



FOR THE LIFE OF YOUR BUSINESS

# Managing Your Human Resource Issues to Stay Out of Trouble

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# Introduction

No matter what size company you are, chances are that at some point you will face a challenging HR compliance issue or employee situation that exposes your business to significant financial liability.


Today, we'll focus on 10 HR practices that go a long way to protecting your business.



# #1: Extend Written Job Offers

## Why Do Written Offers:

- Written job offers are a great opportunity to start the employment relationship on a positive note
- They also serve as legal documentation of the terms of the employment relationship – an important foundation to have in place should issues arise in the future



Polling  
Question: How  
many of you do  
written offers?

# #1: Extend Written Job Offers (cont.)

## Tips for Doing Written Job Offers:

- Welcome the individual to your team
- Avoid words that could imply a contract such as “guaranteed” and “annual”
- Include a statement that employment is “at will”
- Establish the timeframe for which the offer is valid and request the candidate accept and sign the offer within the timeframe (e.g., 3 to 5 business days)
- Create a standard offer letter form and have your attorney review it to ensure it contains language that will protect your business

**At Will Definition:** At will employment means an employee can resign at any time, for any reason, and the Company can end the employee’s employment any time, for any reason, with or without notice and with or without cause.

# #1: Extend Written Job Offers (cont.)

## Checklist: What to Include in Offer Letters

- Basic Job Information:** Job title, job responsibilities, reporting relationships, and start date
- Compensation:** Base pay, whether paid on an hourly or salaried basis and when, eligibility for overtime, and if applicable, a description of bonuses and incentive compensation
- Benefits:** Benefits (e.g., health, retirement, and time off) for which the employee will be eligible and when, and cost to employee
- At Will Language:** A statement that all employment is at will (unless this is an executive or other position who will be under an employment contract)

# #2: Have Employees Sign Confidentiality and Non-Solicitation Agreements

- Confidentiality and non-solicitation agreements provide some protection against an employee sharing your proprietary information outside the company and soliciting business away from the company
- For new hires, you can include the agreement language in the offer letter
- For existing employees who have not yet signed an agreement, inform them it is now a policy of the company to require an agreement and ask them to sign one (Note: This is especially effective if you are rolling out a new employee handbook at the same time. )
- Sample agreements are available from multiple sources but you should always have your attorney review a final draft of the agreement before asking employees to sign

## #2: Have Employees Sign Confidentiality and Non-Solicitation Agreements (cont.)

Under an agreement, employees agree:

- To keep all proprietary information confidential
- To return all company documents upon terminating employment
- That all work and documents generated on the employer's premises or on company equipment belongs to the company
- To not solicit or influence clients, vendors, suppliers, and others to not do business or to not continue to do business with the company while an employee and for a stated time period following termination of employment (e.g., one year)

# #3: Provide Employee Handbooks

While there are pros and cons for providing employees handbooks, the pros far outweigh the cons because handbooks:

- Help protect your business from employee legal claims, including sexual harassment claims
- Set expectations and rules for how you want employees to behave in the workplace
- Provide valuable guidance to managers
- Serve as a valuable orientation tool for new hires



**Polling Question:**  
How many of you provide employee handbooks?

# #3: Provide Employee Handbooks (cont.)

## Tips for Writing Employee Handbooks:

- Make sure your handbook complies with federal, state and local employment laws **AND** that it reflects your company's mission, values and culture
- Make sure your handbook is written in language that is easily understood by your managers and employees – not in legalese
- Update your handbook regularly – at minimum every two years, preferably annually
- Always date all versions of your handbook and retain old versions on file in case you need to refer to them later for issues that arose during that time
- Do **NOT** download a handbook from the Internet and distribute it (The handbook may not have been updated for new laws or changes to existing laws or it may contain language on laws that are not applicable to your company)

## #4: Document Terminations for Performance

Dealing with performance issues can be challenging for managers and employees alike. Here are a couple of important things you should know:

- Although Massachusetts is an at will employment state, it is important to be able to show that an employee was appropriately terminated. This is because there are exceptions to at will employment protections, for example, terminations that violate nondiscrimination laws, public policy, and employment contracts (whether actual or implied).
- Thoroughly document performance issues, including conversations with the employee and others regarding the issues and steps taken to help the employee improve his or her performance. Terminating an employee without thorough documentation is potentially one of the costliest mistakes a business can make!

# #4: Document Terminations for Performance, cont.

Here are a couple more important things to know:

- If you terminate an employee for performance: consider offering severance pay in exchange for a waiver of discrimination and other claims. Note that when severance pay is contingent on a waiver of claims, the employee will be able to collect unemployment benefits while receiving severance pay. Make sure you have your attorney review the severance letter for compliance and protection purposes.
- Remember, for any employee terminated involuntarily, Massachusetts law requires that you pay the employee his or her final paycheck on date terminated. The final paycheck must include earned but not yet paid commissions and pay for accrued and unused time off.

