



New Employee Best Practices

10 documents to consider for your new hires

Once the recruiting is done and you've settled on a candidate, there's a substantial amount of paperwork to handle, and some of it requires specific timing. The common approach of creating and following a written company procedure and filing all the associated paperwork in an employee file works well when the process is correct and is followed consistently, but it creates vulnerabilities if a step is forgotten or a timing requirement is ignored.

For example, specific agreements, such as confidentiality, non-competition, non-solicitation and invention-assignment agreements, generally must be signed when the position is accepted. Requirements vary with jurisdiction, but in most cases agreements presented for signature after negotiation for the position has formally concluded carry less weight and are harder to enforce.

In large corporations, the management of the hiring documents is handled by staff with a primary responsibility of ensuring best practices for documentation is followed. In some organizations this is aided by HR software. But the software is typically expensive, cumbersome, and difficult to set up.

Small and mid-sized businesses may be cavalier about some aspects of the hiring process because they want to create an informal workplace. That informality can be incredibly costly if the business unwittingly violates federal or state laws, has flawed non-compete, non-solicitation agreements that enables a former employee to steal their customers and key employees, or neglects to document training on harassment or discrimination policies.

Benefits, Payroll, and Employee Eligibility Documents

STEP ONE: GET AN EIN

Before you can hire an employee your company needs to acquire an **Employer Identification Number (EIN)**, that all the government documents such as W4's are filed under.

UNCLE SAM WANTS HIS CUT

W4 forms must be filled out by the employee on or before the date of employment and filed with the IRS.

FILL IT, FILE IT, FORGET IT

Employee Eligibility Verification (Form I-9): Within three days of hire you must complete an I-9 form. This is a political mess that you have to navigate carefully. Unless you are in the industries that the Immigration Service targets you will probably never have to do anything with this form, but you still need to be careful and must have the appropriate I-9 forms on file.

The form requires you to examine acceptable documentation supplied by the employee to confirm their eligibility to work in the U.S. Please note that the very first paragraph of the form directions is dedicated to telling you that you can be sued for discriminating. You can **ONLY** ask for the documentation specified on the I-9 form. Asking for other documentation, or even trying to specify which of the documentation forms you require, makes you liable to discrimination lawsuits. You don't file the I-9 with the government, you must keep it on file for three years after the date of hire or one year after termination, whichever is later.



In theory, the form contains all the directions required to complete it. In practice it's confusing and contradictory and the deeper you go into the enforcement and reporting elements, the more contradictory it becomes. There are no realistic safe harbor regulations to protect employers aiming to comply with the underlying regulation, so if you think you might have some kind of I-9 problem, seek professional help from a lawyer or HR practitioner.

STATES' NEW HIRE REPORTING PROGRAM

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires all employers to report newly hired and rehired employees to a state directory within 20 days of their hire or rehire date. If nothing else, you have to love the name—it's one of the few places that Personal Responsibility ever gets mentioned in Federal statute.

WORKERS' COMPENSATION INSURANCE

Most businesses are required to carry Workers Compensation Insurance coverage through a commercial carrier, on a self-insured basis, or through the state Workers' Compensation Insurance program.

UNEMPLOYMENT INSURANCE TAX REGISTRATION

Most businesses are required to pay unemployment insurance taxes. If your business is required to pay these taxes, you must register your business with your state's workforce agency.

DISABILITY INSURANCE

Some states require employers to provide partial wage replacement insurance coverage to their eligible employees for non-work related sickness or injury.

REQUIRED NOTICES

This doesn't have much to do with hiring employees, but you are required by state and federal laws to prominently display certain posters in the workplace that inform employees of their rights and employer responsibilities under labor laws. Now you know why coffee rooms and bulletin boards everywhere have those ugly posters. Don't fall for companies selling the posters, they are available for free from federal and state labor agencies. Here's a link: <http://www.sba.gov/content/posters>.

And of course you need to store receipts, keep track of deductible expenses associated with the employee, and store any other documents related to preparing your company's tax returns. Here's a useful, though somewhat overwhelming guide to the steps you need to take:

<http://www.sba.gov/content/10-steps-hiring-your-first-employee>.



The Top 8 Agreements

Besides those basic filings and enrollments here are the Top 8 documents you need to manage, and their associated best practices.

THE OFFER LETTER

When you've decided to hire, you should create an offer letter. The offer letter confirms and solidifies the commitment on both sides, which is particularly important if the candidate is going to quit their current job. This is a formal document and should include: title, job description, summary of benefits, salary, start date, and a statement of the government and company documents that must be completed before hiring is complete. It's particularly important to include in the offer letter a list of confidentiality, non-compete, non-solicitation, invention assignment, and any other agreements that might affect the decision of the prospective employee to accept a position. If you present these agreements after the negotiation process you will not only potentially irritate a new employee by springing an unpleasant surprise on them, but you'll also weaken the enforceability of the agreement. There's a simple mental test you can apply to determine what should be included in the offer letter. Picture the employee appearing before a judge saying, "I had already accepted their offer and quit my job when they sprung this «agreement» on me—I was compelled to sign it."

