

Horrors of Human Resources..... How to Prevent Them

Presented by;

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Five Key Areas to watch out

- ▶ New Hires
- ▶ Job Description and Wages
- ▶ Employee Handbooks
- ▶ Work Environment
- ▶ COVID19

From the Beginning...New Hires

The background features a series of overlapping, semi-transparent geometric shapes in shades of red and blue, primarily concentrated on the right side of the frame. The shapes include triangles and polygons of varying sizes and orientations, creating a dynamic, layered effect. The colors range from bright red to deep blue, with some areas appearing as lighter, more translucent washes.

Employment Application

- Have applicant complete the Employment Application prior to first interview
- Make sure candidate completes all sections
- The Employment Application contains information the resume doesn't; Don't just accept the resume



Application for Employment

Please provide accommodations for persons with disabilities in the hiring process. If your disability is not listed, please let us know, and we will provide assistance.

ng		Date of Application	Date Avail
First Name	Middle Initial		
City			
Are you 18 years of age or over?			
<input type="checkbox"/> Yes		<input type="checkbox"/> No	
		If No, Date of Birth	
Education			

Employment Application

All information on the Employment Application should be relevant to the position/company

Do Not Include;

- Social Security Number
- Date of Birth
- Date of School/College Graduation
- Requests for information about clubs, outside activities
- Arrest Record
- Questions about past compensation

Interviewing...Avoid Legal Troubles Caused by Asking the Wrong Interview Questions

- Employers need to be careful to only ask questions that relate to the position
- Train all employees that interview candidates to ensure they know what can/cannot be asked in an interview
- Focus on the job description and what skills are needed

Interviewing- Avoiding Trouble

As you wait for the first applicant to arrive, you scan her resume and notice that she volunteers at an elementary school in her spare time. When she enters your office, you break the ice by chatting for a time about her volunteer work and asking if she has any children of her own.

This type of casual encounter would be considered harmless in almost every other instance, but if you were to have this conversation during a job interview, you could be subjecting your company to the possibility of a lawsuit. If you decide not to hire the applicant, for example, she could assume it's because she admitted to having four young children and you thought the job would be too much responsibility on top of her family. And because you did ask her about children and then declined to offer her the job, she has enough of a discrimination case that you could find yourself in court.

Interviewing

- Not all discrimination cases will result in a lawsuit or massive settlement, of course, but you probably can't afford to put your Non-Profit at risk
- These cases happen frequently and even if you win the case, your reputation will likely suffer some severe damage in the process
- There are certain questions that you must avoid asking during an interview

Interviewing Questions— *Don't Ask*

Are you a U.S. Citizen?	If you were in the military, were you honorably discharged?	What political affiliation?
How old are you?	What Holidays do you celebrate?	What country are you from?
Are you married?	Where do you live?	Do you have any physical or mental disabilities?
Do you plan to have children?	Have you ever filed for Worker's Comp?	Do you have any illnesses or operations?
What are your child-care arrangements?	What prescriptions are you taking?	What clubs or organizations do you belong to?
Have you ever been arrested?	Do you attend church?	How many Sick days did you take last year?

Interview Styles

Stay focused on what the position needs

- ▶ Behavioral – gives you a more complete understanding of candidate's work history, experience, knowledge and motivation
- ▶ Situational - provides insight into how a candidate would handle different situations and their thought process
- ▶ General – questions regarding position, skills, qualifications

Offer Letters...Avoiding Trouble

How could this sentence have gotten anyone into trouble?

'We are delighted you'll be joining our team. We are confident this will be the beginning of a long and profitable relationship.'

That sentence was part of a warm welcome letter that a Los Angeles-based firm sent to a new employee. It cost the firm almost \$1 million. Here's what happened: After receiving the letter, the new hire moved his family to LA. Two and a half years later, he was terminated. Upon termination, he sued the company for wrongful discharge, claiming that the offer letter -- including the sentence above-- constituted an employee agreement. The company settled out of court for the near-million-dollar figure.

