



HIRING YOUR FIRST EMPLOYEE

2017 EDITION

A publication of Texas RioGrande Legal Aid and Texas CBAR

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INTRODUCTION

Introduction:

Texas CBAR is a project of Texas RioGrande Legal Aid that provides free legal assistance and representation, pro bono referrals, community education, and legal resources to income-eligible self-employed persons and microentrepreneurs in Texas.

For many people, self-employment and entrepreneurship is the most feasible route to earning a living wage. Access to entrepreneurial training, access to capital, and of course, access to legal assistance is key to promoting the success of these entrepreneurs. Their success reduces poverty and maintains both their own families as well as the families of their employees and workers.

Entrepreneurship promotes a unique and diverse business community. As microentrepreneurs reinvest in their own communities, local economies grow in an organic and sustainable manner.

This publication is designed to guide and assist microentrepreneurs in understanding their legal obligations when hiring their first employee and in organizing their business practices to better ensure compliance with applicable employment laws and regulations. Although this guide is geared to be a useful resource to most microentrepreneurs, there are many special exceptions in federal, state and local laws. This guide is designed to be a useful overview of the most commonly applicable laws and but it cannot, and does not, function as an exhaustive guide nor can it replace the individualized counsel and advice of an attorney.

This guide is intended to provide a brief, practical overview of some of the employment law issues faced by microentrepreneurs. It is not intended to detail all laws and is not a substitute for the advice of an attorney.

We welcome your suggestions and comments for its improvement.

Andrea Harrington
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INTRODUCTION

Hiring Your First Employee

Congratulations on growing your business to the point that you are planning on hiring one or more employees. While you are probably eager to bring your new workers on board as soon as possible, there are many issues you should think about before you start interviewing applicants and making job offers. This guide is designed to explain the basic things you should think about BEFORE you hire your first employee, including taxes, discrimination laws, and pay. While it doesn't contain every piece of information on every topic, this guide will give you an overview of important issues so that you are aware of what pitfalls to avoid and how to address problems that may arise.

SECTION I.

I. Hiring a Worker: Employee or Independent Contractor?

What's the difference between an employee and an independent contractor? Independent contractors are people who perform services for others but who do not have the legal status of employees. Whether a worker is an employee or an independent contractor will impact different aspects of your relationship with your worker.

One main consideration is on the type of supervision and control you can have over your worker. If you need to be able to have a lot of control over how the worker does the job, then the worker will be an employee. A big difference between employees and independent contractors is payroll taxes. If the worker is an employee, you must pay payroll taxes to the state and federal government (Social Security, Medicare, and unemployment) – it does not matter if the person is part-time or full-time. These payroll taxes do not apply to independent contractors.

An independent contractor should have the opportunity to make a profit and have the risk of taking a loss on each job. The independent contractor should also have several income streams or other clients; you should not be the person's main source of income. The following questions can help you decide whether the person you're hiring is an employee or an independent contractor:

	YES	NO
Will you provide close supervision for the worker?		
Will the work be done on company property?		
Will the individual work only for you?		
Will you provide tools for your worker to do his or her job?		
Will you control the hours the person works?		
Will the work being done be a central part of your business?		

If you answered “yes” to most of the questions above, you may be hiring an employee, not an independent contractor. For more detailed information on how to classify a new hire, check out the IRS's Publication 15-A at www.irs.gov/publications/p15a/index.html and the Department of Labor's “Employment Relationship” fact sheet at www.dol.gov/whd/fact-sheets-index.htm.

While it's tempting to pay someone as an independent contractor since it's less expensive, this can get you into a lot of trouble. The Texas Workforce Commission, the IRS, and the Department of Labor can all investigate and levy penalties on employers who classify and pay their workers incorrectly. You will have to pay the back taxes anyway, and the penalties and fines for misclassifying workers are expensive!! If you think the person you're hiring is an independent contractor, you may want to check with an attorney to make sure you're right before the individual starts work.

SECTION I.

For example, the person who works four hours in the early morning making donuts in a bakery is an employee, while the person who does the books every week for a few hours would be an independent contractor. You should never call a person an independent contractor to try to avoid following state and federal employment laws. The burden will be on you, the employer to prove that a worker is NOT an employee. Proof can include contracts signed by you and the worker, copies of the worker's business cards, and invoices submitted by the worker to you.

