



eGuide to Small Business Hiring

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TABLE OF CONTENTS

Building Your Small Business Team	page 3
Independent Contractor or Employee?	page 4
Recruiting & Making an Offer	page 6
Your Employee's First Day	page 10
Staying in Compliance	page 14
Discipline, Disputes & Liability	page 17
The Exit Interview & Saying Goodbye	page 20
Conclusion	page 22



EGUIDE TO HIRING:

Building Your Small Business Team

Running a business on your own means you're used to working long hours and juggling lots of responsibilities. Whether your goal is to reduce those long hours, to improve productivity, or to bring in new expertise, hiring independent contractors or employees might be just what your business needs to keep growing.

Building your team is an exciting step, but some aspects of hiring and managing workers could pose a challenge if you jump in without learning the basics. For example, you'll need to:

- ✓ Stay compliant with local, state and federal employment laws.
- ✓ Decide whether to hire contractors and employees.
- ✓ Stay organized to manage all the aspects of your employment relationships.

It may sound like a lot when you first start out. But if you take care to check little legal boxes along the way, the whole process will be a lot easier in the long run. Once you've covered yourself with basic employment agreements, handbooks and other solid HR practices, you'll be in an excellent position to make the most of your new workforce.

This eGuide to Small Business Hiring will lead you through the whole process. Above all, we want to show you how to get the legal basics nailed down so you have more time to do what you do best.

ABOUT ROCKET LAWYER

At Rocket Lawyer, we're making legal work easier and more convenient for everyone.

We know the law is complex and mistakes can be costly. We also know there's no replacement for a good lawyer. That's why we've developed easy-to-use technology to help you do more on your own, and backed it up with a network of Rocket Lawyer On Call™ attorneys who are ready to help when you need it.

Since 2008, we've used this approach to help over 20 million small businesses and families create legal agreements, plan for the future, and feel more confident.

Visit www.rocketlawyer.com

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EGUIDE TO HIRING:

Independent Contractor or Employee?

When you need to bring in more help, the first thing to figure out is whether it's best to hire an employee or an independent contractor. In this chapter, we'll explain what you need to know about this distinction, why it's important to both you and your workers, and the potential consequences of misclassifying the people who work for you.

It's best to start by understanding the differences between these two types of workers.

Employee: Someone who performs services or labor for you on an ongoing basis, and you control what will be done and how. Employees stay on past the completion of each project. They tend to work at your businesses location, using equipment and tools that you supply.

Contractor: Someone who performs services or labor for you, but is responsible only for the results, not how the project will be executed. A contractor's work is usually done at the completion of each project—there are no ongoing responsibilities. Often they charge more, use their own equipment, set their own schedule and take care of their own business expenses.

It's a good rule of thumb to base hiring decisions not only on the type of working relationship you want to have, but also your tax responsibilities.

WHY IT'S DIFFERENT

Since contractors are self-employed, an employer is more like the contractor's client than their supervisor. That means the contractor is responsible for paying taxes on their earnings. Independent contractors also don't get a lot of the same benefits as employees: they're not eligible for unemployment benefits, worker's compensation, and social security. Plus, they don't get offered sick leave, vacation, health insurance, and any other benefits an employer might offer to attract an employee. The contractor shoulders all of these costs since they're treated like a self-employed business.

All of this is fine as long as the independent contractor gets to be their own boss as it's intended. Problems can arise when employers want the best of both worlds—they hire their workers as independent contractors, but treat them like employees, dictating when and how the work is done. Employers avoid paying payroll taxes and providing benefits, but in essence they have an employee who they can manage directly.

FOR EMPLOYEES YOU'LL NEED TO:

- Withhold state and federal income tax
- Withhold Social Security tax
- Withhold Medicare tax
- Pay unemployment tax on wages
- Complete a W-2 form for each employee

FOR INDEPENDENT CONTRACTORS:

- You typically don't have to withhold taxes
- You have fewer reporting requirements
- You may have to file certain forms (like the 1099-MISC) to report payments made to them



If you have a long-standing relationship with a contractor, consider bringing them on board officially to avoid misclassifying them.

WHAT HAPPENS IF YOU GET IT WRONG

Say one of your salespeople has his own office and works on commission. You have a second salesperson who works remotely and doesn't receive benefits. You decided to hire them as independent contractors, but based on your working relationship, the IRS or another government agency might classify them as employees. If you misclassify employees as independent contractors, you'll be on the hook for back payroll taxes, plus fines.

To prevent that from happening, make sure everyone is clear on the nature of the working relationship. Choose the designation carefully based on the above guidelines, and create an [employment agreement](#) or an [independent contractor agreement](#) to document it. Then remain consistent with the classification. For example, if you treat workers like contractors in practice (and don't pay payroll taxes) and then claim a tax deduction for having employees, a tax audit notice is a lot more likely to come your way. Workers can also make a complaint to the IRS if they feel they've been misclassified.