Offer Letters...Avoiding Trouble

Employers should take great care in drafting offer letters to prevent potential claims or lawsuits by employees.

- Since some employees have argued in litigation that stating an annual salary is a promise of employment for one year, the offer letter should quote a salary in smaller amounts, such as weekly or monthly amounts.
- If the offer includes salary increases after a certain period of time, the offer letter should make clear that any future increases do not constitute a guarantee of continued employment.
- Don't include a probationary period as it could be considered a promise of employment for a certain period of time.

What Information Should an Offer Letter Include?

- Salary: Include how the salary will be paid and how often; Break it down by weekly, bi-weekly or semi-monthly
- Job Details: Include Supervisor name and title, expected start date and job title of new employee
- Contingencies: State that the offer letter is contingent upon completion of a successful background check, drug screen (if applicable), completion of I-9 Form or confidentiality agreements that you require employees to complete
- At Will Employment Statement: State that the employment is “At Will” and can be terminated by either party at any time on an at-will basis
- Include a contact that can be reached for any questions about the Offer as well as the date by which you would like the letter to be signed and returned

Background Checks

- Recommend using a third party to conduct Background checks
- Third Parties must comply with the Fair Labor Credit Act guidelines
- Background Checks should be performed based on position; not person
- Recommend conducting after offer is made and have finished prior to start date
- If using a third party, a separate set of authorization forms is required from the employee
- If issues come back on the Background check, let your third party handle the process
- Non-Profits should conduct Background Checks for Volunteers

Background Checks

“Ban the Box” –

- Requires employers to remove questions about criminal history from the Employment Application
- Banned in many states and cities; but not a Federal Guideline
- In Texas, may ask candidate if they have been “convicted” of a crime on Employment Application
- Inquire only about criminal or driving offenses that relate to the position

Background Checks

- Items to check after offer but prior to employee start work
 - Past Employment – Verify dates match Employment Application
 - Education – If required for the position
 - Driving - Review driving record for employees that are in a driving position
 - Criminal – If candidate has a criminal record, will it affect their position?
 - Credit – Only request a credit check for certain positions; such as those that are responsible for monetary transactions
 - Drug Screening –be aware of privacy laws
 - References

What is the Form I-9?

Eligibility Form I-9 is required by the Immigration Reform Act

- Verifies the identity of an employee and their eligibility to work legally in the United States
- If an employer misses any steps or forgets to include the proper documents, they are at risk for steep fines with possible and quite serious legal complications, which is why it is so important to verify every aspect of an employee I-9 form

Mistakes Companies Make in Handling I-9 Forms

- Allowing untrained staff to administer I-9's
- Not conducting an internal I-9 audit
- Not supervising new employees filing out the I-9
- Accepting unacceptable documents or fraudulent documents, such as fake lawful permanent resident or social security cards
- Not recording the document title, issuing authority and expiration date or not recording the information correctly
- Making corrections without initializing and dating them

I-9 Violations Can Be Costly –Avoiding Trouble

- The U.S. Department of Homeland Security's immigration and Customs Enforcement (Otherwise known as ICE), imposed substantial fines on a small transportation employer for I-9 form violations.
- ICE audited the Form I-9's of a Buffalo Transportation Company with 138 employees. ICE found six technical or procedural errors and 138 substantial I-9 violations for failing to prepare or present Forms I-9's on a timely basis (within three days of employment).
- As a result of these violations, ICE levied a fine of \$935 for EACH violation. Fines range anywhere from \$230 to \$3,000 per violation and sometimes higher
- This cost the Transportation Company \$134,640. These fines can really add up!

What is E-Verify?

E-Verify is an internet-based system that compares information entered by an employer from an employee's Form I-9, Employment eligibility verification, to records available to the U.S. Department of Homeland Security and the Social Security Administration to confirm employment eligibility.

