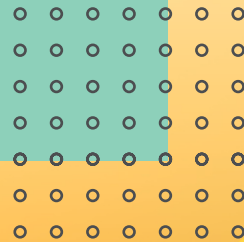


HIRING YOUR FIRST EMPLOYEE

Human Resource
Information for Small
Businesses



Introduction

Welcome to this guide about hiring your first employee! This booklet provides valuable information for small business owners who are considering hiring their first employee.

Human resources (HR) is important for any business regardless of size. It helps organizations manage their employees effectively, which is essential for achieving business objectives and maintaining a competitive advantage. HR plays a critical role in recruitment, selection, training, development, compensation, benefits, and employee relations.

By managing these aspects of employee engagement, HR can help create a positive work environment that promotes job satisfaction and employee retention. HR also ensures that the organization complies with employment laws and regulations, which helps to protect the organization from legal liabilities.

Hiring your first employee is an important milestone for any small business, and it can be a daunting task. There are many factors to consider, including legal requirements, payroll taxes, and benefits. This booklet will guide you through the process and provide you with the information you need to make informed decisions about hiring and managing your first employee.

In this booklet, you will find information about:

- ▣ Legal requirements for hiring employees
- ▣ How to create a job description and post a job opening
- ▣ How to screen and interview candidates
- ▣ Payroll taxes and benefits
- ▣ Employment laws and regulations
- ▣ Tips for managing your first employee

We hope that this booklet will be a valuable resource for you as you navigate the process of hiring your first employee. Please note that the information provided in this booklet is intended as general guidance and should not be construed as legal advice. For specific questions or concerns, we recommend consulting with an attorney or HR professional.

This guide is a publication of the Arkansas Small Business and Technology Development Center and was created through the Arkansas Business Navigator project.

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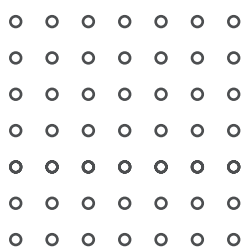
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Contractor (1099) vs. Employee

Understanding the Differences Between Contractors and Employees

One of the most common mistakes that business owners make in an attempt to save money is classifying workers as 1099 Contractors instead of W-2 Employees. Misclassifying workers is one of the most common issues that cause small businesses to face IRS and Department of Labor fines and penalties that could lead to financial hardship for your business. We have provided this information to use as a general guide to assist you in making the right choice when classifying your workers. This is one way you can protect your business.

We have also provided a Department of Labor Fact Sheet with more detailed information. Here is the link to this and many other Fact Sheets that can be used in making your employment decisions:

<https://www.dol.gov/agencies/whd/fact-sheets>

Contractor (1099) vs Employee (W-2)

- An employee is on a company's payroll and receives wages and benefits in exchange for performing the functions of the business operations. Essentially, without the employee performing this work, the business would not exist.
- A contractor is a self-employed, independent worker who has autonomy and flexibility but works in a capacity such as project-based work to further the company's goals by bringing in specialized skill sets not available within the company. A contractor is not on payroll, is responsible for paying their own taxes and does not receive any company benefits. Contractors usually have their own entity or business set-up. i.e., LLC, S-Corp, etc.
- It is also important to note that an agreement between the worker and the company does not protect the company from risks associated with misclassifying a worker.
- A contractor who should be classified as an employee, does not have the right to classify themselves. It is not a matter of choice- it is a matter of legal compliance.



Contractor (1099)

- ▣ Works within the scope of agreed upon contract for short- or long-term projects.
- ▣ Exercises autonomy even though an agreed upon schedule can be in place, the contractor still controls the schedule and how the work is performed.
- ▣ Highly skilled in an area that commonly provides a service- think in terms of an electrician fixing an electrical problem, bringing in a consultant to advise on the best strategy for that business' growth, etc.
- ▣ The work is not directly related to the primary purpose of the business and its functions- a retailer cannot hire a cashier as contract labor because it directly relates to the primary function of the business.
- ▣ Provides own tools to do the job.
- ▣ Paid separate from payroll- provides invoice according to contract terms.
- ▣ Taxes are not withheld- a 1099 is issued annually if the amount paid is over \$600.
- ▣ Pays for own travel and gets reimbursed according to contract terms.
- ▣ Company benefits are not offered- no time off accruals, no insurance, no employee perks.
- ▣ May have multiple clients at the same time.
- ▣ Training is not provided outside of general company safety, etc.

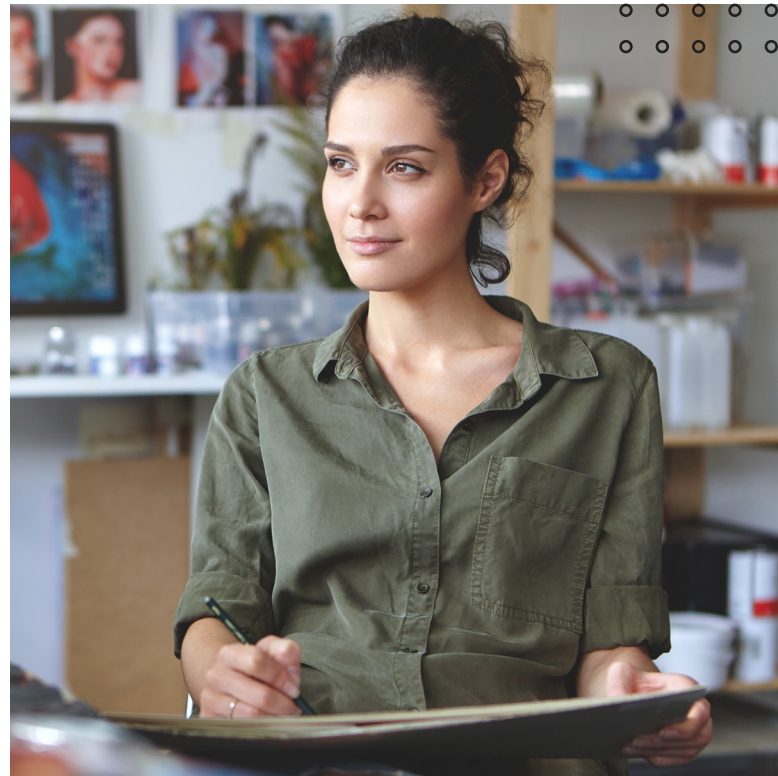
Employee (W-2)

- ▣ Hired to fill specific jobs and tasks related to the primary purpose of the business.
- ▣ Has very little autonomy in how the work is completed and must adhere to policies, procedures, and work rules as established by the company.
- ▣ May carry out job specific functions or perform multiple functions as needed by the company to continue day-to-day business.
- ▣ Tools are usually provided by the company or employee is reimbursed for the costs of tools.
- ▣ Paid through payroll on a regular basis (In AR, at least twice monthly).
- ▣ Federal, State, & Local taxes are withheld from the paycheck per legal requirements- employers share the cost of taxes with the employee.
- ▣ Company compensates the employee for travel and other compensable time as determined by the Fair Labor Standards Act (FLSA).
- ▣ Employees are entitled to company benefits according to company policies- Accruals, insurance, holidays, employee assistance programs, etc.
- ▣ Employees usually only work for the company and offer a higher level of loyalty to the company because they are not constantly in search of the next contract.
- ▣ Training is provided by the company- onboarding, orientation, continuing education, etc.

