

How to Become an Employer

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Introduction

It's no mystery why many sole practitioners insist on doing everything themselves. Your business' survival depends on hiring the right people. Finding the best employees can be tricky, and without the right systems in place to meet employment laws, the hiring process can even have disastrous consequences. Consider the following items to help you navigate the hiring process that you as an employer will be responsible for.

Employer Identification Number

One of the first steps necessary for employers is to obtain an Employer Identification Number, also known as a federal tax identification number, which is used to identify a business entity. You can apply for a number by filling out IRS Form SS-4 or download at www.irs.gov.

Employment Eligibility Verification

As an employer you are required to have on file an Employee Eligibility Verification I-9 Form for every employee. These must be completed within three business days of hiring an employee. The Bureau of Citizenship and Immigration Services (BCIS), formerly known as the Immigration and Naturalization Service (INS), has the forms available by calling 800-375-5283 or downloading them at <http://www.immigration.gov>.

Reference Checks

As an employer you should seek out and confirm your applicants work history. When doing so anticipate that previous employers may only reveal an employee's date of hire, date of termination and job title.

Credit Checks

An employer must provide clear and conspicuous written notice to an applicant and obtain their written consent prior to ordering a credit report. This notice and consent ideally would be included on a job application form.

Background Checks

Consider conducting background checks on applicants for positions that involve financial issues or require business related driving. Employers may access arrest and conviction records that are public information, but avoid using such information for hiring decisions.

Interview Guidelines

When interviewing applicants focus on the skill and experience needed for the position. Avoid asking questions about age, marital and family status, organizations, physical and personal information, national origin and citizenship, religion, or disabilities. Create a list of desired skills for the job to help you formulate insightful questions. Then use that skills list to create a list of interview questions. Putting together a list of interview questions will help you learn more about the candidate. Construct open-ended questions that invite candidates to share information and talk about their experiences.

Employment Laws

Both federal and state governments care about who you hire and more importantly, who you do not hire. To discourage discrimination, there are a variety of federal and state laws governing hiring practices.

The Civil Rights Act Prohibits discrimination on the basis of race, color, religion, sex or national origin. It also prohibits sex discrimination on the basis of pregnancy and sexual harassment.

The Equal Pay Act of 1963 Prohibits employers from paying different wages to men and women who perform essentially the same work under similar working conditions.

The Immigration Reform and Control Act of 1986 Prohibits discrimination on the basis of national origin or citizenship of persons who are authorized to work in the United States.

The Americans with Disabilities Act Prohibits discrimination against persons with disabilities.

The Bankruptcy Act Prohibits discrimination against anyone who has declared bankruptcy.

The Age Discrimination in Employment Act (ADEA) Prohibits discrimination against individuals who are age 40 or above.

Depending on the size of your company, it may be exempt from some discrimination laws. For example, the Age Discrimination in Employment Act only applies to employers with 20 or more employees. No matter what the size of your firm is, always watch your hiring practices. Remember that any size employer can be sued based on employment patterns and for not employing enough minorities and women.

Required Posters

Employers are required to display several posters at the workplace depending on such factors as the nature and location of the business, the number of employees, annual dollar volume, and whether the business has Federal contracts or subcontracts. Check with the Texas Workforce Commission as they provide many of the following required posters free of charge:

- Texas Unemployment Compensation Act
- The Texas Payday Law
- Texas Minimum Wage Act
- Equal Employment is the Law
- Fair Labor Standards Act
- Employee Polygraph Protection Act
- Family and Medical Leave Act

Employee or Independent Contractor

How an individual is classified will affect how you pay Federal Income Tax Withholding, Social Security (FICA) Tax, and Medicare taxes. A worker is either an employee or an independent contractor. Three categories including behavioral control, financial control and the relationship of the parties help define this role. An independent contractor will usually maintain an office and staff, advertise, and have some financial investment risk. Generally, a worker is classified as an employee if the employer can control the details of how and when work services are performed. Don't just classify all of your employees as independent contractors because the IRS may penalize your business heavily if you designate regular workers as independent contractors. For details, see the IRS Publication 15 Circular E, The Employer's Tax Guide.

Payroll

The IRS requires employers to maintain adequate books and records that substantiate payroll information for every employee and contract person. In general, you need to keep all employment tax records for four years including

- The name, address and Social Security Number of each employee
- The total amount and date of each payment
- The portion of each payment that constituted taxable wages
- Copies of each employee's W-4

- Dates and amounts of tax deposits
- Copies of returns you filed
- Copies of any undeliverable W-2 forms

Child Support Enforcement

Every U.S. employer, large and small, must comply with state and federal laws pertaining to child support enforcement including:

- When a valid Order or Notice to Withhold Income for Child Support for an employee is received, follow the terms of the Order/Notice and deduct the specified amount from each paycheck within the allowable limits. This amount must then be remitted within designated timeframes.
- Provide information to the state or local child support enforcement agency for information about an employee, such as information about his or her earnings, current residence, and health insurance coverage, and report the termination of an employee for whom you are withholding child support (whether the employee is fired, resigns or is temporarily laid off).
- Employers must report all newly hired employees within 20 days of hire to the Texas Employer New Hire Reporting Operations Center - (1-800-850-6442) or <http://employer.oag.state.tx.us>

Breaks and Lunches

Breaks of 20 minutes or less must be counted as hours worked and paid time. Meal periods of 30 minutes or longer are customarily unpaid but required. Employees cannot be expected to perform any type of work during meal periods.

Paid Travel

Normal commuter time is generally not paid time, whereas travel time relating to a special one-day assignment in another city is paid.

Federal Income Tax Withholding (W-4 Form)

Employers are required to withhold income taxes from employee paychecks based on each employees' marital status, amount of wages earned, and the number of withholding allowances selected by the employee. Have each employee fill out and sign an Employee's Withholding Allowance Certificate otherwise known as a W-4 form available from the Internal Revenue Service. If you do not have an employee's W-4 on file, you are required by law to treat the employee as a single person with no exemptions for withholding purposes.

Social Security Tax (FICA)

The Federal Insurance Contribution Act provides current funding for future social security benefits for employees. As an employer you are responsible for the employer's share as well as withholding the employee's share from their wages. As an employer you will report this information quarterly using IRS Form 941 but liability for this tax is due as wages are paid. Deposits of employment taxes must be made timely to avoid penalty. See IRS publication 15 for further details about Employer's Tax reporting.

Federal Unemployment Tax (FUTA)

The Federal Unemployment Tax Act imposes a tax on gross wages. However this tax is assessed only to the employer. As an employer you are allowed to reduce the Federal liability through participation in state unemployment insurance programs. Contact your local Texas Workforce Commission office to establish an Unemployment Tax account.