This guide will tell you what to do **if you're hiring an employee**. There are different rules for independent contractors, so if you're hiring an independent contractor, you should get in touch with an attorney to make sure you are doing everything properly.

A. Hiring an Employee: Recruiting and Interviewing Process

Job Posting

Create a job description: this helps you determine what qualifications, certifications or special skills you will require, as well as sets out the job duties you expect the person to perform. Be specific! If you need an employee to open up your shop, then make sure the job duties include being at work every day by a certain time. Texas is an at-will state, and you may want to make it clear that employment is at-will, which means that you can fire the person without a reason, whenever you want. For example, you may want to include the following statement or something similar in your job description: "Employment is at-will and may be terminated by [INSERT EMPLOYER NAME] with or without cause at any time and without prior notice."

Applications

You should have standard job application forms that you use with all the applicants for the position. This allows you to objectively compare the same information about the applicants' qualifications, certifications and special skills.

Put a statement on the forms that untrue or incomplete information can result in not getting the job or getting fired, and have the applicant sign it. For example, you may state as follows: "I certify that all of the above information is true and complete, and I understand that any falsification or omission of information may disqualify me from further consideration for employment, or if hired, may result in termination regardless of the time elapsed before discovery."

Interviewing and Background Checks

After you have reviewed the applications for the best candidates, you can schedule interviews for the most qualified candidates for the job. You should prepare interview questions ahead of time and ask the same questions to all the applicants. Ask questions that reasonably relate to the job for which the applicants are applying. Questions should focus on gathering information necessary to determine whether the applicants are suitable for the position. Sample questions are as follows:

1. What do you know about our company?
2. What job duties are you interested in?
3. Why should we hire you?
4. What was the hardest thing about your previous role?

SECTION I.

If you can, have another person conduct the interview with you and take notes, so you can go back and review your notes as you make your final hiring decision.

Before conducting a background check, you must disclose to the applicant that a background check may be obtained and obtain the applicant's consent. Make sure the applicant signs a separate, stand-alone document separate from the employment application that gives you permission to do a background and reference check. If you plan not to hire someone based on information obtained through a background check performed by an outside, for-profit firm the Fair Credit Reporting Act requires that you explain to the employee that the discharge is the result of the unfavorable report, give the employee a copy of the report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" (the company who provided the report should furnish you with this notice), and furnish contact information for the firm that issued the report.

Don't Discriminate

Federal and state laws prohibit you from making employment decisions for certain reasons. These laws apply to a lot of different situations, including:

- the application process (whom do you want to interview?)
- the interview process (what questions can you ask?)
- the hiring process (which applicant are you going to hire?)
- the employment relationship (how do you treat your employees?)

In short, **you may not ask about**, or base any decision on, the applicant or employee's:

- Race
- Color
- Genetic information
- Veterans or active-duty military service members
- Religion
- Country of Birth
- Gender
- Pregnancy
- Disability
- Age (over 40 years old)

The Equal Employment Opportunity Commission has more information on discrimination laws on its website: www.eeoc.gov/employers/index.cfm.

You can base a decision to hire someone for a good reason related to your business, such as needing a bilingual employee because your customers or vendors speak two languages. For example, you could base your hiring decision on a bilingual skill set, but not because the person is Hispanic or Chinese.

SECTION I.

Hiring Decision and Notifications

Do not make a job offer until AFTER you complete all reference checks. Base the hiring decision only on reasons related to the applicant's ability to perform the job duties. Inform the applicants of your decision whether or not they were chosen to fill the position.

“You appear to have some good qualifications, but we feel we have hired the most qualified applicant for this position.”

Make sure you and your new employee are on the same page in setting a start date and work schedule. To ensure that you are on the same page, you should provide your new employee with an offer letter outlining the general terms and conditions of employment. At minimum, the letter should include:

1. The position offered;
2. Whether the position is exempt or overtime eligible under the Fair Labor Standards Act;
3. Whether the position is full-time or part-time;
4. That the position is at-will;
5. The pay offered; and
6. Benefits offered.

Hiring Minors

If you want to hire someone who is under 18 years of age, you will need to comply with the Federal Fair Labor Standards Act and the Texas Child Labor Law.