Contractor vs. Employee Quick Checklist

Contractor/1099s

- ✓ Paid upon agreed terms via invoice submission to client
- ✓ Provides own materials and tools
- ✓ Has freedom to work for multiple clients
- ✓ Temporary relationship based upon length of contract
- ✓ Contractor exercises discretion in performing the work
- ✓ Contractor and client agree to project scope and other terms
- ✓ No benefits offered



W-2 Employees

- ✓ Paid hourly or salary on a regular payroll cycle
- ✓ Uses employer's materials, tools and equipment
- ✓ Has a continuing relationship (at will or a defined time)
- ✓ Employer decides manner and means of performing the work
- ✓ Employer determines when work is performed
- ✓ Eligible for company benefits per the guidelines of the benefits



Getting Ready to Hire Your First Employee

Getting Ready to Hire Overview

Before you begin recruiting and hiring, it is imperative that you lay the foundation and eliminate ambiguity for the candidates as well as comply with legal requirements.

STEP ONE – Register as an Employer in Arkansas (with all applicable agencies)

- ▣ Obtain FEIN: www.irs.gov
- ▣ Register with the Secretary of State: <https://www.sos.arkansas.gov/business-commercial-services-bcs/for-new-business>
- ▣ Register with AR Labor Office: <https://newhire-reporting.com/ar-newhire/>
- ▣ Register for Unemployment Insurance: <https://www.workforce.arkansas.gov/Tax21/Home.aspx>
- ▣ Register @ AR for State withholdings: https://atap.arkansas.gov/_/
- ▣ Obtain information from IRS for Federal Withholdings (IRS Publication 15, Circular E,
- ▣ Employer’s Tax Guide from the IRS website at www.irs.gov
- ▣ Obtain Workers’ Comp Insurance: Required in AR if you have 3 or more employees & some industries require it with just 1 employee)

STEP TWO – Create Your New Hire Paperwork Packet:

- ▣ New Hire Checklist
- ▣ Application (A resume may not be substituted for a completed application. An application is an official legal document while the resume is only for informational purposes.)
- ▣ W-4 (Federal Form)
- ▣ AR Withholding Form (AR4EC)
- ▣ I-9
- ▣ Policies
- ▣ Handbook Acknowledgement

**Within 20 days of employee beginning work, report new hires to the State via Online Portal, Mail, or Fax

- ▣ Direct Phone: **501-376-2125**/ Public Phone: **800-259-2095**
- ▣ Fax: **501-376-2682**/ Fax: **800-259-3562**
- ▣ Website: **<https://newhire-reporting.com/ARNewhire/Default.aspx>**
- ▣ Address Information: **P.O. Box 2540 Little Rock, AR 72203**

STEP THREE – Post Required Notices (These can be obtained from the Department of Labor website. Be sure to check industry specific requirements as well)

- ▣ The Employee Polygraph Protection Act (EPPA)
- ▣ The Fair Labor Standards Act (FLSA)
- ▣ The Occupational Safety and Health (OSH) Act
- ▣ Uniformed Services Employment and Reemployment Rights Act (USERRA)
- ▣ Whistleblower Protections
- ▣ Public Employee’s Chemical Right to Know (AR)
- ▣ AR Workers’ Comp Poster
- ▣ AR Department of Labor Poster



STEP FOUR – Set-up Personnel Files System:

- ▣ New Hire Paperwork with Emp Info (Date of Birth & Date of Hire are not on the initial app so write these at the top of the tab of your file folder for easy access.)
- ▣ I-9 Folder or Binder (Can NOT be included in the Personnel File)
- ▣ Medical File – must be separate (For doctor’s notes, etc.)

STEP FIVE – Set-up Time Keeping System:

- ▣ Create Payroll Schedule
- ▣ Timecards, Payroll Records, etc.



Getting Ready to Hire Checklist

The first thing to do is make sure that you are registering as an employer with all applicable agencies.

- ☑ Register with the Secretary of State: <https://www.sos.arkansas.gov/business-commercial-services-bcs/for-new-business>
- ☑ Register with AR Labor Office: <https://newhire-reporting.com/AR-Newhire/Default.aspx>
- ☑ Register for Unemployment Insurance: <https://www.workforce.arkansas.gov/Tax21/Home.aspx>
- ☑ Register @ AR for State withholdings: https://atap.arkansas.gov/_/
- ☑ Obtain information from IRS for Federal Withholdings: (IRS Publication 15, Circular E, Employer's Tax Guide from the IRS website at www.irs.gov)
- ☑ Obtain Workers' Comp Insurance: There are many companies but this one specializes in Small Business. If you already have a General Liability policy in place, you may be able to bundle and save with your current provider. (Required if you have 3 or more employees & some industries require it with just 1 employee): <https://www.employers.com/where-employers-does-business/arkansas-workers-comp/>

☑ **Create your New Hire Paperwork packet to include:**

- ☐ New hire checklist
- ☐ Application - a resume may not be substituted for a completed application
- ☐ W-4
- ☐ Arkansas Withholding Form
- ☐ I-9
- ☐ Copies of signed policies
- ☐ Handbook Acknowledgement

☑ **Within 20 days of employee beginning work, report new hires to the State (information needed)**

- ☐ Employee Name
- ☐ Employee Address
- ☐ SSN
- ☐ Employee date of birth
- ☐ First day of work
- ☐ State of hire
- ☐ Employer name
- ☐ Employer address
- ☐ FEIN (optional)
- ☐ Employer phone number
- ☐ Employer fax number
- ☐ Employer email address

☑ **Post Required Notices- (These can be obtained from the Department of Labor website. Be sure to check industry specific requirements as well)**

- ☐ The Employee Polygraph Protection Act (EPPA)
- ☐ The Fair Labor Standards Act (FLSA)



- ▣ The Occupational Safety and Health (OSH) Act
- ▣ Uniformed Services Employment and Reemployment Rights Act (USERRA)
- ▣ Whistleblower Protections
- ▣ Public Employee’s Chemical Right to Know (AR)
- ▣ AR Workers’ Comp Poster
- ▣ AR Department of Labor Poster
- ☑ **Set-up Personnel File System**
- ☑ **Set-up Time Keeping System that will be kept on file for the required amount of time.**
 - ▣ Create Payroll Schedule (AR requires employees to be paid at least twice monthly. Options are daily, weekly, biweekly, and semi-monthly.)
 - ▣ Timecards, Payroll Records, Etc.

