HR 101

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What does HR mean to you?
What does HR mean to you?

Hiring? Benefits?
Terminating? Recruiting?
Laws? I9’s?
Harassment/Discrimination?
Performance Management?

LAWS, LAWS, LAWS

- Federal Civil Rights Laws
- Federal Wage and Hour Laws
- Federal Employment Laws
- State Employment Laws
- City/ Municipal Laws
**LAWS, LAWS, LAWS**

**AMERICANS WITH DISABILITIES ACT (ADA), 1990**
- Covers individuals against discrimination in employment who meet the statutory definition of having a “disability”.
- During the interviewing and hiring process, employers must consider “qualified individuals who can perform, with or without reasonable accommodation, the primary functions of the job”.
- Employers must consider and extend the same opportunities (promotions & training) to qualified employees and provide reasonable accommodations if necessary (one that does not impose “undue hardship” on the employer). The ADA is enforced by the EEOC.

**CIVIL RIGHTS ACT, 1964 (Amended in 1991)**
- Covers all persons considered to be in a protected class from being discriminated against in the employment process based on race, sex, religion, or national origin.
- Title VII of the Act covers discriminatory practices such as: sexual harassment, pregnancy, reverse discrimination, disparate treatment, adverse impact, and retaliation. The Civil Rights Act is enforced by the EEOC.

**EQUAL PAY ACT, 1963**
- Protects an employee of one sex from being paid a different rate than an employee of another sex for performing a job that requires equal skills, efforts, and responsibilities under similar conditions in the same location.
- Pay differences are permitted when based on seniority, merit increases based on performance, or any other factor other than sex. This Act is enforced by the EEOC.

**FAIR LABOR STANDARDS ACT (FLSA)**
- FLSA sets forth criteria for minimum wage, overtime pay, compensatory time (public sector employees), record keeping requirements, child labor laws, and overtime exemptions. Enforced by the Wage and Hour Division of the Department of Labor.

**FAMILY AND MEDICAL LEAVE ACT (FMLA), 1993**
- A qualified employee must be allowed up to twelve (12) weeks of unpaid leave per year for the birth or adoption of a child, for the care of an immediate family member who meets the FMLA definition of having a “serious health condition”, or if the employee is unable to work due to their own serious health condition.
- A qualified employee is one that has continuously worked for the employer for at least twelve (12) months and has worked a minimum of 1250 hours during the past twelve months.
- An employer may require an employee to use all of their available sick and vacation time as part of their leave.

**IMMIGRATION REFORM AND CONTROL ACT (IRCA), 1986**
- Covers employees against discrimination on the basis of national origin, citizenship, or intention to obtain citizenship to the extent that such discrimination is not covered under Title VII of the Civil Rights Act of 1964.
- Employers must complete an I-9 form on all new hires to prove legal eligibility to work in the United States, maintain those I-9 forms for a specific period of time, and track expiration dates on documents that are required on the I-9 form.
- Employers must consider all applicants who meet the minimum requirements for the open positions and cannot ask for any documentation during the interviewing process.
Illegal Interview Questions

How old are you?
Maturity is essential for most positions, but it’s important that you don’t make assumptions about a candidate’s maturity based on age. A lawful question would be, “Are you 18 years of age or older?”

Are you a native-born American? Are you a U.S. citizen? Where are you from?
Rather than inquiring about citizenship, question whether or not the candidate is authorized for work. A lawful question would be, “Are you legally authorized to work in the United States on a full-time basis?”

Do you have any physical disabilities that would prevent you from doing this job?
Disabilities, whether they’re physical or mental, may affect a candidate’s ability to do the job, but it’s critical that you avoid asking about them. Rather, find out if the applicant can handle doing what's required.

Can you get a babysitter on short notice for overtime or travel?
Don’t make the mistake of assuming that a candidate has children or that they don’t already have proper child care plans. A lawful question would be, “On occasion, you'll be required to travel or work overtime on short notice. Is this a problem for you?”

Our bottom line: Do not discriminate against anyone because of their age, race, color, gender, pregnancy, national origin, religion, or disability.

Form I9

Key points –
- You cannot request a specific form of id(s) – supply the candidate with the List of Acceptable ids, and have them bring you either:
  - 1 ID from List A
  - 1 ID from List B, AND 1 ID from List C
- Only black or blue ink is acceptable.
- If an error is made, have the applicant put 1 line through it, and correct the mistake. NO white-out or scratches.
- All dates must be completed in the following format – MM/DD/YYYY ** 07/07/2015 – not 7/7/15
- Current version: Form I-9 07/17/17
FMLA

What steps to take when an employee requests FMLA

• Certify
  – Related Forms: WH381, WH382, WH380E, WH380F, etc.
    • Exp 8/2021

• Documentation

• Follow Up

• Types of Leave – Consecutive, Intermittent, etc.

FLSA Changes

On September 24, 2019, the U.S. Department of Labor announced a final rule to make 1.3 million American workers newly eligible for overtime pay.