- E-Verify is the only free, fast on-line service of its kind that electronically confirms an employee's information against millions of government records and provides results within as little as three to five seconds
- E-Verify uses information from the Form I-9
- It cannot be used in place of the Form I-9
- E-Verify is voluntary for most employers

Job Descriptions and Wages

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Job Descriptions

- Keep updated, accurate job descriptions
- Should be descriptive of position
- Job titles do not determine Non-Exempt or Exempt status
- Review job description with employee
- Have employee sign off on job description

Job Descriptions

- The use of job analysis and a thorough job description guides the entire recruitment and selection process
- Hiring managers will have a stronger understanding of what is expected from a given position, so their candidate interviews will be more accurate
- Without focusing on the job description, employers face greater risks of discrimination lawsuits if rejected candidates allege that screening processes don't tie closely to the job and are biased.

Job Description

Key elements of a job description

What are the Essential Functions of Position?

Main Responsibilities, Duties and Requirements

Will the position be Exempt or Non-Exempt?

Expected Salary Range

Exempt or Non-Exempt?

- ▶ Based on job description, determine if the position is Exempt or Non-Exempt
- ▶ If position is not classified correctly, it could be very expensive
- ▶ May have to pay back-pay for overtime worked

Non-Exempt Classification

- A non-exempt employee is entitled to overtime pay through the Fair Labor Standards Act. Also, some states have expanded overtime pay guidelines. Check with the state Department of Labor website for rules by location
- Employers are required to pay time and a half the employee's regular rate of pay when they work more than 40 hours in a given pay week
- Most employees must be paid at least the federal minimum wage (\$7.25 in 2020) for regular time

Exempt Classification

- ▶ Provides an exemption for minimum wage and overtime pay
- ▶ Must meet certain tests regarding job duties
- ▶ Employee must be paid at least \$684 per week/\$35,568 annually

Categories for Exempt Employees

- To qualify for an exemption, duties must meet certain tests under each position
 - Executive
 - Administrative
 - Learned Professional
 - Creative Professional
 - Computer Professional
 - Outside Sales

Exempt or Non-Exempt? Avoiding Trouble

- Local Bakery failed to pay overtime for hours worked over 40 as well as pay employees for all hours worked. The Company attempted to manipulate employee's time and pay records to avoid paying overtime.
- DOL sought \$150,437 in back wages and liquidated damages for workers and an injunction against future violations.

Part-Time / Full-Time

Part-Time – typically works less than 30 hours a week

- Check benefit plans to determine eligibility
- If exempt employee works part-time, pay a set salary; regardless of hours worked

Full-Time – typically works at least 30+ hours a week

- ACA – Must provide benefits if working 30+ hours a week
- Should only pay overtime on hours worked over 40 per week for non-exempt employees

Determine Compensation

- Many States are increasing the Minimum Wage higher than the Federal minimum wage
- Texas Minimum Wage is \$7.25, same as the Federal Minimum Wage
- Pay what the position is worth; not based on what the candidate made at last position
- Salary Surveys

Determination of Employee vs. Independent Contractor

Common Reasons for Misclassification

- Working at home or offsite with flexibility over hours
- Employee and Employer agree to classifying as Independent Contractor
- An agreement is signed
- Receive a 1099 instead of a W-2

Determination of Independent Contractors Vs. Employee

- ▶ **Behavioral**: Does the company control or have the right to control what the worker does and how the worker does his or her job?
- ▶ **Financial**: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
- ▶ **Type of Relationship**: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Key is to look at the overall employment relationship

Texas Payday law

- Designates dates employees must be paid
 - Non-Exempt employees must be paid at least twice a month
 - Exempt Employees must be paid at least once a month
 - Must be Regular Intervals

Texas Payday law

- In order process any payroll deductions, company must get proper written authorization before making the deduction
- Upon Hire, have employee sign a “Wage Deduction Authorization” form
- If a deduction is outside of the what is listed on the “Wage Deduction” form; get an authorization in writing

Texas Payday law

- Time off such as vacation, holiday or other types of pay is not required; however if offered, policies should be followed
- Employers are not required to pay vacation at time of termination

Texas Payday law

Termination of Employment

- If employee is resigning, can issue final paycheck with the next paycycle
- If employer is terminating employment, must issue final paycheck within six days

Employee Handbook

The background features a series of overlapping, semi-transparent geometric shapes in shades of red and blue. These shapes are primarily located on the right side of the page, creating a modern, abstract design. The colors range from light pinks and blues to deep, dark reds and blues.