# #4: Thoroughly Document Terminations for Performance (cont.)

## Tips for Addressing Employee Issues:

- Don't ignore performance issues – try to nip them in the bud by talking with the employee
- Treat the employee with dignity and respect
- When talking with an employee, maintain your professionalism, provide specific examples of the issue, and what your expectations are for performance going forward
- Consider implementing a progressive discipline policy if you have not already done so

**WARNING!** If you implement a progressive discipline policy, however, be sure to follow it! If you don't, you expose your business to potential liability.

- Make sure your progressive discipline policy gives the company the right to skip progressive discipline for egregious behavior

# #5: Complete and Maintain Form I-9s Correctly

- Under federal law, companies may only hire individuals who can legally work in the U.S. – U.S. citizens, noncitizen nationals, lawful permanent residents, and aliens authorized to work in the U.S.
- To comply with the law, a company must verify the identity and employment authorization of each person they hire and complete and retain a Form I-9 that documents the verification
- Failure to comply can result in civil fines, criminal penalties, and debarment from government contracts

**Employment Eligibility Verification**  
 Department of Homeland Security  
 U.S. Citizenship and Immigration Services

USCIS  
 Form I-9  
 OMB No. 1615-0047  
 Expires 08/31/2019

▶ **START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Attestation** (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Last Names Used (if any)	
Address (Street Number and Name)				Apt. Number	City or Town	State ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		Employee's E-mail Address		Employee's Telephone Number	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

1. A citizen of the United States

2. A noncitizen national of the United States (See instructions)

3. A lawful permanent resident (Alien Registration Number/USCIS Number): \_\_\_\_\_

4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): \_\_\_\_\_  
 Some aliens may write "N/A" in the expiration date field. (See instructions)

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:  
 An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

1. Alien Registration Number/USCIS Number: \_\_\_\_\_  
 OR  
 2. Form I-94 Admission Number: \_\_\_\_\_  
 OR  
 3. Foreign Passport Number: \_\_\_\_\_  
 Country of Issuance: \_\_\_\_\_

Signature of Employee \_\_\_\_\_ Today's Date (mm/dd/yyyy) \_\_\_\_\_

**Preparer and/or Translator Certification** (check one)  
 I did not use a preparer or translator.  A preparer/translator completed and signed this form.  
 (Fields below must be completed and signed when prepared by a preparer/translator.)

I attest, under penalty of perjury, that I have knowledge the information is true and correct.

Signature of Preparer or Translator \_\_\_\_\_

Last Name (Family Name) \_\_\_\_\_

Address (Street Number and Name) \_\_\_\_\_

**Polling Question:**  
 Do you file I-9s in Employee File?

# #5: Complete and Maintain Form I-9s Correctly (cont.)

## Checklist for Processing Form I-9s

- Have the employee complete and sign Section 1 of the form.
- Review and copy documents provided by the employee for verification.
- Using Form I-9 Instructions regarding documentation, complete and sign Section 2 of the Form. **Warning!** Make sure you complete and sign the Form no later than 3 days from the employee's date of hire.
- If based on documentation provided, recertification will be required, be sure to record in a tickler file to request new documentation from the employee and recertify timely.
- Maintain all Forms for active employees in one single file – do NOT maintain the Forms in individual employee files.
- Retain all Forms for terminated employees in a separate file from active employees.
- Schedule time (for example, quarterly) to delete Form I-9s of terminated employees. A terminated employee's Form I-9 must be retained for 3 years after the employee's date of hire or for one year after the employee's date of termination, whichever is latest.

# #6: Maintain Accurate Employee Files

- Several federal and Massachusetts employment laws require employers to maintain and retain certain information about active and terminated employees
- Regardless of whether your employee files are in electronic and/or paper form, accurate files provide a solid foundation if issues should arise



# #6: Maintain Accurate Employee Files (cont.)

## Tips for Maintaining Files:

- Make sure access to the files is limited, for example, to an employee's manager or an HR manager. Also, develop a policy and rules for who and when access to employee files will be given.
- Make sure employee files are kept in a secure area and in locked cabinets or in secure electronic form.
- Be sure to maintain information such as job changes, pay changes, performance reviews, and other similar information in employee files.