What to Include in a Job Description?

Think of a job description as an opportunity to clarify the role for which you want the employee to take on when employed by the company. Even when you’re hiring for a position due to turnover, the job description provides a chance to adapt or change the role to fit your company’s current needs.

Job Descriptions should be living documents that are reviewed at least annually to ensure the description still fits the actual responsibilities and requirements of the role. Keep in mind that you always want to keep it as simple as possible. Include what is needed and leave out the fluff. At a minimum, job descriptions should contain the following.

- ▣ Job Titles and Summary
 - » A job title defines the nature of the job and provides the employee with a sense of identity.
 - » The summary should include department, location, who the position reports to, any position which this position has supervisory duties over, and the date of the description was created.
- ▣ Statement of Job Purpose and Objectives
 - » This should be a brief and concise statement of purpose and objectives of the job.
- ▣ Essential Job Duties
 - » List all significant job duties in order of most important to least important.
 - » Include rather or not the job is “safety-sensitive”.
 - » Include a statement on the last bullet-point such as “all other duties as assigned”.

- ▣ Required Qualifications

- » Clearly outline the job qualifications needed for the job.
- » Consider listing each qualification as “required” and “preferred”.

- ▣ Special Licenses or Certifications

- » This could be anything from a drivers’ license to a specific industry certification like “Practitioner” or program specific like an “Excel” certification.

- ▣ Required Abilities and working Conditions

- » Provide a brief description of the quality of work environment, the types of hazards or dangers involved and outlined the type of efforts demanded by the job, such as physical lifting or mental demands.



Interviewing Potential Employees

Interviews can follow many formats. You can choose to host multiple one on one interviews, panel interviews, or a combination of both. This is the time to vet them for the basics. When you are ready to move to the next step, communicate with all involved in the process. Make sure that you are on time as you are setting a precedence for expectations going forward.

When conducting an interview, stay away from questions that do not directly correlate with the job. There are many legalities surrounding proper interview questions and questions you simply cannot legally ask. Make sure that all employees who are conducting interviews understand and follow the tips below:

■ Be consistent

- » To avoid discrimination claims, treat every applicant consistently. Put an interviewing process in writing and follow it every single time you interview.
- » Ask every candidate the same question. Focus on open-ended, behavioral interview questions to get your candidates talking about specific skills and demonstrate how they've performed in a similar role.
- » Avoid these questions:
 - Where were you born? Are you an American citizen?
 - ▶ Instead, ask if the candidate can verify their eligibility to work in the U.S.
 - Would your religion prevent you from working weekends and holidays?
 - ▶ Instead, explain that the job requires weekend and holiday availability, and ask if they can work this schedule.
 - Are you disabled or have any health issues?
 - ▶ Instead, ask if they are capable of performing the position's essential job functions.
 - Are you married? Do you have children?
 - ▶ Stay away from these questions because they have no correlation with how well the candidate can perform the job.
 - Have you ever been convicted of a felony?
 - ▶ Instead ask "If hired, are you willing to submit to the required background screening?"
 - How old are you?
 - ▶ Instead, only ask if the job legally requires a minimum age.

■ Write objective notes

- » If an applicant files a discrimination claim, any notes related to the interview can be used as evidence. When interviewing and screening, only write notes that are factual, job-related, and not opinion based.
- If any personal information such as marital status, religion, sexual orientation, etc is revealed by the candidate, do not write that in the notes.
- Do not write on the application itself - Remember, it is a legal document. Also, ensure that the application is filled out completely and signed by the applicant.



■ Make the Offer

- » Once you have chosen the right person for your open position, communicate this to the candidate and then to the rest of the team.
- Make a verbal offer by calling the candidate and offering them the job. This gives you the opportunity to work out any details and finalize any negotiations before sending an offer letter if you choose to utilize offer letters.
- If the verbal offer and acceptance satisfies your requirements, simply set-up the training and be ready to welcome your new hire on Day 1.
- If you do want to make formal offers with written offer letters, be sure to include the details of the job such as position title, pay rate, general operating hours, first day of orientation or training. It is important to include a statement about the offer letter not implying an employment contract.

- If you are a company that requires background checks and drug screens prior to beginning work, the offer letter will be a “conditional offer” based upon successful completion of background check and drug screen. This should also be included in the offer letter.

■ Background Checks and Drug Screens

- » Establish providers and set-up a billing account for each.
- » Obtain written authorization from the conditional hire giving you permission to run the background check. This needs to be on file for all background checks and can be established with a proper background check policy.
- » When background check results are returned, be sure to keep all information private. If there is evidence of potential criminal history, be sure that you only eliminate the candidate if the offenses could have a negative impact on the company and is directly related to the position. For instance, if there are drug charges from 10 years ago and the position is for kitchen staff, you may not want to immediately eliminate the candidate without further review.



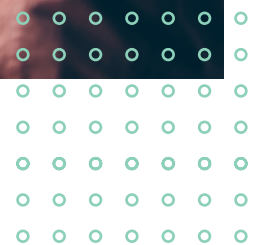
New Hire Orientation

The orientation process is very important in retaining employees. It is the point where an employee decides if they will stay long term or begin passively looking for the next opportunity. It is imperative to make the new employee feel valued from the first day and make sure they have all the tools they will need to be successful in their position. Always keep in mind that while we have provided a 5 day orientation checklist, full orientation will take several months and learning should be an ongoing process.



