



**Oklahoma Small Business Development
Center**

Northwestern Oklahoma State University

in coordination with the

**Service Corps Of Retired
Executives**

and in a partnership program with the

U. S. Small Business Administration

This material is based upon work supported by the U.S. Small Business Administration (SBA) under Cooperative Agreement # 7-7770-0038-20. Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Small Business Administration.

BUSINESS BASICS:

Finding Employees



*Copyright, 1996
Revised, 2/2005*

*developed by
OSBDC at NWOSU*

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What If I Need Employees?

Many small businesses begin without giving a lot of thought to hiring employees. They assume they will do all the work themselves, get assistance from friends or family, or simply contract out special jobs on an "as needed" basis. For some small business ventures, this scenario might work. However, for successful small businesses, who grow at an average rate or faster, the scenario quickly breaks down. At some point the hiring of additional personnel becomes a necessity. After all, 80 percent of all jobs expected to be created in the United States between now and the year 2010 are projected to come from small business.

A common misconception among small business owners is that *"If I only hire one or two employees, I won't have to deal with personnel problems."* Wrong! It makes no difference if you hire one, five, ten, twenty, or one hundred employees, your responsibilities as an employer remain basically the same. These responsibilities will include paying and filing tax returns for federal and state unemployment taxes, social security taxes, as well as income tax withholding for wages. In addition, you will be required to comply with workers' compensation laws, employee health and safety laws, antidiscrimination laws, U.S. immigration laws, and a variety of other state and federal regulations.

The important thing to remember with regard to employees is the strict and absolute adherence to federal and, in many instances, state labor regulations. Personnel policies and procedures are constantly being upgraded and changed to meet new situations, responding to emerging problems, and dealing with existing issues.

Whether you are an extremely small business, with only one employee, or a slightly larger one, with five or more employees, you must comply with labor laws.

Often, the first issue is "*How do you define an employee?*" Ultimately, when an employer-employee relationship exists, it doesn't matter what it is called. The employee may be referred to as a partner, an agent, or even a contractor. It also doesn't matter how payments are measured or paid or what they are called - - wages, salaries, etc., - - or whether the employee works full or part time; nor is there any employee class differentiation. An employee can be a manager, a supervisor, a technician, a common laborer, or any other of dozens of titles. The real problem comes into play in determining the difference between an independent contractor and an employee. The IRS poses 20 questions in order to determine if an employee or independent contractor relationship exists:

1. Are instructions given?
2. Is training provided?
3. Are services integrated into business?
4. Are services rendered personally?
5. Are assistants hired by business?
6. Is there a continuing relationship?
7. Who sets the hours of work?
8. Is full-time work required?
9. Is the work done on the premises?
10. Who sets the order or sequence?
11. Are reports required?
12. How are payments made?
13. How are expenses covered?
14. Who provides materials/equipment?
15. Does the person have an investment in the business?
16. Does the person work for more than one person or firm?
17. Is there a potential for loss?
18. Are services offered to the general public?
19. Can the person be fired?
20. Does the person have the right to quit?

A good general rule of thumb to define an employee versus an independent contractor is this: ***If the employer has the legal right to control the method and result of the service provided, the individual he is controlling is considered to be an employee.***

However, it is important to remember that the candidate chosen may or may not accept the position. (S)he may have received a better offer or may wish to negotiate employment conditions. For this reason, it is important to predetermine which issues (e.g., duties, pay, benefits, hours, vacations, titles, or responsibilities) you are willing to negotiate. Once all issues have been clarified and approved by both parties, a formal job offer can be made. Assuming the candidate accepts, then notify other candidates that the position has been filled. If, on the other hand, the chosen candidate declines, you must decide whether or not to move on to the next rated candidate or begin the entire process again. This decision will likely hinge on the quality of the next candidate in line.

The hiring process is complex and time consuming; both for the employer as well as the applicant. A successful "hire" will result in a highly motivated, qualified employee who thoroughly understands his or her role in the company and both feels and responds like an important part of the business team.

HIRING PRACTICES

The purpose of the following information is to provide you with as much knowledge as possible to avoid discriminatory issues.

Placing Ads

In placing a "help wanted" ad, or in listing openings with employment agencies, it is important to avoid anything that would seem discriminatory in nature. This would include references such as these:

- Race or national origin, including reference to "native language,
- Sex classifications such as "female secretary wanted. . ."
- Age such as "mature woman, over 40, or "recent graduate"
- Marital status such as "married man. . ."

Also, remember that ads must be placed where disabled individuals can learn about the available position; must not discourage them from applying; and must give them access to the business.

Job Application and Interview "Do" and "Don'ts"

Employment applications and interviews must also avoid discriminatory questions and/or references. The following information cannot be requested:

- The applicant's Social Security number
- Whether an applicant is single, married, divorced, or widowed; has children, is pregnant, or plans to have children, the age of children or child care arrangements
- An applicant's maiden name, spouse's name, or if the name has national or religious affiliation
- Any questions relating directly to race or color
- Whether the applicant is male or female; if the applicant is gay or heterosexual
- The applicant's age, birth date, graduation date, or any

RECRUITING EMPLOYEES

Good employees make the difference between a successful business and a marginal one. It is important to know where to find qualified employees and where those potential employees can receive training, if needed.