You will need to keep records that show the date of birth for all employees under age 18, and that show each minor's occupation, start and quit times for each day, as well as daily and weekly hours worked. You must also display the poster from the Department of Labor regarding the child labor rules.

Generally, children under age 14 may not be employed (unless it is your child and you are the owner of the business). Children 14-15 may only be employed in a non-hazardous job, outside of school hours, and for limited hours, including restrictions on working night-time hours. Children 16 years and older are not subject to the same number of hours per day or times of day restrictions that younger children are, but there are restrictions on the types of work they can do.

This is just a brief overview on hiring minors. If you want to hire someone under the age of 18, consult with an attorney to make sure that you are complying with the child labor laws!

SECTION I.

B. New Hire To-Dos!

Get Your Employer Identification Number

If you don't already have one, you need to get what's called an Employer Identification Number (EIN) from the IRS, which is the number that the government uses to identify your business and track your federal payroll taxes. You can apply for an EIN online at www.irs.gov, by fax, by phone, or by mail.

Federal Income Tax Withholding (Form W-4)

Download copies of the withholding exemption certificate (Form W-4) at www.irs.gov/pub/irs-pdf/fw4.pdf. Have the employee fill out and sign the Form W-4 so that you know how much to federal income tax to withhold from the employees' wages; if the employee does not return a filled out W-4 to you, you must withhold income taxes from his or her wages as if he or she were single and claiming no exemption allowances.

Employee Eligibility Verification (Form I-9)

Federal law requires you to verify your employee's eligibility to work in the United States. Within three days of hiring an employee, you must complete an I-9 form for the employee. You can download the I-9 form at www.uscis.gov/files/form/i-9.pdf. This requires you to look at certain documents provided by the employee – which are listed on the I-9 form – to confirm the employee's eligibility to work in the U.S. You do not file the I-9 with the federal government; just keep it on file for three years after the date of hire or one year after the date of the employee's employment termination, whichever date is later.

Report Your New Hire

Within 20 days after an employee starts working for you, report to the Texas Attorney General's Office that you hired the employee. This can be done online. Go to: <https://portal.cs.oag.state.tx.us/wps/portal/employer> and sign up for an account with the Texas Attorney General's Office (click on the "Request New Account" link).

Post Required Notices

Under state and federal laws, you must put up certain posters in the workplace (somewhere the employees will see them, like a break room) that inform employees of their rights and your responsibilities under various employment laws. These posters are free and can be found online:

Go to www.dol.gov/elaws/posters.htm for federal posters you should post. Download the required federal posters at www.dol.gov/whd/resources/posters.htm.

Go to www.twc.state.tx.us/ui/lablaw/posters.html for which state posters you should post, and to download those posters.

SECTION II.

II. Your First Employee – Now What?

Employment–At–Will

Texas is an “employment at will” state. This means that unless the employee has a specific contract that states that he or she has a job for a specific length of time, the employer may fire the employee without cause. This means that the employer can fire the employee for any reason or no reason (unless it’s unlawful discrimination or retaliation) at any time. An employer may not fire an employee based on the employee’s race, gender, religion, nation of origin, disability, or age (over 40).

Generally, an employer does not have to explain why it is letting an employee go. One exception, however, is if an employee is discharged as the result of a background check covered under the Fair Credit Reporting Act - a background check performed by an outside, for-profit firm – in that case, the employer must explain to the employee that the discharge is the result of the unfavorable report, give the employee a copy of the report, and furnish contact information for the firm that issued the report.

Training

Make sure you train your employee to do the job correctly! You should have policies and procedures in place so that your employee is clear on what you want him or her to do, and how you want him or her to do it. Be aware that all training time and hours count as time worked by the employee and must be paid! Make sure you document all the training, including a sign-in sheet or other acknowledgment signed by your employee that he or she attended the trainings.

Employee Handbook

You should have an employee handbook stating your policies. It is a good starting point if you have a disagreement with your employee in the future.

The handbook can include:

- Mission statement such as “providing high quality customer service”
- Disclaimers
 - That employment is ‘at will’
 - That you have the right to modify or delete policies in the handbook, without notice to the employees
 - That the policies in the handbook are guidelines only
- Overtime policy
- Anti-discrimination policy
- Drug abuse policy
- Probationary period/raises
- Leave, payday, work hours
- Safety & training
- Discipline & grievances
- Grounds for termination
- Receipt and acknowledgment
 - The employee has received the handbook;
 - The employee has read it, understood it, and agreed to comply with its provisions; and
 - The employee understands that he/she is employed on an at-will basis.