Keep in mind that someone who starts as an independent contractor can assume responsibilities that are more and more like an employee over time. If you have a long-standing relationship with a contractor, consider bringing them on board officially to avoid misclassifying them.

We'll be focusing on the employment relationship for the remainder of this guide. For more business tax information or information on worker designations, go to the [Internal Revenue Service website](#).

MORE HELP FROM ROCKET LAWYER:

[Employment agreement](#)

[Independent contractor agreement](#)



EGUIDE TO HIRING:

Recruiting & Making an Offer

QUICK ASIDE:

Keep the above laws handy for the long term, because they apply not only to hiring employees but also when it comes to termination and harassment issues. They also apply to:

- All classes of employees
- Advertisements
- Recruiting
- Testing (like Meyers-Briggs and other aptitude tests)

Before you even begin to draft a job description for that first employee, you should understand the legal ins and outs of the hiring process. They say an ounce of prevention is worth a pound of cure—a saying that is very, very applicable to the employment process. The US Department of Labor estimates a bad hiring decision can cost 30 percent of a business's first year earnings.

In this chapter we'll go over fair hiring practices, writing a job description, interviewing candidates, the job application, background checks and references, and extending a job offer.

FAIR PRACTICES

To begin, it's important to have a good sense of fair practices in hiring employees under federal law. Keeping anti-discrimination laws on the top of your mind helps protect you from lawsuits that could arise from your hiring decisions. Here's a rundown of what you need to know.

Anti-discrimination laws:

- Prohibit employment discrimination based on race, color, religion, sex, or national origin.
- Protect men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.
- Protect individuals 40 or older.
- Prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.
- Prohibit discrimination against qualified individuals with disabilities who work in the federal government.
- Prohibit employment discrimination based on genetic information about an applicant, employee, or former employee.
- Award monetary damages in cases of intentional employment discrimination.

You can find more information on job discrimination laws at the [U.S. Equal Opportunity Commission](#) website.

And don't forget to spread the word about these laws and practices to managers and other people with authority in your company to avoid any unnecessary misunderstandings. Outlining your company policies in an employee handbook is a smart move too (we'll talk more about this in the next chapter).



JOB DESCRIPTION

Now that you've gotten familiar with equal opportunity laws, you can start writing the job description you'll use to find your next superstar hire. You want to accomplish two main things here: (a) find the best candidate for the position and (b) make sure you're doing it legally. Here are some do's and don'ts before you draft the job description:

Do:

- List the job's responsibilities (e.g. what the job supports and what the employee will be doing).
- List the job's qualifications and requirements (e.g. technical skills required, education, etc.).
- Include that you are an "Equal Opportunity Employer" and that the job description or advertisement is not an offer or guarantee of employment.

Don't:

- List requirements that cover gender, age, race, etc. and would violate anti-discrimination laws. For example, it's better to say you're looking for an "energetic entry-level employee", rather than "a young and eager person").

THE JOB APPLICATION

Once the inquiries start pouring in from candidates, you'll want to have the job application teed up (here's an [employment application](#) template to get you started). Like the job description, a few rules need to be followed to make sure everything conforms to the usual guidelines. Here are a few pointers:

- Include that you are an "Equal Opportunity Employer" and that the job description or advertisement is not an offer or guarantee of employment.
- Draft a separate document asking the candidate for approval to conduct a background check.
- Make sure you're in compliance with the [Fair Credit Reporting Act](#) if you want to run a credit check on a potential employee.

Try and run these documents by your attorney or Human Resources manager. If your company is too small for an HR person, you might consider hiring an HR contractor.

THE JOB INTERVIEW

Once you've selected a few candidates that look great on paper, you'll want to bring them in for a face-to-face interview to get a better sense of who they are and how they'd fit in with your company.

Remember: It's common to share private company information during the course of an interview. Before you start talks, make sure every candidate signs a non disclosure agreement (you can get started with our [non disclosure agreement](#)). In this document, a candidate agrees to keep your confidential company information private, preventing your trade secrets and other proprietary knowledge from getting in the wrong hands.

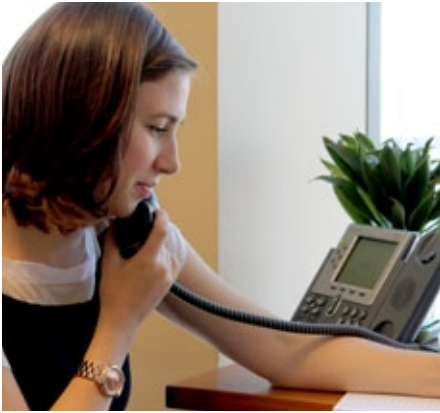
Once the nondisclosure agreement is in place, it's important to keep everything legal in the job interview to prevent misunderstandings and manage expectations.

