



By Bob McKenzie

New businesses know they must have an accountant, insurance agent, attorney, and other business advisors to operate their businesses efficiently. The often-missing piece of the management team is the human resources expert, usually because hiring a full-time HR specialist is not cost-effective.

Unfortunately, if you don't comply with governmental regulations you place your company in a position of risk of lawsuits and government fines. Fortunately, maintaining compliance is not difficult. Once you "know what you don't know," you can fix your greatest risk problems—negligent hiring, I-9 documentation, new hire reporting, and wage and hour compliance.

Negligent hiring

Don't jeopardize your business with negligent hiring, which can occur if you hire someone who has a criminal history of theft or violence and put them into a position of trust involving customers. If that employee steals from a customer or commits a violent act on a client, your company may be liable for negligent hiring.

For example: A small business owner wanted to hire a computer technician, who would be required to go into customers' homes and businesses to set up and repair computer systems. The business owner made a conditional offer of employment to the technician, and then ran a criminal history background check. The back-

ground check found that the applicant had convictions for domestic violence, kidnapping, employee theft, violations of his probation, and several other charges. Needless to say, business owner rescinded the job offer and dodged a major bullet.

To protect yourself from negligent hiring:

1. Get a complete a job application. Be sure the applicant answers all questions about convictions.

2. Interview the applicant.

Take at least 30 minutes to talk to the individual and ask open-ended questions that elicit responses from the applicant.

3. Do reference checking.

Make a reasonable attempt to call past employers to verify employment and to check references. Document what they tell you.

4. Run a criminal background check on the applicant. This is best done before offering the applicant a job.

To reduce your liability for negligent hiring, the state of Florida recommends a minimum of a Florida Department of Law Enforcement (FDLE) check, which can be done online at <https://www2.fdle.state.fl.us/echinet/> or through a reputable background screening company. It is recommended, that you check an applicant's background for the last seven years, including a check in other states where he or she lived.

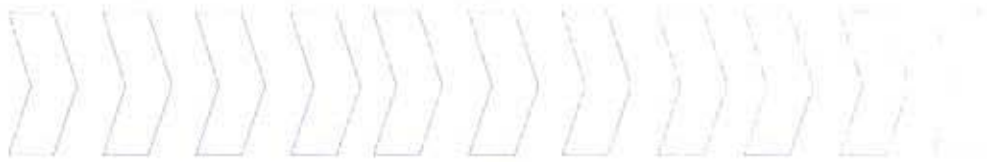
If the job requires the employee to drive a vehicle, check the driving record of the applicant. If the driving record

does not meet your minimum standards, then the applicant is not qualified for the position.

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I-9 documentation

According to the Immigration Reform and Control Act of 1986, employers can hire only individuals who show proof of eligibility to work in the United States. Proof of that eligibility is a review of certain documents and the completion of an I-9 form, which



you are required to keep on file. Examples of eligibility documents include a U.S. passport or permanent resident card or a combination of documents, such as a driver's license and Social Security card.

(The full list of accepted documents is listed on the back of the I-9 form.)

I-9 documentation is enforced by the Department of Labor and the Immigration and Custom Enforcement (ICE) offices. The fine for non-compliance is \$1,000 for each missing I-9 form. Since it takes no more than two minutes to complete the form, there is no excuse for not having these on file. ICE is hiring an additional 600 investigators to randomly inspect I-9 forms. The newest version of the I-9 form is available at www.uscis.gov/files/form/i-9.pdf. Learn how to complete the entire form. If there are questions, contact an HR expert.

New hire reporting

Whenever you put someone on your payroll, you must report that hire to the state. The reason for this requirement is to track individuals who have not paid child support. Again, this is an easy thing to do and the information on how to do this is available at <http://newhire-reporting.com/FL-Newhire/default.aspx>.

If your business is using a payroll service, the service usually does this reporting for you. If you do your own payroll, make sure you report new hires to the state. The reporting can be done online or via fax. Just make sure to do it.

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Wage and hour compliance

Nearly half of the wage and hour lawsuits filed in the United States originate from the state of Florida. The Wage and Hour Division of the Department of Labor (DOL) estimates that 75% of the companies in the country are in violation of the wage and hour laws. With smaller businesses, that percentage is probably closer to 90%.

Personal injury attorneys seeking to increase their business are also aware of the high rate of noncompliance and are now advertising on television. Their commercials ask, "Are you not being paid for overtime when you work more than 40 hours a week?"

Compliance with wage and hour laws, known as the Fair Labor Standards Act (FLSA) is critical for every business, and virtually all organizations are bound by its regulations. Unfortunately, this law is complicated and misunderstood because of its many rules and exemptions.

To help unravel some of its mysteries and avoid wage and hour violations, here are some guidelines to staying out of trouble:

1. Salaried employees must be paid at least \$455 per week. If they are paid less than that, they must be paid on an hourly basis.

2. Putting an employee on salary does not automatically make an individual exempt from overtime. FLSA specifies that duties determine if an employee is exempt—not being on salary or

having a job title (such as "manager" or "supervisor"). (See www.dol.gov/esa/whd/regs/compliance/fairpay/fs17a_overview.htm, a basic overview of determining exemption status.) If you are audited, the wage and hour investigator will review the work that is actually performed to determine exemption status.

3. Do not dock exempt employees for hours not worked within a workday. For example, if an exempt employee leaves an hour early, you should not dock her pay for that hour. However, if you have a paid time off program, you can charge the time off to the employee's sick, vacation or paid time off bank.

4. Do not let nonexempt employees work "off the clock." Employees who clock out because they know they are not allowed to work overtime and then go back to work to finish a job are not doing you any favors. Make sure your employees get paid for all hours actually worked.

5. All overtime over 40 hours in a workweek must be paid—even if it is unauthorized. If an employee works unauthorized overtime, he/she must be paid for the extra time worked even though it was not approved. However, you can discipline the employee for working the extra unauthorized hours.

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6. Don't let nonexempt employees eat lunch at their desks. Nonexempt employees who eat lunch at their desks and answer phones or do other work while eating are considered working. They must be paid for their time.

7. Make sure employees record all hours actually worked.

8. Piecework does not exempt employees from overtime compensation.

9. If nonexempt employees are required to attend training programs, they must be paid for the time spent in the training.

10. Nonexempt employees who must travel must be paid for the time traveling from one job to another. Time spent traveling to work or to a work site is not paid, but if they are required to travel after getting to work, that time is paid travel time.

11. Florida does not require you to give breaks to employees 18 years of age or older. Therefore if an employee works through a lunch break, it is counted as time worked and there is no violation of any law.

These are just the basic wage and hour laws. The bottom line is that the HR compliance is becoming increasingly complex. In this world, what you don't know can hurt you. To ensure you are in compliance, have an audit done by a human resources expert. Fix the things that need to be fixed and then you will have one less thing to worry about and the peace of mind a government official knocks on your door. **A**



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