■ Pre-Onboarding

- » Process background check & drug screen (if applicable)
- » Assign office keys
- » Set-up computer and all accounts access
- » Enroll in required online trainings
- » Prepare workspace
- » Communicate new team member start date to the rest of the team
- » Order “Welcome Kit” & any required items (list them here)
- » Send Onboarding Agenda to new hire





Day 1

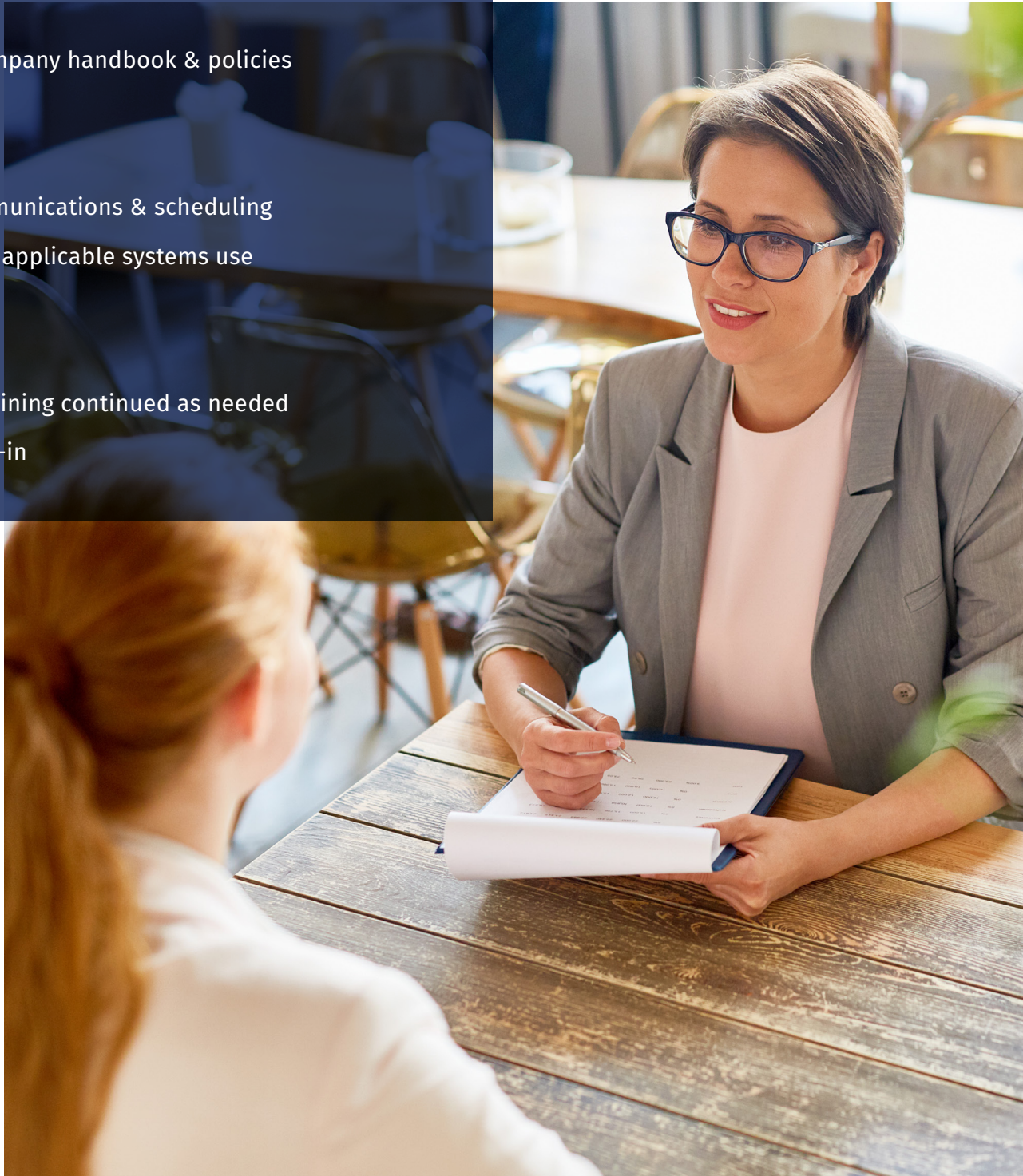
- » Morning greeting and coffee with the team- Present “Welcome Kit”
- » Office tour
- » Administrative procedures: New hire paperwork (if not completed prior to start date), issue office keys
- » Workplace and software set-up
- » Team lunch
- » Handbook
- » Intro to company handbook & policies

Day 2

- » Q&A
- » Office communications & scheduling
- » Training on applicable systems use

Days 3-5

- » Q&A
- » Systems training continued as needed
- » Daily check-in





New Hire Check List

This is a quick overview regarding new hires. Please refer to Appendix C & D for example checklists that can be used for record keeping purposes.

What you should do as an employer:

- Personnel file created.
- Confidential medical file created.
- Reference checks completed and filed.
- Background check results received and reviewed.
- Physical exam results received and reviewed.
- Drug test received and reviewed.
- I-9 documents reviewed.
- Payroll change notice completed.
- Orientation documents filed.
- Employee information entered in HRIS & payroll systems.
- State new hire reporting completed.

What you need from new employee:

- ☑ Application form.
- ☑ Authorizations for background check, physical & drug screen.
- ☑ Offer letter.
- ☑ I-9 form (Can be found at USCIS Form I-9 <https://www.uscis.gov/sites/default/files/document/forms/i-9-paper-version.pdf>).
- ☑ Federal tax withholding form (Can be found at <https://www.irs.gov/pub/irs-pdf/fw4.pdf>).
- ☑ State tax withholding form (Can be found at <https://www.dfa.arkansas.gov/images/uploads/incomeTaxOffice/AR4EC.pdf>).
- ☑ Direct deposit form (Refer to Appendix D).
- ☑ Employee policy manual acknowledgement.
- ☑ Employee handbook acknowledgement.
- ☑ Key/security policies acknowledgement.
- ☑ Employee personal information sheet and emergency contact form.
- ☑ Benefit enrollment forms.

New Employee Onboarding Checklist

- ☑ MAKE IT OFFICIAL WITH HR
- ☑ PREPARE NEW HIRE PAPERWORK
- ☑ PROCURE DEVICES AND EQUIPMENT
- ☑ SET-UP ACCOUNTS AND CREATE LOGINS
- ☑ SET-UP THE WORKSPACE
- ☑ SCHEDULE NEW HIRE ORIENTATION
- ☑ SEND A WELCOME EMAIL TO YOUR NEW EMPLOYEE
- ☑ PERFORM A BUILDING TOUR • ASSIGN A PEER MENTOR
- ☑ SEND A NEW EMPLOYEE ANNOUCEMENT
- ☑ SCHEDULE TIME FOR ONBOARDING FEEDBACK
- ☑ SET-UP A 30, 60, AND 90-DAY CHECK-IN PLAN



Employee Compensation and Benefits



Compensation and Benefits Overview

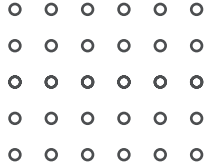
The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments. The FLSA is important because it helps reduce risks of working conditions that may otherwise jeopardize lives, well-being and efficiency.

■ What is Compensation?

Compensation is the financial value that a team member receives in exchange for their services. This monetary value can include wages, salary, commissions, and bonuses. Properly paying your employees and offering additional incentives builds retention and creates loyalty.