Employee Handbooks

- Always have an Employee Handbook, no matter what size employer
- Cover main Human Resource and company policies
- Ensure employee is familiar with the Employee Handbook
- Require employee to sign an Acknowledgement that employee has read and understands the policies

Key Policies to Cover

- General non-discrimination
- Harassment
- Reasonable Accommodation
- Workplace Safety
- Leave of Absences

General Non-Discrimination

- Race
- Color
- Religion
- Sex, including;
 - Gender Identity
 - Sexual Orientation
 - Pregnancy
- National Origin
- Age
- Disability
- Genetic Information

Non-Discrimination – Avoiding Trouble

- A court ruled that plaintiff, a transgender school police officer, was subjected to sex discrimination in violation of Title VII when he was told by his employer that he could not use either the men's or women's bathroom at work.
- Local sports bar discriminated against a pregnant bartender because she had to change her uniform during her pregnancy. EEOC required company to pay employee \$24,000 plus implement discrimination training.

Harassment

- Harassment is defined as unwelcome verbal or physical conduct, based upon a person's protected characteristic
- Examples includes, but not limited to:
 - Epithets; slurs or negative stereotyping; threatening, intimidating or hostile acts; or denigrating jokes and display or circulation in the workplace of written or graphic material that denigrates or shows hostility or aversion toward an individual or group based on their protected characteristic

What is Sexual Harassment ?

- Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature, when:
 - Submission to such conduct is made either explicitly or implicitly a term or condition of an employee's employment
 - Submission to or rejection of such verbal or physical conduct is used as the basis for employment decisions affecting such employee
 - Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment

Bullying

- ▶ Bullying is repeated, persistent inappropriate behavior, either direct or indirect, malicious, unwelcome, or unreasonable conduct that harms, intimidates, offends, degrades, or humiliates an employee, whether verbal, physical or otherwise.
- ▶ Bullying may be intentional or unintentional. However, it must be noted that when an allegation of bullying is made, the intention of the alleged bully is irrelevant, and will not be given consideration when meting out discipline. It is the effect of the behavior on the individual that is important.

Policy Guidelines

- Request any witnesses to report inappropriate conduct even if they are not the person being harassed or discriminated against
- Let employees know that they should report harassing behavior from customers, vendors, suppliers and volunteers
- Harassment can be through social media, email and text messages
- Provide multiple points of contact to report violations

How to Investigate

- Do your research
- Document
- Follow-Up with employee or volunteer
- May need to obtain Guidance from an attorney

Reasonable Person Standard

- ▶ Would a reasonable person find the action offensive?



Reasonable Accommodation

- May be needed for medical or religious reasons
- Changes the way things are normally done at work
- Work with candidate or employee to determine what is needed
- Keep lines of communication open

Discrimination Claims

Claim	% of All Claims
Retaliation	53.80%
Disability	33.40%
Race	33.00%
Sex	32.40%
Age	21.40%
National Origin	9.60%
Color	4.70%
Religion	3.70%
Equal Pay Act	1.50%
Genetic Information	0.30%

Retaliation-Avoiding Trouble

A recent case involved an employee who claimed that she was discriminated against during the promotional interview process.

Two of the three interview panelists were managers involved in current or previous EEO complaints by the employee and one of the panelists attempted to influence the selection process by asking a question that paralleled a previous conflict between the panelist and the employee.

A witness reported that he had heard the manager make the statement, "I don't get mad, I get even" in reference to employees who make discrimination claims.

EEOC found that the selection process was tainted by retaliatory conduct and ordered the agency to promote the employee.