The interviewer's rule of thumb: The law assumes that everything asked on an employment application or in the face-to-face interview will be used in the hiring decision. Now that you know this, it's smart to limit interview topics to only:

1. The job
2. The candidate's qualifications for it

Before you get worried about what might slip out while having what is essentially a conversation with a job applicant, just follow a few basic rules and everything will be fine:

- Circle back to the anti-discrimination laws we mentioned earlier and remember not to ask questions on those factors (e.g. age, race, disability, country of origin, etc.).
- Avoid asking personal questions (e.g. politics, marital status, beliefs, etc.)
- Describe the position accurately



TIPS FOR CHECKING REFERENCES:

Ask open-ended questions:

You want to glean as much info as possible on the applicant, which “yes” and “no” questions can’t really help you with.

Listen to tone of voice:

Some references might sound more enthusiastic about some things than others, which can help you choose your questions wisely.

Gather factual data:

This is a great opportunity to verify employment history, duties and responsibilities of your applicant.

Gather qualitative info: Ask questions that give you a sense of the candidate’s work ethic, communication skills and other personal qualities.

Take notes: While everything should be kept confidential to respect everyone’s privacy, a little record keeping can protect you down the road.

- Avoid making predictions about the health of the company, stock value, etc.
- Avoid making statements that could limit your right to hire or terminate employees down the road (e.g. telling an applicant that employees never get fired, for example).

In a nutshell, if you keep in mind that the law protects individuals from being discriminated against in the hiring process, it will help you hone your questions and interview style to stay focused on (a) what the job requires and (b) whether the applicant has the skills to fulfill the position. Anything else is not a matter for discussion. It’s as simple as that.

THE BACKGROUND CHECKS & REFERENCES

After the interview is a good time to check references and do a simple background check. Remember to get written approval from the applicant beforehand to prevent any legal headaches (here’s a [background and reference check consent form](#) you can use). Once you have this approval, you can hire a company to do the background check, which covers things like:

- Educational background
- Employment history
- Driving records
- Criminal records
- Financial history

If anything unusual or negative shows up in the background check, make sure to keep solid records in case any issues arise from your final hiring decision. And if your decision to not hire an otherwise good candidate is based on this background check, you might want to consult an attorney before making that move just to make sure all your bases are covered.

Next stop is references, which to some might seem like an afterthought in the process. On the contrary, it’s an excellent opportunity to get some much-needed perspective on a candidate’s personality and work ethic. When asking for references, try to get the candidate to cast a wide net, covering:

- Bosses
- Coworkers
- Direct reports
- Third parties (like vendors or other outsiders the candidate worked with)

As with the background check, you’ll need to get some clear, written and signed documentation from the candidates allowing you permission to contact these individuals. And as always you’ll want to check your Equal Opportunity checklist to ensure you’re not asking discriminatory questions.



HERE ARE THE BASIC ELEMENTS OF YOUR WELCOME LETTER:

The position

1. Position name
2. Organization name
3. Supervisor name & title
4. Start date
5. Copy of job description

Salary and benefits

1. Annual salary and payment terms
2. Benefits (medical, dental, vacation, IRA, etc.)
3. Other benefits (e.g., bonuses, relocation expenses, severance)

Job performance evaluations

1. Frequency
2. Person conducting them
3. Group reviewing them

THE JOB OFFER

Congratulations! After much searching, advertising and due diligence, you found the right person to help you move your company to the next level. Whether you tell the lucky individual in person or over the phone, an offer letter will be necessary to make everything official.

And if you're in the position where you need to negotiate the terms, you're not alone: The 2012 Business Journals survey of 2,200 revealed that contract negotiations are one of the top legal hurdles when hiring. But don't let that discourage you. Just keep an open mind and expect the candidate to come back with a counter-offer. Your goal is to come to an agreement that satisfies you and the future employee. Sometimes it works out, and sometimes you have to go back to the drawing board, but that's part of the process. As with everything, if you need a little guidance, an attorney can be a big help.

WELCOME ABOARD AND OFFER LETTER

When you and the employee come to an agreement on the terms of the job, put it in writing with an employment offer letter (our [employment offer letter](#) is easy to customize).

Be sure to sign the offer letter and provide two copies with instructions for the candidate to return the letter.

Now you're ready to welcome your new hire on board. It's a good time to start a personnel file and include copies of all of the documents we've covered so far. Keeping detailed records will help prevent any potential misunderstanding down the road.

MORE HELP FROM ROCKET LAWYER:

[Employment application](#)

[Non disclosure agreement](#)

[Consent to background and reference check](#)

[Employment offer letter](#)



EGUIDE TO HIRING:

Your Employee's First Day

Now that you've successfully tackled the recruiting and hiring process, it's time to welcome your new employee on board—and it couldn't be a more exciting time. Not only will this new person help carry the heavy workload, he or she can bring a burst of energy, fresh perspectives and new skills to your business.