In the final rule, the Department is:

• raising the “standard salary level” from the currently enforced level of $455 per week to $684 per week (equivalent to $35,568 per year for a full-year worker);
• raising the total annual compensation requirement for “highly compensated employees” from the currently enforced level of $100,000 per year to $107,432 per year;
• allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, in recognition of evolving pay practices; and
• revising the special salary levels for workers in U.S. territories and the motion picture industry.

The final rule is effective on January 1, 2020.
Common Questions - FLSA

- Exempt/Non-Exempt
- Can employees be required to work overtime?
- Can you require lunch/rest breaks? Handling timecards/time sheets.
- Docking salaried exempt employees for partial day absences
- Common overtime mistakes:
  - Allowing non-exempt employees to begin or end work before or after their assigned hours
  - Allowing non-exempt employees to work through their lunch break
  - Allowing non-exempt employees to take work home
  - Counting PTO/vacation as work time

COBRA

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a health insurance program that allows an eligible employee and his or her dependents the continued benefits of health insurance coverage in the case that employee loses his/her job or experiences a reduction of work hours.

- Compliance/Notifications
- Eligibility
Common Misconceptions

• Probationary Period
• At-Will Doctrine
• Right to Work
• Employment Posters

Harassment

• Immediately respond to the complaint.
• Meet/Discuss in a private area.
• Allow complainant to tell you about the situation in their own words.
• Be objective, supportive, and non-threatening. Refrain from asking leading questions or making preliminary judgments.
• Ask Who, What, How, Where, When (Refer to Handout Materials)
• Document all incidents and conversations
• Reiterate the Company’s anti-harassment/discrimination policy and ensure the complaint will be investigated immediately and thoroughly.
• Assure employee there will be no retaliation
• Ensure the complainant that the issue will be handled with the utmost discretion and professionalism: Do not promise 100% confidentiality!
• Seek assistance from Human Resources!
Best Practice for Employee Records

The following employee information records must be maintained in separate personnel files:

1. Pre-Employment information; Applications, resumes, and interviewing documentation of candidates not hired.
   - Recommendation: Maintain pre-employment documentation in month chronological order for easy purging.
2. I-9 forms & Identification
   - Recommendation: Store I9 Forms in two separate binders: Active & Terminated.
3. General employee personnel records; employment paperwork
4. Employee medical and benefits documentation
5. Health and safety records; workers compensation claims etc.

We recommend keeping the separate folders grouped together for functional purposes:

- General employee file
- Benefits Plan and Medical Documentation (Medical File)
- Health and Safety (Additional Safety claims such as Workers Compensation)

Document Retention

Pre-Employment Records

- Background checks, drug test results, driving records, employment verifications, and related screening: 5 yrs.
- Employment applications: 3 yrs.
- Resumes of not hired candidates: 3 yrs.

Benefits, Medical & Insurance Records

- Insurance policies (expired): 3 yrs.
- Insurance records, current accident reports, claims, policies, etc.: Permanently
- Benefits Records: 6 yrs.
- FMLA and USERRA and related leave records: 3 years after termination
- Retirement & pension records: Permanently

Safety Records

- Workers’ Compensation Claims: 30 years after date of injury
- Accident reports/claims (settled cases): 7 yrs.
## Document Retention

<table>
<thead>
<tr>
<th>Category</th>
<th>Retention Period</th>
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<tbody>
<tr>
<td><strong>Employment Records</strong></td>
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<tr>
<td>Employee Records</td>
<td>7 yrs. after termination date</td>
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<tr>
<td>Job Evaluations</td>
<td>2 yrs.</td>
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<tr>
<td>Performance appraisal and disciplinary action records</td>
<td>4 yrs. after termination.</td>
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<td><strong>Compensation Records</strong></td>
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<td>Garnishments</td>
<td>7 yrs.</td>
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<td>Withholding tax statements</td>
<td>7 yrs.</td>
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<tr>
<td>Payroll records &amp; summaries</td>
<td>7 yrs.</td>
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<tr>
<td><strong>Legal Compliance &amp; Reporting Records</strong></td>
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<tr>
<td>Form 5500</td>
<td>6 yrs after report was filed.</td>
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<tr>
<td>EEO-1 Reports</td>
<td>2 yrs after report was filed.</td>
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<tr>
<td>Federal/state tax reports</td>
<td>4 yrs after report was filed.</td>
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<tr>
<td><strong>Terminated Personnel Records</strong></td>
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<td>Personnel files (terminated)</td>
<td>7 yrs.</td>
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<tr>
<td>I9 Forms (Terminated employees)</td>
<td>4 yrs.</td>
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## Future Changes

- E-Verify – Future mandate?
- Expected uptick in I9 audits
- Paid Leave Laws
- FLSA
- New/latest I-9 effective 1/22
  - Minor changes
  - “Smart I-9” Option
  - Penalties doubled
Culture & People VS Compliance/Laws

Questions