■ Minimum Wage

Federal minimum wage provisions are contained in the Fair Labor Standards Act (FLSA). The federal minimum wage is \$7.25 per hour effective July 24, 2009. In Arkansas, the minimum wage is \$11.00. Be sure to check other state minimum wage laws when building your compensation plans.



▣ Federal Overtime Provision

Unless exempt, employees covered by FLSA, must receive overtime pay hours worked over 40 hours in a work week at a rate not less than time and one-half their regular rates of pay. Arkansas follows the Federal OT Provisions. Some states require overtime pay after 8 hours worked in a day. Be sure to check other state requirements.

▣ Benefits

Benefits can serve as a major recruiting tool for employers to attract and retain top talent. Benefits are nonmonetary, additional perks or rewards that a company provides for a team member. Certain benefits may have a financial value, even though a team member receives no cash. Examples of benefits with a monetary value include equity, stock options, health insurance and retirement savings plans.

Benefits with No Monetary Value:



Family leave: This benefit includes extended leave allowance for bereavement, maternity, and paternity leave.



Flexible working schedule: An organization can offer flexible work hours and the option to work remotely for a few days a week as long as team members complete their assignments on time.



Paid time off: Depending on the length of service, organizations may allow team members to schedule paid days off for some personal time.



Additional wellness benefits: Such as company paid employee assistance programs, gym memberships, time off for volunteering, and elder care for aging parents.



Training and development: Employers develop training programs to enable team members to learn specific skills or gain knowledge to improve their performance.



Use of company equipment: Some companies provide access to computer equipment, cellphones and tablets for the duration of employment.

Proper Compensation Guidelines

This section will provide an overview of applicable Federal and State laws regarding compensation that every employer should know and understand.

Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) is a federal law with broad coverage, affecting most private and public employees. The FLSA generally requires employers to pay all covered nonexempt employees the statutory minimum wage and overtime pay of at least one and one-half times their regular rates of pay for hours worked in excess of 40 hours in a workweek.

A few states, such as California and New York, have overtime exemption criteria that conflict with the FLSA. Multistate employers should check applicable state laws to ensure compliance with both federal and state law.

Who is covered under the Fair Labor Standards Act (FLSA)?

Employees who work for “enterprises” with at least two employees are covered by the FLSA.

Unless an employer can establish that it is not covered by the FLSA or that an exemption from the FLSA applies, employees are presumed to be eligible for overtime. Employers and employees cannot agree to waive coverage of the FLSA.

Even when there is no enterprise coverage, employees are protected by the FLSA if their work regularly involves them in commerce between States (“interstate commerce”). The FLSA covers individual workers who are “engaged in commerce or in the production of goods for commerce.”

Examples of employees who are involved in interstate commerce include those who: produce goods that will be sent out of state, regularly make telephone calls to persons located in other States, handle records of interstate transactions, travel to other States on their jobs, and do janitorial work in buildings where goods are produced for shipment outside the State.

Also, domestic service workers (such as housekeepers, full-time babysitters, and cooks) are normally covered by the law.

Who is not covered under FLSA?

Overtime Exemptions

The FLSA Section 13(a)(1) exemptions are often referred to as the white-collar exemptions. To be exempt from overtime, a position must meet the following three criteria:

- A minimum salary threshold (some exceptions apply).
- Payment on a salary basis as defined by the regulations (some exceptions apply).
- A primary duty test that is specific to each exemption.

Minimum Salary

On Sep. 24, 2019, the U.S. Department of Labor (DOL) issued a final rule that sets a new salary threshold of \$684 a week (\$35,568 annualized) for the FLSA's white-collar exemptions, effective Jan. 1, 2020. Employers are permitted to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level.

The 2019 final rule includes a special salary level of \$380 per week for employees in American Samoa. In addition, a special salary level of \$455 per week applies to employees in Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands.

The 2019 final rule also includes a special "base rate" threshold for employees in the motion picture producing industry of \$1,043 per week (or a proportionate amount based on the number of days worked). See [New Overtime Rule Raises Salary Cut-Off to \\$35,568](#).

Salary Basis

An exempt employee must be paid a predetermined and fixed salary that meets the minimum salary requirements in the regulations and that is not subject to reduction because of variations in the quality or quantity of work performed.

See Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA) <https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary>.

See Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA) <https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime>.

Which Positions are Not Eligible for Exemption

- ❑ **Blue Collar Workers** – Manual laborers or other blue-collar workers “who perform work involving repetitive operations with their hands, physical skill and energy” are entitled to overtime. Examples of such blue-collar workers include “non-management production-line employees and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operation engineers, longshoremen, and construction workers.”
- ❑ **First Responders** – First Responder employees such as police officers, fire fighters, paramedics, emergency medical technicians, ambulance personnel and rescue workers, “regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.”

- ❑ **Other Workers** - Inside sales employees are entitled to overtime under the FLSA regulations. Generally, paralegals and legal assistants are entitled to overtime. Many executive and administrative assistants are entitled to overtime.

See Fact Sheet #17I: Blue-Collar Workers and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA) <https://www.dol.gov/agencies/whd/fact-sheets/17i-overtime-blue-collar>.

See Fact Sheet #17J: First Responders and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA) <https://www.dol.gov/agencies/whd/fact-sheets/17j-overtime-first-responders>.

Exempt vs Non-exempt in General

- ❑ **Exempt Employees** – Employees who are paid on a salary basis and not required to be paid overtime, in accordance with applicable federal wage and hour laws, for work performed beyond forty hours in a work week. Executives, professional employees, and certain employees in supervisory and administrative positions are typically exempt. Exempt employees’ salary can not be reduced in most situations.
- ❑ **Non-exempt Employees** – Employees who are required to be compensated for overtime pay at the rate of one and one-half times the normal hourly pay for every hour worked in excess of 40 hours per week, in accordance with applicable federal wage and hour laws.



Minimum Wage

- ❑ **Federal Law**

The minimum wage for covered nonexempt workers is not less than \$7.25 per hour effective July 24, 2009. With only some exceptions, overtime (“time and one-half”) must be paid for work over forty hours a week.

Child labor regulations prohibit persons younger than eighteen years old from working in certain jobs and additionally sets rules concerning the hours and times employees under sixteen years of age may work.



▣ State Law (Arkansas)

The State minimum wage is \$11.00 per hour effective January 1, 2021. The Arkansas Minimum Wage Act covers employers with 4 or more employees. Employers covered by the federal Fair Labor Standards Act (FLSA) are also covered by the Arkansas law if they have 4 or more employees.