To make sure everything starts off on the right foot, it's a good idea to do a little prep work to ensure that the new worker's first day starts off legally sound and sets the tone for years and years of productivity and positivity. In this chapter we'll walk you through employment policies, government forms and reporting, employment agreements and record keeping.

THE EMPLOYEE HANDBOOK

An employee handbook should include:

1. What you expect from the new employee
2. What the new employee can expect from you/the company
3. Your legal obligations as the employer
4. The new employee's rights and responsibilities

THE EMPLOYEE HANDBOOK

Keep in mind that your first new employee could be one of many you add to the team as the business grows. Therefore, even in these early stages, some comprehensive documentation will set expectations for both the employer and the employees and build a foundation for future growth.

Simply put, you need an employee handbook.

Whether nicely bound in a book, punch-holed in a binder or printed and stapled, an employee handbook basically documents your Human Resources policies. Every employee handbook should make clear:

1. What you expect from the new employee
2. What the new employee can expect from you/the company
3. Your legal obligations as the employer
4. The new employee's rights and responsibilities

A well-written and comprehensive document can also provide you with some legal protections in the unfortunate event that an employee decides to sue your company for termination, discrimination, or something else.

But it's not just about covering your own interests. Keep in mind that the employee handbook is a useful tool for keeping employees happy, recruiting new talent, etc. by highlighting what a great workplace you've established. So, don't forget to include the good stuff.



ELEMENTS OF AN EMPLOYEE HANDBOOK

- Harassment & Discrimination
- Safety & Security
- Wages & Working Hours
- Behavior & Conduct
- Employee Benefits

INSIDE AN EMPLOYEE HANDBOOK

Here are the general components of an employee handbook. All of these elements are important, but the parts with the biggest potential impact are listed first:

Harassment & Discrimination: This section should list your company's equal opportunity workplace policies, outlining:

- a. Your equal opportunity employer position
- b. Your zero-tolerance for harassment or illegal discrimination in the workplace
- c. Your process for employees to report such violations
- d. Your process for responding to these claims
- e. The fact that employees won't be punished for making such claims

Safety & Security: This section will cover your policy for establishing a safe workplace for all employees, including your company's compliance with federal and state health and safety laws. Here you might need a second pair of eyes from an attorney, but in general you want to cover:

- a. Your pledge to create a safe working environment
- b. Your employees' responsibility to follow physical and IT policies for safety and security
- c. Your employees' responsibility under federal law to report to management all accidents, injuries, hazards, etc.
- d. Any additional policies concerning extreme weather or hazardous community conditions

Wages & Working Hours: You want to make especially clear all matters concerning your employees' pay, pay categories (full-time, part-time, etc.) and time spent at work, including:

- a. Working days and hours
- b. Timekeeping
- c. Breaks and meal times
- d. Pay periods
- e. Tax withholding
- f. Benefits withholding
- g. Overtime pay
- h. Salary increases

Behavior & Conduct: This section should cover a fairly wide range of topics concerning your expectations about employees' behavior and conduct while working and interacting with you, other employees and individuals outside the company. Here you can address:

- a. Attendance
- b. Tardiness
- c. Dress code
- d. Confidentiality
- e. Personal calls
- f. Internet use
- g. E-mail conduct
- h. Drug/alcohol policy

But that's just for starters. Depending on your company's personality and needs, you'll be able to modify as needed. Is it just a phone-based business? You might not need a dress code. Do you promote flexible



EMPLOYEE PAPERWORK

There are several forms to have ready:

- [Form I-9](#)
- [Form W-4](#)
- New Hire Reporting
- [Employment agreement](#)
- [Employee invention agreement](#)

hours or a work-from-home policy? You can make that clear as well, too. On the other hand, if you're a government contractor dealing with sensitive information and people, you might need to add some very specific details in this section.

Employee Benefits: Here's where you can outline the parts of the job that attract new employees and keep them enthusiastic about it—the details (and eligibility) for your company's benefits program, including those required by law (disability insurance, worker's compensation and COBRA) and those you could provide, like:

- Health insurance
- Retirement
- 401k
- Tuition reimbursement
- Paid vacation
- Holidays

Of course, there are other topics you could (and probably should) cover in your employee handbook depending on the nature of the work involved, like use of company property, leave policy and media relations. Visit Rocket Lawyer and we'll walk you through creating an employee handbook, step-by-step. Once you're done with a draft, you might want to run it by an attorney to make sure everything checks out.

EMPLOYEE PAPERWORK

For your new hire's first day on the job, you're going to make sure that they feel welcome and excited about the new workplace, but there are also a few documents you'll want to have them sign to make sure everyone's on the same page and that the government's requirements are met.

There are several forms to have ready:

Form I-9

This document verifies whether an employee can legally work in the United States. Be sure to make copies of the legal credentials your employee provides to verify eligibility (i.e. passports, green cards, birth certificates, etc.).

Form W-4

This form tells you how much federal income tax to withhold from your employees' paychecks.