SECTION II.

You should review your handbook from time to time to ensure that all policies are current and lawful. Generally, if possible, it is good practice to review your handbook on a yearly basis. A handbook must be reviewed and revised when there is a change in the law or if there is a change to your policies or procedures. A revised handbook should indicate that it supersedes any prior handbooks so that your employees are clear as to which policies are current. You should also distribute or post revised handbooks, reissue acknowledgment forms, and collect signed acknowledgments from employees.

Documentation of Job Performance

It is very important that you write down any performance or disciplinary issues with your employee, even if you are just talking about a minor problem, such as arriving tardy for work. This allows you to have a record of past performance for your employees. It also gives you a record to suggest areas for improvement or gaps in training.

It is also very important to conduct a yearly evaluation of your employees (in writing!!). This also gives you a chance to get some feedback from your employee about areas in which they feel they may need more training and assistance, as well as a chance to address any other issues which may have been festering during the year. Include examples in your yearly evaluations to support your performance ratings of your employees.

Retaliation

You may not retaliate against your employees for taking lawful actions to assert their rights as workers. Termination is the most common form of retaliation for reporting discrimination, complaints about improper payments or deductions, or seeking treatment for work-related injuries or illnesses. Other examples of retaliatory conduct would be bad evaluations, cutting or changing hours or lowering pay in response to protected employee conduct like demanding overtime pay for hours worked over 40 per week. You cannot retaliate against your employee for filing a workers compensation claim or refusing to commit an illegal act, or complaining about safety issues in the workplace.

Workers' Compensation Insurance

Workers' compensation is a state-regulated insurance system that provides employees with some lost income and medical benefits if they are injured on the job or have a work-related injury or illness. Workers' compensation insurance usually limits an employer's liability if an employee sues the employer for damages for work injuries or illness. You can generally choose whether or not to carry workers' compensation insurance (you may be required to carry Worker's Compensation Insurance if you have a government contract or subcontract, for example).

SECTION II.

If you decide that you **will** carry Workers' Compensation insurance coverage:

1. Notify your employees of the coverage and remember that your workers have the option not to be covered. The Texas Department of Insurance has free forms that you can use to provide these notifications.
2. Post a notice of your workers' compensation insurance coverage in conspicuous locations at your place of business.
3. Report any work-related injuries and illnesses to your insurance carrier.
4. If you decide to terminate or cancel workers' compensation coverage, you must notify your employees no later than the 15th day after the change in coverage date.

If you decide that you **will not** carry Workers' Compensation insurance coverage:

1. Notify your employees that you are not carrying workers' compensation insurance. The Texas Department of Insurance has free forms that you can use for these notifications.
2. File an annual notice that you are not carrying workers' compensation insurance with the Texas Department of Insurance.
3. Report all work-related injuries and illnesses to the Texas Department of Insurance, Division of Workers' Compensation.
4. If you decide to obtain workers' compensation coverage, you must notify your employees no later than the 15th day after the change in coverage date.

See <http://www.tdi.texas.gov/wc/employer/index.html>. You will find links to the forms that you will need whether or not you choose to carry Workers' Compensation insurance.

SECTION III.

III. Your Tax Obligations as an Employer

If you are an employer, there are federal and state tax requirements that apply to you. You will have to withhold income tax and Social Security and Medicare taxes (FICA) from your employees' paycheck, and remit these to the IRS, and, you will have to pay the employer's share of Social Security and Medicare taxes for your employees. You will also have to pay both federal and state unemployment taxes. This can be overwhelming! There are payroll services, different types of computer software, accounting and CPA professionals and other resources to assist you in making sure that you are complying with these requirements. You should investigate these resources and pick a system that will work best for you while ensuring that you are complying with all tax requirements.

Federal Wage and Tax Statement (Forms W-2 and W-3)

Every year, you must report to the federal government, using Form W-2, what wages you paid and what taxes you withheld for your employee. You must complete a W-2 Form for each employee, each year by February 15. You must also send a copy of the W-2, along with a W-3 form to the Social Security Administration by February 28. There are penalties if you do not file these forms on time!

