relationships that we have addressed are just good business and common sense issues.

If, for example, a country does not have regulations dealing with workplace safety, which are governed by OSHA in the USA, this does not mean business owners need not address this subject. It is simply good business to watch out for the safety and well-being of your employees. It will give you just one more selling point to convey to prospective clients which your competitors may be totally ignoring.

The subject of a living wage is another good example. An employer should never try to figure out how little it can get away with paying its workers but, rather, how much it can pay. Again, this just makes good long-term business sense. Employers who deal fairly with their employees succeed because they create a culture of good will and employee loyalty that many of their competitors just don't have.