New Hire Reporting

Employers must notify the state of new hires. Each state has its own requirements for reporting new hires, so you might want to check with your specific agency.

Employment Agreement

This is probably the most important document for hiring an employee. An employment agreement lays out the terms and conditions of the job offer and employment relationship.



EMPLOYMENT AGREEMENT FORMS OFTEN INCLUDE A:

- [Non disclosure agreement](#)
- General statement of eligibility for benefits plan
- [Noncompete agreement](#)
- Rate of pay
- Severability clause
- Specified probationary period
- Starting date
- Statement of at-will nature of employment
- Title of position
- Any other state, industry-specific, or company required information
- Statement indicating that there are no agreements between the parties other than those explicitly stated within the agreement

Here's an [employment agreement template](#) to get you started. Remember that both the employer and employee should sign the employment agreement to make everything official.

Employee Invention Agreement

If you're developing products, designs or other intellectual property, have everyone sign one of these, which states that the employer owns any inventions developed during the employee's time with the company.

Or, it could state that the employee owns what he or she invents. It just depends on what you want here (you can customize our [employee invention agreement](#) for your needs).

Quick tip: In addition to the employment agreement, you'll also need to make sure the employee reads and signs the employee handbook detailed above.

RECORD KEEPING

Now that all the forms have been signed and sealed, it's a smart move to have designated files for each employee containing all these documents. In case an issue arises at some point with your new hire, it's okay to take the "kitchen sink" approach here, filing away such things as:

- The job description
- The job application
- The signed employee forms
- Signed employee handbook
- Performance evaluations
- Warnings or disciplinary actions
- Any contracts
- Employee benefit forms

Every year or so you'll want to comb through these records to make sure they're up to date and maintained. Above all, your record keeping—based on a well-documented and legally sound first day at work—should make your employer/employee relationship smooth sailing for years to come.

For more guidance on federal labor laws and contact information for state agencies, visit dol.gov.

MORE HELP FROM ROCKET LAWYER:

[Employee handbook](#)

[Form 1-9](#)

[Form W-4](#)

[Non disclosure agreement](#)

[Employment agreement](#)

[Invention agreement](#)

[Employment offer letter](#)



Once you've recruited superstar employees and gotten them settled successfully in the workplace, you'll want to make sure that your business stays in compliance with federal, state and local employment laws—many of which come, go and evolve over time. Here we'll go over FLSA guidelines, tax withholding, insurance, disability and family leave, and HIPAA privacy laws. Our overview will get you started, but you'll definitely want to dig a little deeper to get a better sense of the state-specific and local laws in your area, plus any laws that may apply to your specific type of business.

As you go forward, bear in mind that many of these rules are in place to make sure you're following:

- Tax laws
- Labor laws
- Equal opportunity (non-discrimination) laws
- Workplace safety laws
- Privacy laws

EGUIDE TO HIRING: Staying in Compliance

FLSA CLASSES OF EMPLOYEES

Exempt & Nonexempt

You might have seen these two terms on a job application and wondered what they meant exactly. Or, maybe you assumed that any salaried employee is considered exempt in the eyes of the IRS. How you classify your employees here is an important detail to clarify early on so that you avoid any compliance issues that could cause fines or other penalties.

In a nutshell, the FLSA (Fair Labor Standards Act) guarantees that certain workers are entitled to minimum wage and overtime pay. These so-called nonexempt employees are typically hourly employees who don't have managerial responsibilities, and aren't professionals (like doctors or lawyers).

Typically, salaried employees, managers and professionals are exempt from FLSA requirements, meaning they don't receive overtime pay.

FLSA worksheets and tests (available at the link below) can help you determine how to classify your employees, based on: a) how much they're paid, b) how they're paid, and c) the type of work they do.

For more information on exempt and nonexempt status, visit the [US Department of Labor website](#).

DOES THE FLSA APPLY TO YOU?

More than 130 million workers are governed by the requirements of the Department of Labor's FLSA.

Employees of your business can be covered in two ways:

1. Enterprise Coverage

Employees may be covered if they work for businesses with at least two employees which also are:

- a. Businesses with an annual dollar volume of sales or business done of \$500,000 and higher.
- b. Hospitals, medical or elderly care businesses, schools and preschools, and government agencies.

OR

2. Individual Coverage

Individuals whose work involves interstate commerce (commerce between states) are also covered by FLSA. For example, employees



CRUNCHING THE NUMBERS

Once you've determined the above, it's time to calculate how much you'll set aside from your employee's pay for federal, state and local taxes, in addition to FUTA and FICA.

The IRS and Small Business Administration provide tables for calculating the percentages to withhold for each of the above taxes, in addition to taxes for the specific state and city where your business operates.

If you don't have an accountant, be sure to cross every T and dot every I as well as you can, since this process can be a little tricky. You'll also want to send these payments out in a timely manner to avoid late fees.

