

HR & Benefits Do's and Don'ts: Staying Compliant in 2018

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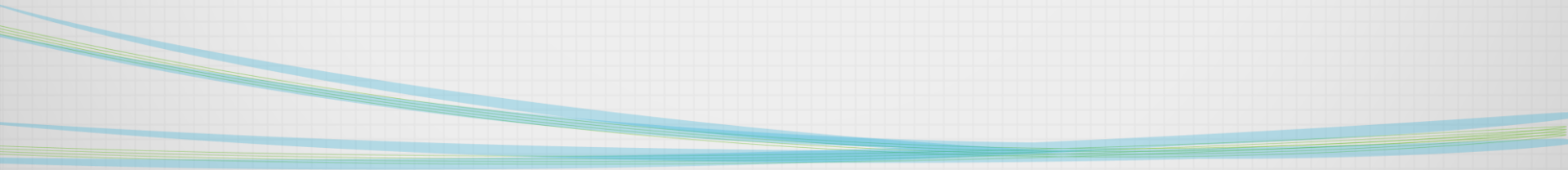
Most Common Benefits Notices Mistakes

- Failing to **maintain and distribute** Summary Plan Descriptions (SPDs) to all plan participants if you have an ERISA-covered group health insurance plan. Both small and large employers must comply with this federal law. The SPD generally informs plan participants as to what benefits the plan provides, how it operates, when he or she can participate in the plan and other eligibility rules, and how to file a claim for benefits.
- Companies with **20 or more employees** failing to provide required notices regarding continuation of health coverage under federal COBRA.
- Failing to comply with state "mini-COBRA" requirements, which may apply to companies with fewer than 20 employees.



Affordable Care Act (ACA) & Your Business

With repeated attempts to repeal and replace the ACA currently taking place in Washington, DC, it is imperative to emphasize that all ACA requirements remain in effect for 2018.



Hiring Do's and Don'ts

- Make sure all interview questions are appropriate and relate directly to the position and the applicant's ability to perform the job's essential functions.
- Make sure questions do not discriminate based on race, sex, religion, age, ethnic group, national origin, marital status, military service, disability, or any other protected status.



Hiring Do's and Don'ts (Continued)

- If doing a background check on a candidate, be sure to have written permission from the candidate, and ensure that federal and state requirements on background checks are satisfied.
- Confirm that policies and procedures related to drug testing, use of arrest and conviction records, consumer credit reports, and other candidate information requests comply with applicable federal, state, and local laws.



Hiring Do's and Don'ts (Continued)

- Be sure Forms I-9 are completed for all new employees within 3 business days from the first day of work for pay.
 - Federal law requires employers to hire only individuals who may legally work in the United States—either U.S. citizens or foreign citizens who have the necessary authorization. To comply with the law, employers must verify the identity and employment authorization of each person they hire by completing and retaining Form I-9. Employers who hire or continue to employ individuals knowing that they are not authorized to be employed in the United States may face civil and criminal penalties.
- Satisfy new hire reporting requirements and complete necessary tax forms (e.g., state-required withholding forms).

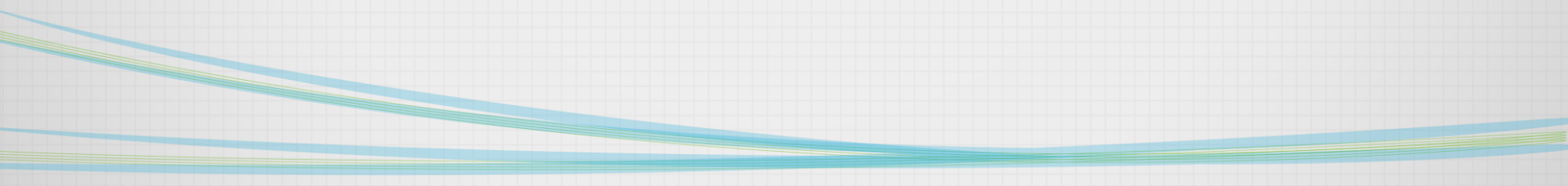


Federal Minimum Wage & Overtime Requirements

Federal law generally requires employers to pay their employees:

- At least the federal minimum wage for all hours worked; and
- Overtime pay of at least 1.5 times the employee's regular rate of pay for any hours worked over 40 in a workweek.

