



## HR Challenges Facing Small Business Owners

In my experience working with small businesses, I find that they usually spend countless hours searching the internet for answers to their HR problems. This is challenging for small businesses, who have limited HR knowledge. If you are unaware of the HR changes and updates, you could place your company at risk.

We find that small businesses face 3 basic problems:

- Lack understanding of applicable state and federal laws.
- Outdated or no policies and procedures.
- Mis-informed of their HR liability.

Many small businesses believe that because they are small they do not need to adhere to employment laws. Keep in mind, you must be compliant with these laws whether you have not employees or only 1 employee. Penalties for non-compliance can range from re-instating employees to costly fines.

I often receive questions from business owners pertaining to compliance issues around proper classification of their employees, paid and unpaid absences, vacation, hiring, discipline, terminations and policies..

Provided below are ten HR challenges facing small business owners.

### **1. Vacation Time**

The FLSA (Fair Labor Standards Act) does not require that employers pay employees vacation. However, if an employer provides paid vacation, the time earned becomes part of the employee's compensation. If the employee is terminated or quits, they are entitled to payment for vacation accrued per company policy.





Some employers who provide vacation requires employees who don't use their earned vacation by the end of the year to lose that time. This practice is not legal in some states.

## **2. Commission or Bonus**

The FLSA does not regulate commission and bonus payments. Commissions and bonuses are determined and agreed upon by the employer and the employee and laws for the state in which the employee works . Commissions and bonuses are usually tied to some target or quota. Employees achieving these targets/quota should be compensated accordingly.

## **3. Misclassification of Employees as Exempt Workers**

The FLSA does not require that exempt employees be paid overtime. Exemption rules are often confusing for both the employer and the employee. Exemptions have nothing to do with an employee's title or job description. Paying an employee a salary rate instead of an hourly rate does not determine that an employee is exempt from overtime. Salary level and job duties are the determining factors for exempt status.

## **4. Independent Contractor**

Independent contractors are self-employed workers who are not covered by the tax and wage laws that apply to employees. Employers do not pay Social Security, Medicare or federal unemployment insurance taxes on independent taxes on independent contractors. Misclassifying an employee as an independent contractor can be very costly.

## **5. Overtime**

Under the FLSA, overtime rules are based on a 40 hour workweek. All work over 40 hours in a work week must be paid at a rate of one and one-half the employee's regular hourly rate. Non-exempt employees may be paid on a weekly, bi-weekly, semi-monthly or monthly basis, however, overtime should be calculated by the Monday through Friday workweek. Accurate records should be maintained.

Some employers implement policies indicating that overtime work will not be allowed or paid without prior approval. Some employers allow non-exempt employees to work overtime and not pay the employees for the over time hours. These policies violates the FLSA.





## **6. Comp Time and Overtime**

For the most part, compensatory time, often referred to as "comp time," is paid time off which is provided in lieu of wages. Some businesses grant comp time instead of paying overtime wages. While "comp" time may be legal depending on the classification of the employee, it must be paid at the same rate as overtime pay. As a general rule non-exempt and hourly employees should be paid overtime pay.

## **7. Hiring Employees**

Small business owners often express concern over hiring the right person. These businesses usually waste valuable time, effort and money in the hiring process, only to end up with a bad hire. This is very costly.

Provided below are tips to assist the employer in the hiring process:

- Look into the candidate's background and conduct reference checks.
- Do not make promises that you cannot keep.
- Do not hire an individual for the wrong reason, i.e., hiring someone as a favor to your brother or hiring someone based on the way they look. The focus should be hiring the best person for the job.
- Ask the right questions to determine whether an individual is right for the position.
- Determine if the individual will be a good fit for the company and the team.
- Provide the successful candidate with a written offer
- Be prepared for the interview. Know the questions you plan to ask and be prepared to describe the position.
- Be realistic in your expectations. Many times managers expect one person to save a sinking ship.

## **8. Discipline**

Some employers find that a progressive discipline policy helps to provide consistency in both discipline and documentation. Such a policy is usually made up of at least three steps. Employees who violate a work rule or fall short of performance standards will typically receive a documented verbal warning first, followed by a written warning. If the problem with the employee persists after these two steps, the individual can usually be terminated. Some employers choose to issue a final warning or a suspension before the termination step.





No matter what type of discipline employers choose to utilize, it's important to do everything possible to create consistency. Consistent procedures help employees know what to expect, and help to ensure that employers can protect themselves from any claims of unfair treatment. It's also important to make sure disciplinary policies are clear to supervisors; regular training can help ensure that discipline is imposed consistently and uniformly, thereby limiting an employer's liability.

Consistency and well trained managers play a key role in an effective discipline process.

## **9. Terminating Employees**

Many employers struggle with termination, especially, when it comes to making sure that their decision to terminate won't be considered unlawful.

There are a couple of reasons why terminations can turn into a nightmare

1. There are discrimination laws that can impact a termination decision.
2. No matter how bad an employee's performance is, they often will not be prepared for the words "you are being terminated" and may seek legal recourse against the company.

Fortunately, there are things that you can do to make sure terminations go smoothly.

The following steps will limit your liability when terminating employees.

1. **Justification:** Employment is at will in most states, meaning that employees can be terminated for any reason, as long as the reason is not discriminatory. However, it is still important to document the legal reason(s) for an employee's termination.
2. **Investigation:** Conducting an investigation is essential to obtaining relevant facts.
3. **Communication:** A termination should not come as a surprise to the employee, especially when it is justified by performance or attendance issues. At the very least, employers should be able to show that their expectation were communicated through policies or other means.





4. **Documentation:** The employer might have enough justification to terminate, and might have verbally communicated those issues with the employee. However, if the only available documentation shows that the fired individual was a valued employee, the record won't support the justification.
5. **Examination of records:** Employers should check the employee's discipline history for previous violations or other factors which might support the termination.
6. **Consistent Application of Discipline:** Looking at records of how other situations were addressed can help ensure consistency when enforcing your rules, policies or expectations.
7. **Be Reasonable and Fair:** This factor encompasses many of the previous steps, such as justification and consistency.

## **10. Employee Handbooks**

Since company policies exist, whether or not they are written, employers should take the time to develop guidelines and spell them out in an employee handbook that is updated at least once a year. Providing supervisors with clear, written guidelines helps them to make consistent decisions that will hold up if challenged at a later date.

In addition to minimizing legal liability, a regularly updated handbook can help to communicate a company's intention toward its employees and clarify expectations about work hours, vacation and holiday policies, sick and personal days, overtime pay, dress rules, causes for disciplinary action and other issues.

The employee handbook is an excellent way for the business owner to share his or her personal vision for the business.

Navigating through the HR jungle can be complex and overwhelming, which is why many people choose to ignore taking the necessary steps to ensure that their companies are compliant.





Over the next several months, we will be providing additional information on tools and tips to help the small business owner successfully handle their HR challenges.

YourHRusa was created with the small business owners in mind and we want to make sure that your HR issues are handled in an effective, simple and affordable way. If you haven't done so, please visit [www.yourhrusa.com](http://www.yourhrusa.com) for our FREE HR Assessment.

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