Check [irs.gov](https://www.irs.gov) and [sba.gov](https://www.sba.gov) for calculating tables and online payment methods.

who make products that are shipped and sold out of state, regularly engage with contacts in other states, or even do maintenance work for businesses that are involved with "interstate commerce" are included.

Housekeepers, babysitters, nannies, cooks and other domestic service employees are also covered.

Keep in mind that the nature of work your employee performs could make him or her eligible for minimum wage but not overtime.

The Department of Labor can provide more information at www.wagehour.dol.gov.

WITHHOLDING TAXES

The next box to check on your compliance worksheets is your obligation for withholding tax from your employee's paycheck. Even if you have a payroll person or an accountant to handle these things, it's a good idea to familiarize yourself with withholding since it's ultimately the business owner's responsibility if something gets miscalculated or accidentally swept under the rug.

Each state has different rules, so be sure to do a little research. Here are some of the taxes you'll need to withhold:

- Federal, state and local income taxes
- FICA (Medicare and social security)
- FUTA (federal unemployment)

WHO GETS WITHHELD

Once you have payroll lined up you'll want to circle back and figure out how you've classified your worker (contractor, exempt, etc.), which will tell you which taxes to withhold from the paycheck. Remember that you do not need to withhold taxes for contractors, but you will need to do so for employees.

WHAT GETS WITHHELD

You might just be paying your employee a salary or hourly wage. But if there are bonuses, sales commissions, or other business-related expenses, these types of income may be taxed in different amounts than an employee's base pay. Consult [IRS Publication 15, Employer's Tax Guide](#) and [Publication 15-A, Employer's Supplemental Tax Guide \(PDF\)](#) for more information.

PAID DISABILITY & FAMILY LEAVE

Throughout the course of your time working together, your employees will need to balance work and family responsibilities. And in some situations they might become temporarily unable to work. The Family and Medical Leave Act (FMLA) allows certain employees up to 12 weeks of unpaid, job-protected leave annually with uninterrupted group health benefits. There are some rules in place to make sure that



REQUIRED INSURANCE

Any business with employees is required by law to pay for certain types of insurance* to protect workers from work-related injury, disability or losing their jobs. Generally, they are:

- Worker's Compensation Insurance
- Unemployment Insurance
- Disability Insurance

*Not all of these are required in every state, so check your state's rules to make sure you need to sign up for them.

LOCAL LAWS

Some local jurisdictions have special laws and rules in place to protect workers. For example, your city or county might have special ordinances covering health insurance, minimum wage, overtime and sick leave.

Check with your local government (or a local accountant or lawyer) to make sure you're compliant with all the laws that apply to you.

the employee's job is protected without putting your business in too much of a bind.

Unpaid leave can be taken:

- for the birth of the employee's child
- for adoption or foster care of a child by an employee
- to care for an immediate family member with a serious health problem
- when the employee has a serious health condition

Eligible employees need to have worked at least 1,250 hours over 12 consecutive months at a company that employs 50 or more employees within a 75 mile radius. There are some other rules as well, so if you're not clear on what your requirements are as an employer, visit the [Department of Labor's FMLA website](#).

HIPAA & PROTECTING PRIVACY

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) helps patients and health care consumers keep their personal information private.

Protected individual health-related information can include:

- Health care claims
- Health care payments
- Coordination of health care benefits
- Enrollment or disenrollment in a health plan
- Health plan eligibility
- Premium payments
- Referrals
- Injury reports

Health care organizations have to be especially careful how they handle these records, adopting special procedures and forms for protecting confidentiality. But many small businesses will deal with these "covered entities," too.

If your company has a self-insured health plan or acts as a liaison between employees and health care providers, you might want to review these rules and possibly speak with an attorney to make sure you're adopting the right procedures to avoid civil penalties.

COMPLIANCE MADE EASY

The web has made it a whole lot easier for businesses to research compliance laws at the federal, state and local levels, in addition to providing downloadable forms and checklists for official use. To be on the safe side, you might also want to share your research with an attorney just to make sure you're on the right track.

MORE HELP FROM ROCKET LAWYER:

[Compliance Center](#)



EGUIDE TO HIRING:

Discipline, Disputes & Liability

...an employee's bad behavior or poor performance could throw a wrench into the system you've worked hard to create. That's why you'll want to have a clear and detailed company discipline policy.

As a business owner with employees, you can create a safe, supportive and productive workplace. You can implement a great hiring and recruiting process, and you can set out employment policies in a legally sound employee handbook.

But no matter how you do things, an employee's bad behavior or poor performance could throw a wrench into the system you've worked hard to create. That's why you'll want to have a clear and detailed company discipline policy.

A 2012 Profiles International survey revealed that employers lose 79 percent of negligent hiring lawsuits, so before you head down this path keep in mind that the best (and most fair) attitude when dealing with a difficult employee is not how to fire them but how not to. The following steps for crafting a disciplinary policy, handling disputes and so on will help you resolve conflicts and protect yourself and your organization from liability.