An employer covered by both laws must pay the highest minimum wage. In most cases, an employer has to pay overtime to non-exempt employees for all hours actually worked in excess of 40 hours in a workweek. This means that employees may work more than 8 hours in a day or work more than a regularly scheduled shift, and still not exceed 40 hours of actual work in a workweek. If you pay employees for hours not actually worked, such as for a holiday or a sick day, then those hours do not count as hours actually worked for the purpose of state and federal overtime.

▣ Tipped Employees

Tipped employees must be paid at least \$2.63 per hour. The tips they earn must be enough to bring them up to the applicable minimum wage per hour. If the tips do not bring them up to minimum wage, the employer must add enough to their pay to do so. It is the employer’s responsibility to keep accurate tip records.

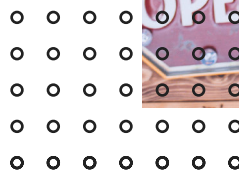
▣ Deductions from Minimum Wage

Non-standard deductions are generally not allowed to bring the employee below minimum wage per hour for the workweek. These types of deductions include but are not limited to the following: spoilage or breakage; cash or inventory shortages or losses; and fines or penalties for lateness, misconduct, or quitting by an employee without notice.

Deductions that reduce the employee below the applicable minimum wage per hour that may be made include deductions that are court ordered, wage assignments to a third party, or deductions for board, lodging, apparel, or other items and services. It is important to note that these types of deductions can only be made in accordance with the statutes and rules of the Arkansas Minimum Wage Act.

A.C.A. § 11-4-210 – Arkansas Minimum Wage Law

Private Employment Agency Laws and Regulations-
http://www.labor.arkansas.gov/wp-content/uploads/2020/05/private_employment_agencies.pdf





How to Manage Compensation

■ Compensation Policies

- » Develop a written compensation policy that guides you and promotes consistency in compensation decision-making throughout the company while keeping your budget on track.
- » Make sure your compensation policy addresses a total compensation package that includes incentives, bonuses, and/or any other benefits you want to offer.
- » Create objective and fair criteria for wage increases, bonuses, and promotions? Are any bonuses or incentive payments tied to clearly documented triggers (e.g., sales performance or profit-based measures).

■ Compensation Strategy

- » Research and develop pay scales that align in your industry and geographic region.
- » Document your reasoning for any one-off or unusual pay decisions to ensure they are equitable.
- » Account for cost-of-living allowances.
- » Solicit employee feedback for future compensation plans and incentives.

■ Payroll Management

- » Choose a system that allows you to prepare official documents (e.g., W-2 forms) and easily generate any reports you may need to run repeatedly or in the future for analysis and audit purposes.
- » Determine pay weeks and paydays. In AR, employers must pay at least semi-monthly.
- » Determine how time worked and paid/unpaid leave will be tracked and reported.
- » Make sure you are accurately addressing payroll tax withholdings and filings. A good CPA or Bookkeeper should be able to assist with this.
- » Will you pay via direct deposit, paper checks, or both according to employee preference? Some states do not allow companies to require direct deposits.



Regulatory Compliance

- » Have you audited salaries to ensure that you pay at least minimum wage?
- » Have you properly classified exempt and nonexempt employees to ensure overtime requirements are met?
- » Have you audited all currently exempt positions to ensure they meet salary requirements and the duties test? Remember, job title alone does not determine employee classification.
- » Do you have policies in place to ensure employees understand when and how they need to track time worked?
- » Do you have procedures in place to ensure pay equity across the organization?
- » Have you reviewed pay practices to ensure they align with the Fair Labor Standards Act?
- » Have you reviewed pay practices to ensure they align with any applicable state and local laws?

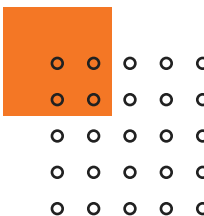
Understanding Employee Benefits

Benefits can serve as a major recruiting tool for employers to attract and retain top talent. This document will provide an overview of various options to consider when creating a benefits package for your organization.

The sky's the limit when it comes to showing appreciation for those that perform the daily work. You don't have to pay above market salaries and have a big benefits program. Providing small incentives and tokens of appreciation are the key to retaining the best when growing your small business.

Employer Mandate

- » If you have 50 or more FTEs (full-time employees), you must offer health insurance that is affordable and provides minimum value to 95% of your full-time employees and their children up to the end of the month in which they turn age 26 or be subject to penalties.
- » Employees who work 30 or more hours per week are considered full-time.
- » You must offer the insurance within 90 days of full-time employment.
- » Affordable coverage is considered to be coverage that covers at least 60% of covered services.



Health Insurance

» If you choose to offer medical insurance, but have less than 50 FTEs, there are some guidelines under the ACA that will apply to you. This is not an all-inclusive list.

- Must cover at least 50% of the premium
- Must provide an SBC (Summary of Benefits & Costs disclosure) annually
- Must offer the option to enroll within 90 days of FT employment

» Use a knowledgeable insurance broker to ensure you are meeting all requirements and getting the best benefits for your employees.

Supplemental Insurance Options

» Below are some other insurance options that you may offer your employees. These are typically 100% employee paid. However, most are very low-cost options so many employers will cover at least a portion of the premium.

- Dental
- Vision
- Life
- Supplemental Life
- Long-term Disability
- Short-term Disability
- Critical Illness & Cancer
- Long-term Care
- Accident
- Hospital

Other Incentives for Consideration

- Paid Time Off- Limited and Unlimited
- Holiday Pay
- Birthday Pay
- Remote and Hybrid Work
- Shorter Work Week
- Mentorship Programs
- Coaching Services
- Gym Reimbursements
- Student Loan Assistance
- Employee Assistance Programs
- Monthly Birthday Celebrations
- Employee Appreciation Celebrations
- Employee Discounts through Partnerships
- Lunch n Learns funded by outside companies who want to get information and services to your team



Benefits Checklist

In order to determine which benefits you want to offer your employees, start by asking yourself the following questions.

- ▣ What benefits do I want to offer?
- ▣ Can I afford to offer employer paid benefits?
- ▣ Will I offer all benefits to all employees or only full-time employees? Can I offer health, dental, and vision to full-time and offer supplemental products (life, long- and short-term disability, etc.) to full- and part-time employees?
- ▣ Can I afford the full cost of employee health premiums or should I pay only the required 50% for employees?
- ▣ Do I want to offer coverage to dependents?

In order to assist in this big decision, below is information for consideration:

- ▣ ACA overview
 - » Employer Mandate: if you have 50 or more FTEs, you must offer health insurance that is affordable and provides minimum value to 95% of your full-time employees and their children up to the end of the month in which they turn age 26.
 - » Employees who work 30 or more hours per week are considered full-time.
 - » You must offer the insurance within 90 days of full-time employment.
 - » Affordable coverage is considered to be coverage that covers at least 60% covered services. (Most plans do this)

■ Medical Insurance

» If you choose to offer medical insurance there are still some guidelines under the ACA that will apply to you. This is not an all inclusive list.