Income Tax and FICA Withholding and Federal Payroll Taxes

After each quarter of the year, employers who pay wages subject to income tax withholding, Social Security taxes, and Medicare taxes must file IRS Form 941. You will also pay and report the employer's share of Social Security and Medicare taxes for your employees. Download the form off of the IRS website, and you must file the completed form by the last day of the month that follows the end of the quarter. (April 30, July 31, October 31, January 31). You must pay these taxes on time! The penalties are very high if you do not pay on time.

Federal Unemployment Taxes

If you paid wages of \$1,500 or more in any calendar quarter, or you had one or more employees work for you in any 20 or more different weeks of the year, you must also file IRS Form 940, Employer's Annual Federal Unemployment Tax Act (FUTA) Tax Return and pay federal unemployment taxes. You can download this form off the IRS website, and the completed form must be filed by the end of January.

State Unemployment Taxes

If you paid wages of \$1,500 or more in any calendar quarter, or you had one or more employees work for you in any 20 or more different weeks of the year, you must also register with the Texas Workforce Commission and pay state unemployment taxes. Register with the Texas Workforce Commission (TWC) within 10 days of becoming subject to unemployment taxes. You can do this online at www.twc.state.tx.us/ui/tax/unemployment-tax-registration.html.

SECTION III.

General Guidelines for Payroll Taxes	
Payment	Percentage of employee's gross wages that the employer must pay
Social Security – employer share	6.2%
Medicare – employer share	1.45%
Federal & State unemployment insurance	2-6% (this varies – 4% is typical for new employers)
Workers' Compensation Insurance (varies depending on insurance provider and type of work being performed)	Approximately 5%
Total:	Approximately 17%

SECTION IV.

IV. Paying Your Employees

You must pay your employees for all time that they work. This includes paying your employees for any tasks that benefit you and your business. So, if you tell your employee to clock out and then clean up the workspace, you must still pay the employee for the time spent cleaning. This obligation cannot be waived and does not have any exceptions!

So, for example, even if your employee says it is ok not to pay him for the extra work, or even if you do not get paid by a client for a job, you still have to pay your employees for the time they worked, and you must still pay the payroll taxes owed to the state and federal government!

Minimum Wage

The Texas minimum wage is the same as the federal minimum wage, \$7.25 an hour. All employees must be paid at least \$7.25 for the first 40 hours worked in a week. Employees may not waive or consent to being paid less than the minimum wage.

There are some exceptions, such as for tipped employees. If you think that your employees will fit into a minimum wage exception; you should consult with an employment law attorney to make sure that you meet all the requirements to pay less than the minimum wage, and are obtaining the necessary certifications and maintaining any necessary records for compliance with the minimum wage law.

Overtime

Whether or not an employee is exempt from overtime is a complicated question under the federal Fair Labor Standards Act. Most employees are not exempt. This means that if you only have a few employees, they will most likely qualify for overtime – if they work over 40 hours a week, they must be paid an overtime rate of 1.5 times their regular hourly rate for all hours over 40 hours worked per workweek.

The consequences for not paying overtime properly can be very expensive, and the employer may have to pay two times the amount that should have paid to the employee, plus the employee's attorney's fees.

Certain employees who meet very specific definitions established by federal law for “administrative,” “executive,” and “professional” employees are exempt – they do not have to be paid overtime. However, before treating an employee as exempt you should carefully read the resources provided by the Department of Labor and the Texas Workforce Commission and consult an employment law attorney.

Guidance from an employment law attorney is especially important as there have been recent and ongoing developments in this area of law. To illustrate, among many other changes, the Department of Labor has revised the regulations to require a higher salary threshold (from \$455 to \$913 per workweek) for employees to satisfy the minimum salary requirements (in addition to the “Duties Test”) for the “administrative,” “executive,” and “professional” exemptions. These changes were to take effect on December 1, 2016, but a court recently stopped the enforcement of these changes. As of now, the old salary threshold (\$455) still applies. **However, this area of law is changing, and you should consult an employment law attorney as to how to proceed to best protect your business.**

SECTION IV.