COMPANY DISCIPLINE POLICY

Protecting yourself in these situations is key, and the cornerstone of your good employee relations is a well-written and detailed company discipline policy. This document will make absolutely clear the steps you (or management) follow when behavior and performance issues threaten the livelihood of the business and workplace. You can create a separate discipline policy, or include it as a section of your employee handbook (see "[Your Employee's First Day](#)" section for more information on creating an employee handbook).

Anti-discrimination laws that apply when hiring an employee also apply when it comes to employee discipline. It's against the law to fire an employee because of age, religion, gender, race, or marital status. And personal reasons--not to mention issues resulting from whistleblowing or official complaints--also won't fly as grounds for termination. You'll need a legitimate, well-documented reason. Reasons for termination can be made clear in your employee handbook or the employment agreement listing general conduct and work expectations.

Going forward, remember:

Communication is key: As you craft your company's discipline policy, remember that clear and concise communication should be a major component. You want to keep troubled employees informed about your issues from the get-go.



ESTABLISHING A DISCIPLINARY PROCESS

It's important to have a process in place from the get-go. Consider including these steps:

1. Initial Feedback
2. Verbal Warning
3. Written Warning
4. Suspension
5. Termination

Documentation is also key: To limit your liability and prevent unnecessary lawsuits, make sure every part of your process is on record.

PROGRESSIVE STEPS

Depending on what your Human Resources person or company attorney recommend, you might have your own method for handling disciplinary situations; however, some companies like to follow a step-by-step process that creates a standard for all situations.

1. Initial Feedback

This first step in the disciplinary process is basically a verbal caution about the problem. Set a deadline, if it seems helpful, to give your employee a goal for correcting the problem. If the problem is fixable, this little chat might be all you need to take care of it.

2. Verbal Warning

If the issue pops up again, you'll need to have another talk with the employee and document the visit on paper (possibly with a witness). Often an employer will keep the warning "in effect" for a specific period of time.

3. Written Warning

When the first two steps have not kept the issue at bay, a written warning is needed to inform the employee that you're entering a more serious stage of the disciplinary process (our [employee warning letter](#) is a good place to start). As a rule of thumb, you'll want to let the employee know what the consequences could be and remember to keep a copy of the warning in your personnel files.

4. Suspension

More volatile situations might warrant a little time-out for everybody. If the first three steps don't help the situation, you could suspend the employee for a period of time without pay. This can allow you to get back to work and regroup, and it could inspire your troubled employee to find a job elsewhere.

5. Termination

The final straw, termination can be undertaken when there's really nothing more you can do to work through an employee's bad behavior or poor performance.

Remember to document in writing (and with witnesses, if possible) all stages of the disciplinary process (our [termination letter form](#) is helpful). Not only will this (a) protect you from lawsuits resulting from the termination, it will (b) minimize your terminated employee's anger, confusion and stress, and (c) maintain morale in the office by underlining the fact that nothing more could be done in this no-win situation.



A TERMINATION LETTER:

- Helps protect you from lawsuits
- Communicates the situation clearly to the terminated employee
- Makes the termination official

LAYOFFS VS. TERMINATION

Firing an employee for behavior or performance issues is just one side of the coin: You might find that your business is not generating enough revenue to justify an employee.

Layoffs are a completely different animal in the legal sense. Here are the differences:

Termination is when the employee leaves the company due to poor performance or unacceptable behavior without any chance of being rehired.

Layoff is when the employee is let go because there's not enough work to keep them, but they could be eligible to come back if economic or organizational conditions get better.

Why the labeling is important: Employees who are laid off are eligible for unemployment benefits* and COBRA (health insurance extensions); in addition, the "intention to rehire" might need to be part of the exit documentation to keep everything legal.

**States have their own specific laws about unemployment benefits and COBRA, so remember to contact your state and local government for info if you decide to go this route.*

DISPUTES AND LIABILITY

Employee lawsuits are on the rise, and sometimes the best, most thorough and well-documented disciplinary policies won't keep a dispute from escalating.

One safeguard is Employment Practice Liability Insurance (EPLI), which protects your company against lawsuits covering things like:

- Wrongful termination
- Sexual harassment
- Discrimination
- Wrongful discipline
- Emotional distress
- Breach of employment contract

Small businesses are especially vulnerable to these claims, since they often have neither the means nor the time to tackle them head-on. So if you're dealing with a dispute, it's smart to consult with an attorney. You don't want to tread into these sticky situations alone.

To sum up, your disciplinary policy helps create a more positive work environment by encouraging employees to improve, as well as clearly documenting your attempts at resolving the problem. A fair and transparent process is good for everyone.

MORE HELP FROM ROCKET LAWYER:

[Employee handbook](#)

[Employment agreement](#)

[Employee warning letter](#)

[Employee termination letter](#)



EGUIDE TO HIRING:

The Exit Interview & Saying Goodbye

Whether your employee is moving on for good reasons or bad, by choice or against their will, it's never easy to see them go. However, like any road bump in the life of a business, it's an excellent learning opportunity for you as an employer.