Workplace Violence

- Workplace violence is any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site
- It ranges from threats and verbal abuse to physical assaults and even homicide. It can affect and involve employees, clients, customers, visitors and volunteers
- It can occur at or outside the workplace
- One of the leading causes of job-related deaths
- Some 2 million American workers are victims of workplace violence each year

Workplace Violence - Watch for the Signs

- Sudden change in behavior, deterioration in job performance
- Statement he or she would like something bad to happen to supervisor or another coworker
- Harassing or obsessing about a coworker: sending unwanted gifts, notes, unwanted calling, stalking
- Sudden and persistent complaining about being treated unfairly
- Presenting and talking about reading material that is violent in nature
- Inability to control feelings, outbursts of rage, swearing, slamming doors, etc.

Workplace Safety

- Keep updated Emergency Contact information for employees and volunteers
- Know who is in your workplace. Keep a visitor log
- Keep First Aid Kits, if possible include a defibrillator
- Know the floor plans for the workplace and where exits are located
- Have an Emergency Action Plan

Always know your escape routes

Workplace Safety

See, Say, Do Something

- Employees should be aware of your surroundings
- Let employees know they should report any suspicious behavior
- Take all comments seriously

Employee Leave Policies

- Vacation
- Sick Time
- Holidays
- Bereavement
- Voting Time Off
- Military Leave
- Short-Term Disability
- Family Medical Leave
- Unpaid Leaves
- Return to Work Guidelines

State/City Paid Sick Leave Ordinances

- In Texas, Austin, Dallas and San Antonio have tried to implement required paid sick leave for employees.
 - Ruled on April 1st that Dallas is non-enforceable
 - Austin and San Antonio the same
 - Coronavirus19- created new options
 - State or Federal plans in the future?

Employee Handbook

Don't Make These Mistakes by

- Adopting an “off the shelf” Handbook
- Being too specific—keep procedures in a procedure manual
- Not being consistent with other company documents
- Not including an “at-will” disclaimer
- Failing to update – Recommend reviewing Employee Handbook every year for changes

COVID-19



COVID-19

- Changes every day
- New situations to understand; unprecedented situations
- Almost every law must be taken into consideration
 - American Disability Act
 - OSHA
 - Privacy Laws such as HIPAA
 - Discrimination
 - Family Medical Leave Act
 -and others

COVID-19 Key Policies and Plans for Non-Profits

- Policy to allow for remote board meetings
- Remote work policies
- Employee\Volunteer Safety Policies & Procedures
- Policies & procedures for organizations serving high risk clients
- Sick Leave Policies
- Communications plan
- Events policy & procedures
- COVID-19 Fundraising Plans

Additional Resources

- ▶ Free COVID-19 Course for Nonprofits provided by City Vision University – They offer free webinars and presentations
 - ▶ www.nonprofitcovid19.org

Families First Coronavirus Response Act (“FFCRA”)

- Effective from 4/1/2020-12/31/2020
- Applies to employers with less than 500 employees
- Exceptions are health care providers and small businesses with fewer than 50 employees*

FFCRA Small Business Exceptions

Small Businesses with fewer than 50 employees –

- Would the FFCRA create a financial hardship that may cause the business to cease operating at a minimal capacity? or;
- Would the absence of employee or employees requesting time create a substantial risk to the financial health or operations because of their specialized knowledge or the business or responsibilities? or;
- Would there be sufficient workers who are available to keep business operating at a minimal capacity?

Document reasons for exemption but do not need to submit anything

Families First Coronavirus Response Act (“FFCRA”)

- Key Points
 - Emergency Paid Sick Leave Act
 - Pay for up to 10 days
 - Emergency Family and Medical Leave Expansion Act
 - Pay for up to 10 weeks

<https://www.dol.gov/agencies/whd/pandemic>

Emergency Paid Sick Leave Act

- (1) The employee is subject to a federal, state, or local government or agency quarantine or isolation order
- (2) A health care provider has advised the employee to quarantine
- (3) The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis
- (4) The employee is caring for an individual subject to (1) or (2)
- (5) The employee is caring for a son or daughter due to a school or day care provider closure or the unavailability of a childcare provider
- (6) The employee is experiencing any other substantially similar condition specified in regulations issued by the U.S. Department of Health & Human Services (HHS)

Emergency Family and Medical Leave Expansion Act

Temporarily expands the FMLA to include “public health emergency leave” when an employee is unable to work because the employee must care for a son or daughter under age 18 due a school or day care provider closure or the unavailability of a childcare provider

The Plan to Re-Open Workplaces – What Does that Look Like...