Beware of “Off the Clock Hours”

If your employees who work through scheduled breaks, or show up early and start working, or stay late and continue working past their normal ending times you need to know that you must pay your employees for ALL time that they work. Employees cannot ‘agree’ to work for free!

There is no such thing as “voluntary work” that does not have to be paid. Employers must count as hours worked any time that they either know or should know the employee is working. You may not simply sit back and accept the benefit of employees’ work time without paying for it. For example, if an employee clocks out of a bakery after making the donuts in the morning, but stays to clean the oven and fryers in preparation for the next morning, you must pay for the time that the employee actually works, even though he or she is working past his or her shift; and you must pay him at the overtime rate if this work puts him over forty hours for the workweek.

If you do not want your employees to work additional hours outside of your agreed work schedule you may need to make it clear that your written approval is needed to work overtime hours, and that an employee working ‘unauthorized’ overtime hours will face discipline to ensure that that your employees do not work “off the clock hours.” You may include the following language in your handbook: “Employees must obtain prior written approval from their supervisors before working overtime. Failure to obtain such approval may result in discipline, up to and including termination of employment.”

Travel and Waiting Times

Time spent traveling by an employee after the employee arrives at work counts as work hours and must be paid, so does time spent by an employee waiting, if the employee is required to be at the work site or workplace or is unable to use the time for his or her own purposes.

Vacation or Leave Time

There is no law in Texas that requires employers to provide employees with paid vacation. If you decide to grant your employees vacation or leave time, it can either be paid or unpaid. You should have a very clear written policy on how vacation or leave time is accrued, how requests for leave time must be submitted, and whether your employees will be entitled to be paid for leave time that is accrued but unused at the time their employment is terminated.

You cannot fire or discriminate against an employee for reporting for jury duty or for complying with a valid subpoena to appear in court or in an administrative hearing, but you do not have to pay an employee for those hours. You must give paid time off for an employee to vote on Election Day, unless the polls are open for voting on Election Day for two consecutive hours outside of the employee’s work hours.

Breaks

There is no law in Texas that requires that you give paid breaks. But, you need to know what ordinances your local city or county has passed. For example, for construction jobs in the City of Austin – you must give a paid 10 minute break for every four hours worked, and cannot go more than three and a half hours without a break.

SECTION IV.

However, breaks and rest and meal periods of less than 20 minutes count as work hours and must be paid. Meal periods of more than 20 minutes also count as work hours and must be paid if the employee is required to eat at his or her desk or continue working during the meal period. You do not have to pay for a meal period if the employee is completely relieved from all his or her duties for meal periods of 30 minutes or longer.

Employee Records and Pay Issues

Federal and state laws require employers to keep employee records for several years. We recommend that you keep your records for at least seven years. Records should be kept either at the place of employment, or at a central office, but they must be accessible for inspection within 72 hours if a demand is made by the Department of Labor. These records include any records concerning personnel and employment issues, including hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship.

Employers must also maintain specific records to comply with requirements under the Fair Labor Standards Act. For each employee, you must keep records that have the following information:

The employee's personal identifying information:

- Full name
- Social security number
- Home address
- Date of birth
- Gender
- Occupation

Wage and hour information:

- Time and day of week when employee begins and ends work
- Hours worked each day
- Total hours worked each week
- How each employee's wages are paid
- Regular hourly pay rate
- Total daily or weekly straight-time earnings
- Total overtime earnings for each workweek
- All deductions from wages
- Total wages for each pay period
- Date of paycheck and the pay period covered by each paycheck

It is extremely important that you keep accurate and precise records regarding the exact hours worked by employees. Rounding hours up or down is not acceptable: the hours must be exact. The employee should review and sign the weekly records to ensure accuracy. Include a statement above the signature line to the effect that the employee agrees that the record shows all time that he or she worked. For instance, this language could read, "The above record is a full and complete record of all time that I worked during the pay period shown. I certify that I did not work any time that is not shown on the above record."

SECTION IV.

When Do You Pay Employees?

The Texas Payday Law requires an employer to pay its employees in full and on time on regularly-scheduled paydays and prohibits illegal deductions from wages.

Paydays

Post what the paydays will be in your office, where employees normally gather. Your paydays must be regular (for example, the first and third Fridays, or the first and fifteenth of the month). You must schedule at least two paydays per month and keep records of what you have paid to your employees.