Before officially saying goodbye to an employee, there are a few points to consider. During this exit period you basically want to:

ASK THE EMPLOYEE:

- Why are you leaving?
- What could have persuaded you to stay?
- How do you feel about the company?
- What is your new company offering that we're not/can't?

1. Learn the reasons for the person's departure
2. Assemble information on the employee's existing projects and contacts
3. Gather intelligence to share with the employee's replacement
4. Account for any company property used by the employee
5. Protect your company secrets
6. Protect yourself from liability

Since you've already hammered out an effective hiring process, an employee handbook and a disciplinary policy, the next logical step is a solid exit interview process.

THE EXIT INTERVIEW

When anyone voluntarily leaves your company, you want to know why. And the exit interview sets aside a designated time to get candid, specific information about what it's like for someone else to work at your company.

Craft your questions for this face-to-face meeting in conversational style and try to follow these guidelines:

Create a relaxed atmosphere: Exiting employees are much more likely to share their feelings if there's zero pressure and an easygoing environment.

Ask open-ended questions: "Yes" and "no" answers won't generate much feedback, so try to cast a wide net with your inquiries.

Put the onus on yourself: Another way to de-stress the interviewee, this will also help you retain good employees in the future.

Listen: The more you talk, the less information you'll gather from the interview.

Take copious notes: Not only will it help your record keeping, but you can use this information to correct any issues that might have influenced the employee to move on.



RETURN PROPERTY & REVOKE ACCESS

If the exiting employee uses any company property regularly or has access to sensitive information, now is the time to:

- Gather or verify company-owned electronic equipment (laptops, smartphones, etc.)
- Collect keys and security badges
- Change passwords to entryways and online accounts

NON-DISCLOSURE, NON-COMPETE

Back during the hiring process your employee signed a nondisclosure agreement to protect your trade secrets and other valuable information.

A friendly reminder of this agreement should be part of your exit process, and give you a chance to provide your former employee with a copy for their records. This is especially important if he or she is heading off to work for a competitor, but it's good to do it every time.

Still unsure what you need to ask in the interview? Here are a few basic questions you can flesh out for your particular needs. Ask the employee:

- Why are you leaving?
- What could have persuaded you to stay?
- How do you feel about the company?
- What is your new company offering that we're not/can't?

The above questions—and any offshoots that result from the conversation—should help you gather enough information to make changes, if any, to your workplace culture. As with any official company procedure, you might want to consult a lawyer if you're not sure about something.

Quick aside: Some former employees will want to avoid a face-to-face exit interview for one reason or another. If you're unable to meet with them in person, craft a questionnaire for them to complete during their last day on the job.

RELEASE OF LIABILITY

Finally, you want to have a record that the employee is not being fired but is in fact quitting and will not sue for wrongful termination, discrimination or any other reason outlined in the “termination” section of our guide.

Small business owners can be pretty vulnerable when it comes to former employees, even those who quit voluntarily. The law allows employees years to file wrongful termination lawsuits against former employers, for example, and in cases when the employee's new job offer doesn't pan out, the former employer can sometimes be liable for unemployment benefits.

A release of liability form can make this parting official (our [general liability release of claims](#) will help you put it in writing). As with any liability release, it won't prevent former employees from suing if they really want to, but it can make your life a whole lot easier when you have clear documentation to back up your side of the story.

You never want to see a good worker go, but it will certainly happen from time to time during the course of your business career. Establishing a solid exit strategy for each and every employee will provide you with the crucial feedback to become a better manager and a better employer.

MORE HELP FROM ROCKET LAWYER:

[Non disclosure agreement](#)

[Noncompete agreement](#)

[General liability release of claims](#)



EGUIDE TO HIRING: Conclusion

When your business is strong enough to employ people, it's in a special class, considering that the U.S. Labor Department estimates that 75 percent of American businesses have no payroll. But you'll also have more responsibilities. You'll need to develop employment policies and procedures, stay up to date on labor and tax laws, and keep good records to help protect your business.

As you search for answers and information about the process of hiring, retaining and saying goodbye to the people who work for you, you'll find that many of the forms, contracts and guidelines you need can be found online.

From employee handbooks to termination letters, Rocket Lawyer can help you put together a wide range of employment related contracts, forms and other documentation. As you go along, you'll probably have more questions about specific state and local laws too. Rocket Lawyer has a network of attorneys who can help you with these employment-related legal questions.

If we can help you with an employment legal issue or anything else, just let us know and we'll point you in the right direction.

MORE HELP FROM ROCKET LAWYER:

[Labor and employment legal center](#)

As you go along, you'll probably have more questions about specific state and local laws too. Rocket Lawyer has a network of attorneys who can help you with these employment-related legal questions.

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