- ▶ Employers are starting to think about moves they might take to re-establish regular work operations. This includes:
 - ▶ Rotating schedules by staggering shifts and rotating lunch breaks
 - ▶ Establishing scheduled hand washing
 - ▶ Cleaning and disinfecting office equipment
 - ▶ Providing protective equipment in the workplace
 - ▶ Enforced social distancing
 - ▶ Any industry-specific requirements

The Plan to Re-Open Workplaces – What Does that Look Like...

- Not only will employers need to consider measures to ensure the health and safety of their returning employees\volunteers by phased in returns to the workplace and physical distancing but,
 - There may be a greater employee demand for flexible work schedules and remote-work arrangements as part of the new normal
 - With schools closed the rest of the academic school year, this could cause some issues for working parents.

Furloughed Employees

- Furloughed employees agree to take an unpaid leave of absence in an effort to help their organizations cut costs temporarily. This helps employers survive an unprecedented economic downturn but still retain the talent their business needs to come back, hopefully better and stronger.
- Just as you confirmed an employee's furlough with an Official letter, you should also send a furlough recall letter to all returning employees.
- In the letter, state all the facts about what has changed or has not changed with their employment and the organization.

Items to Include in Furlough Recall Letter

- An Employment Offer – Employees may have found alternative employment while furloughed or simply do not wish to return to work at this time. Employees should be given a choice whether to accept the offer to return or reject it and have their employment terminated.
- Return to Work Date – Include the exact date when an employee is expected to return to work.
- Terms of Employment – This letter will now supersede any previous terms of employment, so it is important to get all the important details right. For example...Position, Supervisor, Salary, Hours, Exempt/Non-Exempt status.
- What's Changed – And what Hasn't – Lay out whether any of the employee's terms of employment have changed. Even if there are only small changes, not disclosing them clearly will only lead to resentment.
- Reassurance – Offer employees a chance to reach out privately with any questions or concerns. This is a time of high anxiety.

Facemasks and testing

As of yet, there is no requirement that people should wear facemasks or other Personal Protective Equipment (except in certain specific healthcare related situations) although the Government's guidance should be kept under review

If employers require PPE to be worn, the employer should provide it along with training on how to use and dispose of it effectively

Other measures which employers may consider implementing are testing for COVID-19, symptoms screening, and body temperature testing at work; however have steps in place to protect personal employee information

Wrap-Up



Documentation is Key

Good Documentation

- Employment Applications– provide more information than a resume and has candidate sign off that the information is true
- Payroll – keep track of hours worked; have good systems in place to record time
- Provides information on performance conversations, conditions of employment, etc.
- Helps if you want to protest Unemployment Claims and defend employment claims
- Employee Handbook – sets expectations for employees; will save time and money by having a thorough, well-written Employee Handbook.

Best Practices

- Address all complaints, no matter how small
- Talk to your employees and understand their concerns
- Ensure employment documents are compliant
- Be consistent in administering policies
- Display Employment Law posters
- Provide meaningful training- don't just check the box
- Get it right from the start—will be easier as you grow

Know the Laws that Apply to your Business

- Federal, State and City laws
- State of Texas has great resources – seminars, Employment Guidelines book and internet site
- Some laws may seem minor, but you don't want to ignore them
- Stay current-- as your business continues to grow, there may be more laws you need to comply with

Wrap Up

- Create a respectable workplace
- Follow your company values such as integrity, diversity, etc.
- Enforce your policies
- Employers need to think through decisions carefully and thoroughly
- There are many laws, guidelines, and ordinances to consider. By working together and communicating, this will help reducing any possible conflict

Be a “Best Place to Work”

Wrap-Up

We are glad to be a resource for any of your questions. You may contact us at:

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