CONFIDENTIALITY

While this is particularly important for employees who will be exposed to strategically important information, nearly all employees could potentially be exposed to sensitive information like confidential client communications or documents, customer data, health care or credit card information, etc. It's a good management practice to discuss confidentiality expectations with all new employees and to document the communication with a signed agreement. The agreement should state that the employee won't disclose information without written permission, and include a generalized list of all types of information covered.

TERMS OF EMPLOYMENT

Your terms of employment document summarizes the other requirements. It should state that employees are required to sign and comply with all other documents in order to be employed at your company. Presenting a Terms of Employment for signing during the hiring process provides some added assurance that your agreements will withstand legal challenge. Ensure that your Terms of Employment agreement is synchronized and consistent with your offer letter.

NON-COMPETITION

These agreements prohibit the employee from working with competitors or competing with your company for a time after employment. These are restricted in many jurisdictions, so make sure you understand the limitations you operate under. If you assert non-competition requirements that are not permitted in your jurisdiction, the agreement may be voided entirely and/or will certainly be much harder to defend. For optimal protection, the agreement must be signed on or before the hiring date.



NON-SOLICITATION

Non-Solicitation agreements state the the employee will not solicit customers or employees of the Company. This is particularly important in jurisdictions where non-compete agreements are limited. Employees can be enjoined from selling their services either directly to your clients or on behalf of a new employer. You can also enjoin them from hiring away your key employees. Two years from date of termination is typical. For optimal protection, the agreement must be signed on or before the hiring date.

INVENTION ASSIGNMENT

Invention Assignment agreements are critical for employees working on any kind of product, process or proprietary information. The typical Invention Assignment agreement assigns anything the employee does while under your employ to your company. If you intend for the agreement to include inventions created on the employee's own time, the wording of the agreement must clearly state this. You might consider "own time" provisions to be overreaching, but without them the creative effort you hired the employee to deliver may be compromised—it can be very difficult to prove who created what and when. Without specific language, the extension to personal time may be unenforceable in some jurisdictions. For optimal protection, the agreement must be signed on or before the hiring date.

SAFETY AND TRAINING DOCUMENTS

Training of any kind should be documented. Yes, it's a pain in the neck, but so is a lawsuit, and they're a lot more expensive than storing a piece of paper. Training can take the place of a formal company policy manual, which many HR and legal experts consider a double-edged sword. Manuals get out of date, and any omissions or errors in the manual can be used to support a claim. For example, if your company manual lacks information about harassment issues, it may be presented as proof that the company condones harassment. A signed document specifying that an employee has received harassment and discrimination training carries far more weight than a dusty manual.

If your employee is working in any kind of hazardous environment or using potentially hazardous tools, chemicals, or other equipment, it's important to communicate the risks, and the proper procedures to minimize them. Their signature that they have received training reinforces the contention that you are properly managing risks. Workers compensation insurance partners will have their own requirements as well.

INFORMATION TECHNOLOGY POLICIES

Do you have sensitive data and information on your networks? Are employees allowed to use Facebook at work? Can an employee use a personal computer on your network? Your company policy for managing and protecting your network and determining how employees are permitted to use information technology can be simple or complex, but it's important that you set expectations and review it with new employees. If you store health care data, credit cards, client information, customer data or other sensitive information, these policies are especially critical.



HR/Legal Review

Many states and industries have their own requirements. It's important to consult with an expert to ensure you're covered—both from a legal requirements perspective, and in terms of reducing your potential exposure to lawsuits. If you have the basics covered as listed above, it should be a fairly quick and inexpensive process. Make sure to get everything in place before you bring in the expert. It's wasteful and expensive to have high-end legal talent help you with things you could easily prepare yourself.

The Right Documents For Your Company

Once you have a complete array of hiring and general HR documents, you need a written process for using them. Your process should include a listing of the required documents, the timing requirements for each document, where each document is submitted, and where they are filed. The process should include a checklist so you can see at a glance if something has not been completed.

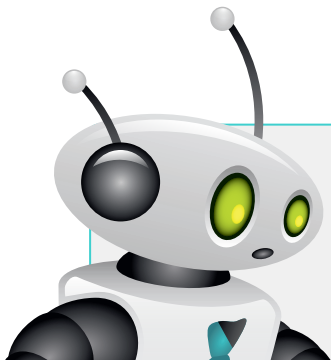
It may be necessary to deviate from your process to meet the needs of your company, but you should understand the potential ramifications of that decision. If that software developer you desperately need wants to have his lawyer review the agreements, do you still put him to work on your crash project? It's your decision, but you should understand that the agreements will be weakened if they are not completed as part of the hiring process. You can mitigate that somewhat by having the prospective employee sign a note that they understand the requirement for these agreements to complete the hiring process.

Is It Worth It?

If the hiring process were not such a critical component of business success, then we'd all be sole proprietors. The quality of a company's employees determines its potential. A great idea, a great product, a brilliant solution is also a vital part, but ultimately it's the quality of execution that separates the good from the great, and that comes down to finding, recruiting, hiring and retaining the best employees.

Hire well, my human compadres,

Your friendly HiringThing Robot.



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