Deductions

You must pay your employees in full! This means that you must beware of deductions; they are allowed only in very limited situations. You can legally make deductions from your employee's paycheck if you have a court order (such as for child support), IRS withholding, or for a deduction the employee approves in writing, but even then it must be for a lawful purpose, such as for charity. If you want to make deductions for meals or uniforms or loan money to an employee or give an advance, you may not get repayment through a payroll deduction unless the employee authorizes the deduction in writing. There are limits to how much these additional deductions can reduce an employee's pay!

Do Not Pay Employees in Cash!

Employers that cannot prove they have paid their employees are at risk of wage claims. The riskiest practice is to pay in cash, without a pay stub or receipt for the payment. This problem is sometimes seen in situations where the employer believes that the worker is "contract labor" or else a casual temporary worker to whom the normal rules do not apply. Although Texas law does not require a check stub or pay receipt along with the pay; it is a good idea, because it can help you defend against wrongful wage claims and minimize concerns among employees that their pay may not have been calculated correctly.

Last Paycheck

If an employee is laid off, discharged, fired, or otherwise involuntarily separated from employment, the final paycheck is due within six (6) calendar days of discharge.

If the employee quits, retires, resigns, or otherwise leaves employment voluntarily, the final paycheck is due on the next regularly-scheduled payday following the effective date of resignation.

It is not legal to hold a final paycheck past the deadline for reasons such as failure to give two weeks' notice, failure to return company property, failure to sign timesheets, or similar problems. If the company knows or should know what the pay should be, it must deliver the final pay no later than the deadline.

ADDITIONAL RESOURCES

Federal Government:

IRS Home Page:

www.irs.gov

IRS Small Business Page:

<https://www.irs.gov/businesses/small-businesses-self-employed>

Department of Labor Home Page:

www.dol.gov

Department of Labor Small Business Resource Center:

<http://www.dol.gov/oasam/programs/osdbu/sbrefa/>

Department of Labor Employment Law Guide:

www.dol.gov/asp/programs/guide/main.htm

Immigration Services I-9 Information:

<http://www.uscis.gov/I-9Central>

Texas Government:

Texas Workforce Commission Employer Resource Center:

<http://www.twc.state.tx.us/customers/bemp/businesses-employers.html>

Texas Workforce Commission - “Especially for Texas Employers”

<http://www.twc.state.tx.us/news/efte/tocmain.html>

Texas Department of Insurance Worker’s Compensation Insurance Center:

<http://www.tdi.texas.gov/wc/>

Other:

Legal Assistance to Microenterprises Project Home Page:

<http://www.texasbar.org/>

Texas C-BAR Employment Law Samples and Resources:

http://www.trla.org/www_texasbar/legal-library/toc/

Texas Society of Certified Public Accountants:

<https://www.tscpa.org>

CHECKLIST FOR HIRING YOUR FIRST EMPLOYEE

Checklist for Hiring Your First Employee

- Classify correctly: employee or independent contractor
- Create a job description
- Use standard job application forms
- Schedule interviews
- Complete all reference checks
- Make a job offer; let other applicants know position was filled
- Get Employer Identification Number (EIN) from the IRS
- Have the employee fill out and sign the Form W-4
- Within three days of hiring, complete an I-9 form for the employee
- Within ten days of hiring, report new hire to the Texas Attorney General's Office
- Put up required posters in the workplace
- Post what the paydays will be in the workplace
- Provide training; remember these are work hours and must be paid
- Have an employee handbook
- Choose whether or not to carry workers' compensation insurance
- File IRS Form 941 quarterly; pay and report the FICA payroll taxes
- Register with the Texas Workforce Commission and pay state unemployment taxes
- Pay at least minimum wage, \$7.25 an hour – do not pay in cash, use pay stubs
- Make it clear that written approval is needed to work overtime hours
- Pay overtime rate - 1.5 times regular hourly rate for hours over 40 hours worked per workweek
- Pay employees for all time worked
- Maintain detailed employment records for at least 7 years
- Document job performance and conduct yearly evaluations
- Report annually, using Forms W-2 and W-3, wages paid and taxes withheld
- File IRS Form 940, annually; pay federal unemployment taxes

HIRING YOUR FIRST EMPLOYEE

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