# #6: Maintain Accurate Employee Files (cont.)

## Tips for Maintaining Files:

- Do **not** keep the following information in employee files. Instead, file the information in separately maintained files:
  - Protected information such as Social Security numbers, age, race, gender, national origin, disability, and marital status
  - Medical information
  - Information received from background checks and reference checks
  - Results of drug tests
  - Form I-9s (see #5 above)

## #6: Maintain Accurate Employee Files (cont.)

### Massachusetts Law Regarding Employee Access to Own File:

- An employer must allow an employee to review his or her file within 5 days of receiving a written request from the employee
  - The review must take place at the place of employment during normal business hours
- A copy of the file must be given to an employee if requested within 5 business days

# #7: Classify Positions Correctly

- Under the Fair Labor Standards Act (FLSA), an employee must be paid overtime at 1.5 times his or her regular pay rate for all hours worked over 40 in a workweek, unless the employee meets one of the FLSA exemptions
- Failure to pay overtime can be one of the costliest mistakes a business can make
- It is very important that positions be classified correctly to avoid legal issues
- Classifying positions correctly requires in-depth knowledge and expertise and for this reason, we recommend having your outside HR/Compensation Consultant review them

## #8: Hire and Promote the Best

- Businesses succeed through their people
- Hiring and promoting the right individuals for your company drives the quality of your services and products, customer satisfaction, efficiency of your operations, and financial results
- Yet, many companies make bad hiring and promotion decisions, which are very costly to a business in terms of time and money spent on training, the impact these failures have on other employees, and the time and money involved in replacing bad hires or failed promotions

# #8: Hire and Promote the Best (cont.)

## Tips for Hiring and Promoting the Best:

- Take the time to screen candidates and employees thoroughly, including conducting appropriate background checks
- Before recruitment begins, review the job description and determine if it needs updating. Think through the job requirements, including the competencies that make an individual successful in the job

# #8: Hire and Promote the Best (cont.)

## Tips for Hiring and Promoting the Best:

- When interviewing, ask about skills, education, and experience as well as questions that help you understand how an employee would behave on the job or handle different situations on the job
  - Example: If you were recruiting for an administrative assistant, you might ask “tell me how you organize your work” rather than “do you consider yourself organized.”
  - Example: If your culture is team-oriented, ask behavioral type questions to learn more about whether the candidate is team-oriented.
- For individuals promoted, consider the job requirements, what strengths the individual will bring to the job, and any gaps for which the individual will need training to succeed.
  - Example: If an individual is being promoted to a supervisory position and has no experience supervising staff, that individual will need training and support to be successful.

# #9: Develop an Onboarding Program for New Hires

- Research has shown that onboarding programs significantly impact a new hire's success
- Creating an onboarding program is a great way to protect your investment given the cost and time involved in recruiting new employees
- An onboarding program does not have to be expensive – the important thing is that there is a plan for orienting and training the new hire as quickly as possible so that he or she will be successful in the job

## Examples of what an onboarding program might include:

- General contact person or “buddy” to whom the employee can ask general questions
- Scheduled meetings with employees with whom the new hire will be working most closely
- Taking the new hire out to lunch the first day
- Follow-ups/check-ins with the new hire after completing one week, one month, two months, three months, and six months of service with the company

# #10: Know Employment Laws

- There are many federal and state employment laws and many apply based on the number of employees your company employs
- It's important to post required posters in areas where they will be seen by your employees – but don't post information about laws to which your company is not subject
- For an overview of the laws and posters required, visit our website at [www.psandeassociates.com](http://www.psandeassociates.com) and go to the Resource page
- Also, avoid asking questions during interviews with candidates that trigger noncompliance with laws

# Avoid Illegal or Discriminatory Questions

Never ask questions about an applicant's age, marital status, gender, disabilities, ethnicity, birthplace, religion, family, genetic information, sexual orientation or identification, or political beliefs.

DON'T ASK	YOU CAN ASK
<p>Are you a U.S. citizen? Asking if a person is a U.S. citizen could be used as evidence of discrimination based on national origin.</p>	<p>Are you authorized to work in the U.S.?</p>
<p>Do you have any mental or physical disabilities?</p>	<p>Are you able to perform the essential functions of the job with or without reasonable accommodations?</p>
<p>Why were you discharged from the service?</p>	<p>You may ask a veteran about the duties performed, training, and work experience in the military but not why discharged.</p>
<p>Are you married? Do you have any children? Are you pregnant? Are you planning to get pregnant? Do you have childcare?</p>	<p>Are you able to work overtime and travel, sometimes on short notice?</p>

# Avoid Illegal or Discriminatory Questions

DON'T ASK	YOU CAN ASK
What religion do you practice? Which religious holidays do you observe?	Are you able to work our required schedule?
What is your maiden name?	Have you ever worked or attended school under a different name?
How old are you? How much longer do you plan to work before you retire?	Are you over the age of 18? What are your long-term career goals?
What is your native language?	If the job requires proficiency in a language or languages other than English, you may inquire into languages the applicant speaks and writes fluently.
What are you earning at your current job?	Effective July 1, 2018, you may not ask about salary history in Massachusetts. Many companies have already opted to not ask for salary history.

# Questions



# Today's Presenter

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