However, the law exempts certain employees from these requirements, most notably executive and administrative employees who meet the requirements outlined in federal regulations.

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Who Are Exempt Executive Employees?

- Compensated on a salary basis at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; **and**
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight.



Who Are Exempt Administrative Employees?

- Compensated on a salary or fee basis at a rate not less than \$455 per week.
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; **and**
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of importance.



Misclassifying Employees—Independent Contractors vs. Employees

In determining whether the person providing services is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.

In general, the more control an employer exerts over a worker, the greater the likelihood the worker may be classified as an employee.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral, financial, and type of relationship.



Misclassifying Employees: Behavioral

Key Question: Does the company control or have the right to control *what* the worker does and *how* the worker does his or her job?

An employee is generally subject to the business's instructions about when, where, and how to work.



Misclassifying Employees: Financial

Key Question: Are the business aspects of the worker's job controlled by the payer? These include things like how the worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.

An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. Conversely, an independent contractor is typically paid by a flat fee for the job.



Misclassifying Employees: Type of Relationship

- Type of relationship refers to facts that show how the worker and business perceive their relationship to each other (e.g., written contracts, employee benefits, permanency of the relationship, services provided)
- Businesses generally do not grant employee benefits (such as insurance, pension plans, paid vacation, and sick days) to independent contractors. However, the lack of these types of benefits does not necessarily mean the worker is an independent contractor.
- If you hire a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship.



New Employee Orientation

Review your orientation/onboarding program for welcoming new employees and familiarize them with the company's basic management practices.

New employee orientation steps include:

- Assign one of your employees to show your new hire the workplace environment, make introductions, and respond to any questions. This is a great way to put your new employee at ease.
- Encourage the team to welcome and support the new employee.



New Employee Orientation (Continued)

- Create a great first impression by ensuring the employee's work location is clean and organized.
- Be sure that access to the company's network and e-mail system is available, and that a phone extension is set up for your new employee.
- If necessary, arrange for a building pass, ID, and parking pass to be provided to the new employee.



New Employee Orientation (Continued)

- If you will be providing an employee handbook, make sure it is ready to be distributed, along with a benefits information packet.
- Make sure you provide safety training, and supervise all new employees to make sure they can competently handle all tasks assigned to them.



Employee Handbook Basics

Employee handbooks should be used to effectively communicate information regarding your company's policies, practices, and employee benefits. The employee handbook is the single most important internal document that lays out the policies of your company to each and every one of your employees.

In addition, be sure to consider federal, state, and local laws and regulations that may affect your business when drafting your employee handbook. You should also have employment counsel review the handbook before you publish and distribute it.



Employee Handbook Sections

General Employment Information	Anti-Discrimination Policies	Compensation
Work Schedules	Standards of Conduct	Safety and Security
Computers and Technology	Employee Benefits	Leave Policies

Employee Handbook Sections: General Employment Information

Your employee handbook should include an overview of your business and general employment policies relating to job classifications, employee records, job postings, termination and resignation procedures, and union information, if applicable.



Employee Handbook Sections: Anti-Discrimination Policies

- As an employer, you must comply with the equal employment opportunity laws prohibiting discrimination and harassment, including the Americans with Disabilities Act. Your employee handbook should include a section about these laws, how your employees are expected to comply, and a statement of your compliance.
- This section is also a good place to set out your sexual harassment prevention policy.



