



Set Up Your Employment Policies and Procedures to Avoid Costly Mistakes

Step 1: RULES GOVERNING POLICIES AND PROCEDURES

- Follow the same rules no matter if you're advertising for an employee, or a virtual assistant.
- The rules are somewhat different for independent contractors but many similarities still apply, as long as they are properly classified.
- For most employment issues the Federal standard applies with respect to minimum wage, how overtime is calculated and on independent contractor issues as well.
- States then overlay their laws on top of that and make the Federal rule more strict within the State.
- Regulations are State specific and community specific.
- Always consult with employment law counsel in your State to see if there are additional requirements and make sure everything you're doing complies completely with your State laws.
- Many issues relating to advertising for employment are based on not violating Federal discrimination laws,
- Make sure ads for an employment do not contain criteria that is discriminatory.
- Federal discrimination laws and various States identify protected classes.
- Don't discriminate in hiring or on any aspect of employment on the basis of protected classes.
- Protected classes include: race, gender, age, marital status, pregnancy, medical disability, and religion, amongst others.
- Don't inadvertently violate laws against these protected classes during the interview process.
- Interview questions must be asked in the right way, which is more circumspect.
- Avoid asking questions about political party affiliations or dietary preferences.
- Best practices: Before you advertise, make a list of the essential job requirements and duties that need to be done for that position, and what you might require as an employer to make sure somebody fulfills that.



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Step 2: DOCUMENTATION

- Document the jobs requirements in detail to facilitate termination if later if they don't live up to those requirements.
- Have a list of uniform requirements to discuss in an interview.
- Helps you avoid claims of were being discriminatory in the hiring process.
- Everyone interviewed for a particular position should be asked the same criteria.
- Have all their potential employees fill out a job application before you make an offer of employment. Applicants may reveal information on them that they wouldn't put on a resume.
- Send an offer letter to the person you decide to hire.
- Make sure the offer includes how much money they will be making, the starting date, and whom they report to.
- Include 3 things that are critical:
 1. Employment is going to be 'at will' meaning that the company or employee can terminate at any time for any lawful reason with or without notice.
 2. Notation that these are the terms of employment and that the document can't be changed by any oral representation - it can only be changed in writing; and that there is nothing else that exists in this universe of employment, including any oral statements.
 3. The offer is contingent upon a completion of a satisfactory background check.
- Prevent wage and hour violations by keeping impeccable wage and hour records.
- Use hand-written time sheets to track in/out times if you're not using a time clock.
- Have employees sign the time sheet when you're calculating payroll.
- Termination of anyone should not come as a surprise.
- Consistently document what the person is doing that is not in accordance with the job requirements.
- If you have to defend against a claim of unfair termination, good

documentation will weigh heavily in your favor.



Documentation regarding what happened before a person is terminated can include:

1. Copies of performance reviews
2. Detail of a probationary period
3. Record of disciplinary action.

Best Practices

- Document everything throughout the employment process, not just at the end.
- Have regular review meetings.
- Address problems right away
- Be aware of the Devils Triangle of issues related to medical leave:
 1. Workers compensation
 2. The Americans with Disabilities Act
 3. The FMLA
- Documenting performance issues related to medical issues can actually be problematic for the employer. Check with legal counsel for advice.

Step 3: STANDARDIZE

- Employment policies should be in writing in order to apply policies and practices consistently. Have an employee handbook.
- **The employee handbook should;**
 1. Cover essential policies, vacation, sick time, various medical leaves, sexual harassment and where that should be reported.
 2. Include rules regarding expectation of privacy, especially with respect to the computer the employee uses. For example, privacy issues related to viewing porn or forwarding pornography through email.
 3. Cover privacy expectations to allow for easier enforcement if spyware or other monitoring device reveals inappropriate activity on the computer.



4. State that no employees can work overtime without written authorization from their supervisor and said employees are required to clock in and out.
5. Be reviewed by an attorney.
6. Have employees acknowledge that they've received and read the handbook.
7. Consult with legal counsel before including drug testing; it's a very complex issue.

Step 4: DUE DILIGENCE

- Do a background check on everyone you plan to hire.
- Follow the Federal statutes that mandate you must offer employment *prior* to doing a criminal or DMV background check.
- There has to be a reasonable relationship between whatever they were convicted of, or a credible irregularity with the actual job.
- Check references: Legally, employers are not required to give any information and most only confirm dates of employment, title, etc., but it doesn't hurt to ask.
- Don't just call HR. Make your first call to the person's supervisor that is indicated on the application.
- Include a waiver on your application - a limited privilege that allows the former employer to talk to the potential employer without fear of being sued because of what is said.
- **Always ask these two questions:**
 1. Is this person eligible for rehire?
 2. Is there anything I should know about this person that we haven't discussed?
- If working with an outside agency to do this for you, you're less likely to get good, deep information.
- **Best practices:**
 1. Have those waivers signed.
 2. Have a credit reporting agency check the criminal background, their education, and the DMV if it's applicable.
 3. Call personally and check the references yourself.



4. You do not need Fair Credit Reporting Act clearance if you as the employer are calling and checking those references.

Step 5: DEFINE EMPLOYEE VS. INDEPENDENT CONTRACTOR

- Rules and regulations governing independent contractors are different than those for employees.
- To be protected, it takes more than issuing a 1099 and a classification as an independent contractor.
- The IRS has a multi-pronged litmus test to determine if someone is truly an independent contractor.
- **An independent contractor agreement should:**
 1. Clearly state the person is an independent contractor
 2. Handle issues related to your proprietary information.
 3. Deal with termination issues
- Be clear about the independent contractor status virtual assistants.
Key points include:
 1. Are they part time or full time?
 2. Do they work on a project-by-project basis, or a continual basis?
 3. Specify how much supervision is required. Ideally, for a project based VA to meet the status of independent contractor, the following criteria should be met:
 - ♣ We don't care who you hire to do it.
 - ♣ We don't care where you do it.
 - ♣ We don't care what time of the day you do it or what equipment you use.
- Ways that the employee vs. independent contractor issue becomes a problem include:
 1. The person hired does not pay their taxes. The IRS will then pursue all the taxes from the company that hired them.
 2. You fire the person who you designated as an independent contractor and they subsequently claim they were actually an employee.

Two exceptions to be able to fire at will with or without reason:



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1. If as an employer you entered into a contractor agreement stating their employment was for cause, and specifically articulated what the reason would be that would allow you to terminate. (This is not recommended).
2. You can only terminate for a lawful reason, i.e. not because of race, gender, age, etc.

Step 6: PLAN AHEAD

- Remember that your employees are not your friends.
- Assume they are not out to protect your best interests and plan for your worst-case scenario:
 1. Have your employee handbook and policies in place.
 2. Do your discipline and your write-ups.
 3. Have your offer letters.
 4. Do your background checks.
 5. Have your applications.
 6. Don't try to be the nice guy because being that is what can get you in trouble.
 7. Have a lawyer on your team that you can call for regular review and advice.
- Act as a business owner, even if you are hiring your friends or family members.