- Must cover at least 50% of all premiums.
- Must provide an SBC (Summary of Benefits & Cost Disclosure) annually
- Must offer the options to enroll within 90 days of full-time employment.

■ SHOP (Small Business Health Options)

» For small employers who want to provide health and/or dental insurance to their employees. To qualify for the tax credit, all of the following must apply:

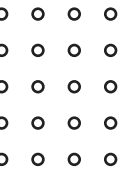
- You have fewer than 25 full-time equivalent (FTE) employees.
- Your average employee salary is about \$56,000 per year or less.
- You pay at least 50% of your full-time employees premium costs.
- You offer SHOP coverage to all of your full-time employees.

■ Health Savings & Reimbursement Accounts

» There are various rules around the management of these types of accounts. Be sure to speak with a knowledgeable expert to determine which may be best for you and your team.

- Direct Primary Care
- Can be offered to all employees full and part-time.
- Acts as a monthly membership to a specific clinic that gives primary care as well as many diagnostic tests, prescription dispensing, and discounts for more invasive procedures.





Supplemental Insurance Options

» Below are some other insurance options that you may offer your employees. These options are typically 100% employee paid. This is only a list of various options due to a very long list of guidelines for each of them:

- Dental
- Vision
- Life
- Supplemental Life
- Long-term Disability
- Short-term Disability
- Critical Illness and Cancer
- Long-term care
- Accident
- Hospital



Company Policies

It is important for a company to have policies and procedures because they provide clear guidelines for how employees are expected to behave and perform their jobs. Policies and procedures help to ensure consistency, fairness, and compliance with legal requirements. Here are some key reasons why policies and procedures are important:



Consistency: Policies and procedures help to ensure that all employees are treated fairly and consistently, regardless of their position or level of seniority. This can help to promote a positive work environment and minimize misunderstandings and conflicts.



Compliance: Policies and procedures help to ensure that the company complies with legal requirements, such as employment laws and regulations, safety standards, and ethical guidelines.



Efficiency: Policies and procedures help to streamline business processes and ensure that tasks are completed in a consistent and efficient manner. This can help to improve productivity and reduce costs.



Risk management: Policies and procedures help to minimize risk by outlining how to handle situations such as accidents, emergencies, and security breaches. This can help to protect the company from legal liabilities and reputational damage.



Communication: Policies and procedures help to communicate important information to employees, such as expectations for behavior, performance, and conduct. This can help to ensure that employees understand what is expected of them and feel empowered to perform their jobs effectively.

Policy

- ▣ Policies are applicable across the organization and all employees are accountable for them. It is a resource to help employers deal with employee accountability, safety, and interactions with one another.
- ▣ Policies should be reviewed and updated at least annually.
- ▣ Policies should be covered in the company onboarding and orientation. The employee should acknowledge the policy by signing off that they understand the policy.
- ▣ The employee handbook is the most common way to communicate policies.
- ▣ They should be easy to access for reference when needed.
- ▣ They should be inclusive and equitable.

Contents of a Policy

- Header Block
- Background
- Purpose
- Scope
- Definitions
- Procedures
- Related Policies
- References/Citations

Examples of policies: Drug and Alcohol, Background Screening, Attendance, Timekeeping, Promotions, Hiring, Termination, Vehicle Usage, etc

Procedure

- Procedures are specific to departments, jobs, and areas of the business because they are step by step instructions on how to carry out the day-to-day tasks of the job.
- Procedures often stay consistent once they're established to maintain a general understanding of what employees should do in various circumstances. It is important to note that procedures should be clear and consistent while allowing for innovation and creativity in processes that will improve performance and enhance the service or product.
- Most procedures are given in the course of the training period and kept readily available at all times to managers and employees for reference throughout the course of employment.

Contents of a Procedure

- Clear Title
- Brief Introduction
- Describe How to Do It
- Format Work Instructions
- Revise Your Document
- Provide Resources
- Test the Procedure

Examples of procedures: Onboarding Process, Exit Process, Timeclock, Employee Changes, etc



Policies and Procedures Review

- ▣ Policies:
 - » Are general in nature
 - » Identify company's rules
 - » Explain why they exist
 - » Tells when the rules apply
 - » Describe who it covers
 - » Shows how the rule is enforced
 - » Describes the consequences
 - » Are normally described using simple sentences and paragraphs
- ▣ Procedures
 - » Identify specific actions
 - » Explain when to take action(s)
 - » Describe alternatives
 - » Shows emergency procedures
 - » Includes warning(s) and caution(s)
 - » Give examples
 - » Show how to complete forms
 - » Are normally written using an outline format

When you are ready to put policies and procedures in place, the best way is to follow the DAIMU method below:

- ▣ Develop
- ▣ Agree
- ▣ Implement
- ▣ Monitor & Review
- ▣ Update as Needed



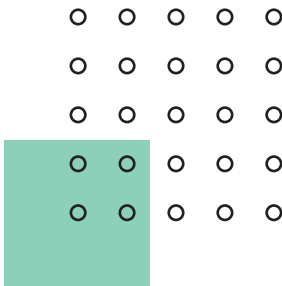
Creating a Company Handbook

A handbook is a resource that should be used in conjunction with your established policies. It should be used as a reference to guide supervisors in managing the workforce in a consistent and fair way as well as used as a communication tool for all employees to understand their benefits and the expected behaviors.

It is important to point out that a handbook is not a legal requirement. However, it does give you a defense if ever faced with a legal issue. Showing that you were operating according to policy, can reduce the risk of being charged with unfair labor practices and discrimination. If you decide to utilize a handbook, do not google it. It is suggested to partner with a local attorney or HR expert to ensure that your policies are compliant. By partnering locally, you can ensure that you are adhering to local, state, and federal laws and regulations that pertain to your business. This is not an area where you want to “do-it yourself” to save money. At the very least, get your handbook reviewed by a professional.