Employee Handbook Sections: Compensation

- Clearly explain to your employees that your company will make necessary deductions for federal and state taxes, as well as voluntary deductions for the company's benefits programs (if applicable).
- In addition, you may outline your company's legal obligations regarding overtime pay, pay schedules, and bonus compensation.



Employee Handbook Sections: Work Schedules

Describe your company's policies regarding work hours and schedules, attendance, punctuality, and reporting absences, along with guidelines for flexible schedules and telecommuting, if offered.



Employee Handbook Sections: Standards of Conduct

- Make sure you set expectations for how you want employees to conduct themselves in your workplace, from dress code to ethics. In addition, it is important to remind your employees of any legal obligations they may need to comply with on the job (for example, your company's legal obligations to protect customer data).
- It is also appropriate in this section to describe your standards related to employee discipline.



Employee Handbook Sections: Safety and Security

- Describe your company's policy for creating a safe and secure workplace, including compliance with the Occupational Safety and Health Administration's laws that require employees to report all accidents, injuries, potential safety hazards, safety suggestions, and health and safety-related issues to management.
- This section should also include your company's policy regarding bad weather and hazardous community conditions.
- Finally, add your commitment to creating a secure work environment, and your employees' responsibilities for abiding by all physical and information security policies, such as locking file cabinets or computers when they aren't in use.



Employee Handbook Sections: Computers and Technology

- Outline your policies on appropriate computer, software, e-mail, and social media use.
- This section should also outline steps employees should take to secure electronic information.



Employee Handbook Sections: Employee Benefits

- Include details on your company's benefit programs and eligibility requirements, including all benefits that may be required by law, such as disability insurance, workers' compensation insurance, and COBRA.
- The employee benefits section should also outline your plans for health insurance, retirement, employee assistance, tuition reimbursement, business travel, and any other fringe benefits your business provides to attract and retain employees.



Employee Handbook Sections: Leave Policies

- Your company's leave policies should be carefully documented, especially those you are required to provide by law. Family medical leave, military leave, and time off for jury duty and voting should all be documented to comply with federal, state, and local laws and regulations.
- In addition, you should explain your policies for vacation, holiday, bereavement, and sick leave.



Performance Reviews

- Review and update employee job descriptions at least annually.
- Keep accurate documentation regarding the performance of each employee. This documentation should be direct, factual, and detail-oriented to support disciplinary or other personnel decisions.
- Base employee performance reviews on specific, job-related criteria.
- Feedback provided should be honest, factual, and complete.



Performance Reviews (Continued)

- Compare performance against job descriptions and goals to offer ongoing feedback.
- Keep the review process and systems for measuring performance fair for all employees.



Termination and Discipline

- Review all discipline, investigation, and termination procedures for compliance with applicable federal, state, and local laws, and enforce them fairly and consistently.
- Be sure policies and procedures for handling employee disciplinary actions and investigations are clearly defined, written, and communicated to employees as appropriate.
- Carefully document all matters involving employee discipline, including warnings, investigations, and terminations.



Termination and Discipline (Continued)

Termination meetings are advised, and should be conducted to achieve the following:

- Inform the employee of the termination;
- Discuss the return of company property; and
- Deliver the final paycheck, and facilitate the employee's departure.

Provide departing employees with a written summary of accrued benefits and notices regarding post-termination benefits, including, where applicable, compensation for vacation and sick time, continuation of health coverage, severance pay, and 401(k) plan information. Be sure to comply with any applicable federal, state, or local requirements.



Termination and Discipline (Continued)

- Make sure policies are in place for collecting keys and other company property from the terminated employee, and confirm that access to computer systems, e-mail, and voicemail is deactivated.
- Deliver final paychecks at the time of termination or as otherwise required by state law.



Termination and Discipline (Continued)

- Keep a summary of the meeting and any related information in the employee's personnel file.
- Upon request, deliver neutral references confirming a former employee's position held and dates of employment, in accordance with company policy.



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