Contents of Handbook

- ▣ Welcome letter to the employees
- ▣ Company History
- ▣ Mission and Vision Statements
- ▣ Table of Contents for Easy Access
- ▣ EEO Statements
- ▣ Purpose of the Handbook
- ▣ Contractual Disclaimer and At-Will Statement
- ▣ Anti-Harassment Policy
- ▣ Americans with Disabilities ACT (if applicable)
- ▣ Family Medical Leave ACT (if applicable)
- ▣ Classifications of Employment (Exempt, Nonexempt, Full-Time, Part-Time, etc.)
- ▣ Summaries of each Policy that applies to All Employees - avoid legalese and make easy to read
 - Drug and Alcohol Policy
 - Violence and Weapons Policy
 - Attendance Policy
 - Hours of Work Policy
 - Meals and Rest Policy
 - Overtime Policy





- Timekeeping Policy
- Personnel Records Policy
- Paydays Policy
- Payroll deductions Policy
- Garnishment Policy
- Performance Reviews Policy
- Promotions Policy
- Transfers Policy
- Terminating - Reduction in force, Layoff/ Recall Policy
- Bulletin Board Policy
- Telephone/Email/Internet Use Policy
- Social Media Policy
- Paid Leave Policies and Explanation of Accruals
- Unpaid Medical Leave Policy
- Safety
- Standards of Conduct
- Progressive Discipline
- Exit Process
- Benefits Information (keep this general since most plans will change from year to year)
- Worker’s Compensation Reporting Information
- Unemployment Insurance
- Acknowledgement of Handbook and Harassment Policies



Pro Tips:

- Keep it as short as possible- you want it to be used as a reference.
- Write it in an engaging way and easy to read way..
- Make it easily accessible.
- Use “Gender Neutral” terms.
- Review annually for updated legal guidance and policy changes.
- Train managers and supervisors on policies in the handbook.
- Annually review with employees.
- Have it reviewed by a legal professional each time an update is made.
- Stay in the loop for legal updates.

Refer to Appendix H for a General Handbook Template

Disciplinary Action



Disciplinary Action Procedures

In order to promote consistency, keep employees on track and performing in alignment with the company's goals, there must be a formal progressive disciplinary process in place. The purpose of disciplinary action is behavior modification- not setting them up for termination.

Discipline should never be negative nor personal, and it should always focus on the standard not met. This promotes a culture of trust and respect, so the employee still feels valued and has an opportunity to improve.

■ Coaching/Verbal Warning

- » Creates an opportunity for the supervisor to bring attention to the existing performance, conduct, or issue.
- » Discuss with the employee the nature of the problem or the violation of company policies and procedures.
- » Clearly describe expectations and steps the employee must take to improve their performance or resolve the problem.

■ Written Warning

- » The written warning involves more-formal documentation of the performance, conduct, and/or consequences.
- » During this step, you will meet with the employee to review any additional incidents or information about the performance, conduct, or attendance issues as well as any prior relevant corrective action plans. Communicate the consequences for the employee if they fail to meet performance or conduct expectations.

■ Final Written Warning with or without Suspension

- » The written warning is similar to a “Last Chance Agreement” and communicates the seriousness of the violation as well as the possibility of termination upon the next violation.
- » A formal performance improvement plan (PIP) requiring the employee’s immediate and sustained corrective action may be issued at this step. A timeline of corrective actions and follow-up meetings should be included in this.
- » Some performance, conduct, or safety incidents may necessitate the need for temporary removal of the employee from the workplace. When immediate action is necessary to ensure the safety of the employee or others, you may suspend the employee pending the results of an investigation.
- » Depending on the seriousness of the violation, the employee may be suspended without pay in full day increments consistent with federal, state, and local wage and hour employment laws. In compliance with the Fair Labor Standards Act (FLSA), unpaid suspension of salaried/exempt employees is reserved for serious workplace safety or conduct issues.
- » Pay may be restored to the employee if an investigation of the incident absolves the employee of wrongdoing.

■ Termination of Employment

- » The last and most serious step is to terminate employment. The company always reserves the right to combine and skip steps depending on the circumstances of each situation and the nature of the violation. You must have everything clearly documented prior to termination.



Disciplinary Actions and Terminations

▣ Disciplinary Action

The keys to a successful disciplinary process are consistency and communication:

- » Establish a Workplace Code of Conduct policy that includes rules, standards, unacceptable behaviors, and reporting procedures.
- » Ensure policies are clear and concise.
- » Written policies should be reviewed, revised, and communicated at least annually.
- » Handle issues immediately to keep the behavior(s) from escalating.
- » Have an established form that allows clear communication and next steps for improvement.
- » Document verbal coaching. This in case you have to move to the next step of written counseling.
- » Keep coaching/counseling sessions private. Praise publicly- correct privately.
- » Track common disciplinary issues among employees to identify when a policy has not been clearly communicated.
- » Apply disciplinary action consistently in similar situations to avoid potential discriminatory issues.

▣ Types of Disciplinary Action

- » Coaching/ Verbal Warning
- » Written warning (Refer to Appendix I for written warning example form).
- » Final written warning with or without suspension
- » Termination of Employment

▣ Termination

When terminating an employee, remember that it is important that the employee leaves the termination meeting maintaining a sense of dignity. Terminations should never be personal and should always be based strictly on violation of company policies to reduce the risk of legal action.

▣ Two Types of Termination

- » **Voluntary Termination-** prompted by the voluntary resignation of the employee due to personal reasons. (Refer to Appendix J for Employee Resignation form)
- » **Involuntary Termination-** Involuntary termination is due to unacceptable behaviors, downsizing, or other reasons for which the employee did not initiate.

▣ Laws to Consider

(It is always a good idea to consult an attorney for legal advice prior to termination).

- » **Title VII of the Civil Rights Act of 1964:** Prohibits termination based on race, color, religion, gender and national origin.
- » **Pregnancy Discrimination Act (PDA):** An amendment to Title VII, prohibits termination based on pregnancy and childbirth.
- » **Americans with Disabilities Act (ADA):** Prohibits termination based on disability.
- » **Age Discrimination in Employment Act (ADEA):** Prohibits employers termination based on being age 40 and older.
- » **Uniformed Services Employment and Reemployment Rights Act (USERRA):** Prohibits termination based on military service.
- » **Family and Medical Leave Act (FMLA):** Prohibits termination based on requesting or using FMLA leave.

Please Refer to Appendix K for a Termination Checklist.





Moving Forward

Hiring your first employee is an exciting step in growing your small business, but it can also be daunting. However, with the right preparation and knowledge, you can navigate the hiring process with confidence. This booklet has provided an overview of human resources information to consider when hiring your first employee, including job descriptions, recruitment strategies, interviewing techniques, legal considerations, and employee onboarding.

This guide was created to help you understanding the basics of human resources and how to hire your first employee. Please note that the information provided in this booklet is intended as general guidance and should not be construed as legal advice. We recommend you to seek out assistance from a human resources professional or a licensed attorney to keep you up-to-date on legal requirements as workplace requirements change often.

We hope that this information has been helpful and that you feel better equipped to hire your first employee. Remember that the Arkansas Small Business and Technology Development Center is here to support you every step of the way, and we encourage you to reach out to us for further assistance as needed. Best of luck in your hiring journey!



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