One of the very first things you should do before hiring employees, is to ask several questions:

1) **How many employees do I need?** In determining how many employees to hire, it is important to determine whether those employees will be classified as:

- Full time, part-time, or temporary
- Entry or advanced-level
- Exempt or nonexempt

2) **What skills are needed in order to perform the work I need done?** In every job there are certain skills, attitudes, and personality traits that make for a better employee. What are they? Beyond that, are there other requirements of the position that are not typically associated with the job?

3) **What education or training is available for employees?** In identifying the education and/or training required of employees, it is important to think in terms of requirements both prior to job start and after hire. Some education and/or training may be necessary before you can even hire an employee; some can be provided on-the-job.

4) **How will the required education or training be accomplished?** Once the required on-the-job education and/or training has been identified, then it is important to consider "how" it will be accomplished. Will it be done:

- In-house
- By contract
- Through local education agencies
- By some other mechanism

5) **What will the employee(s) do?** Many employers do not bother with written job descriptions. The problem then becomes that they can't give candidates a clear picture of what is expected from

employees (in general) or from someone in the job (in particular). In the long run, a well thought out job description can save employers time, money, and effort; even though writing it might be a short-term headache.

Smart business people will take the time to transfer this information into a written job description which spells out the specific duties and tasks required. Many cases of employment discrimination can easily arise when these requirements are not clear to individuals who consider themselves good candidates for a job that is vaguely identified.

6) What are the base wages or salaries I can afford to pay? The wages (or salary), benefits, and training, added together, account for the overall cost of an employee. It is important to know what that bottom line cost is to the business. Is it feasible? If not, then you have to back up and rethink the issue to determine how to make it affordable. (e.g., making the position part-time, cutting benefits, etc.)

7) How should I advertise for employees? Hiring a quality employee is not an easy task. Therefore, it is important to determine -- up front -- what resources are available to find one.

8) What "process" will I use for hiring employees? It is also important to determine what hiring process will be used before interviewing begins. This means making a determination as to how many applications will be accepted (the screening process); how many candidates will be interviewed and by what method (the interview process); and how a final decision will be made (the decision process).

Once all of these questions are answered, you will have a clearer picture of what the employee should be, what (s)he is going to cost -- in terms of time and money -- and what benefits will be derived from having the employee if the right hire is made. Keep in mind, that the costs associated with having employees are much greater than the wages paid. There are costs required by law, as well as many optional costs geared toward helping you keep good employees. All of these must be taken into consideration before making any personnel hires.

Applications and job interviews should **NOT** ask questions like:

- The applicant's religious preference; church or parish names of clergy; religious holidays; or place of birth
- If the applicant is a U.S. citizen; if (s)he, his/her spouse or parents are native or naturalized; request dates of their naturalization or application papers; any question about national origin, including birthplace of applicant, spouse, parents, or grandparents or date of citizenship
- For non job-related educational requirements or the racial, national, or religious affiliation of schools attended
- Native language or how an applicant may have learned a foreign language
- Whether or not the applicant is disabled
- Whether or not the applicant has any health related conditions
- Physical characteristics like height or weight
- For a photograph of the applicant (or take pictures during interview)
- If an applicant has ever filed for unemployment benefits
- Labor union affiliation
- Whether the applicant owns or rents the home or who resides with him/her
- Mode or method of transportation to work
- Club or organizational affiliation designed to reveal applicant's religion, race, color, or national origin
- The applicant's willingness to work religious holidays
- For specific references from anyone reflecting the candidate's color, race, religion, sex, national origin, or ancestry
- Type of military discharge or affiliation with foreign military branches; for service record copies
- If an applicant has ever been arrested

Many of the questions above are illegal.

Applications and job interviews should ask questions like:

- What formal training have you had?
- What practical experience have you had?
- What are your strengths and limitations regarding the position you are applying for?
- Why do you want to work for us?
- What do you like best and least about your present job?
- Are there any conditions or situations that make you uneasy?
- What kind of people do you get along with best?
- What kind of people do you find difficult to get along with?
- What have you done in your present job that you are most proud of?
- What do you expect to, and not to, do in the position you are applying for?
- Do you have any questions?
- Where do you want to be in a year? Five years? Ten years?
- Tell me about yourself.
- Tell me about a typical day in your present (or last) job.
- If you could have made improvements in your last job, what would they have been?
- Describe the best person who ever worked for you or you ever worked for.
- What kind of people annoy you?
- How do you think your previous experience ties in with the job we have open?
- Describe emergencies in some of your jobs for which you had to reschedule your time.
- In what way would you like our company to assist you if you join us?
- What is your long-term ambition or goal in life?

Fair Labor Standards Act

FLSA establishes the minimum wage for full-time, nonexempt employees; establishes overtime pay at not less than one and one half times the (nonexempt) employee's regular rate after eight hours a day or in excess of forty hours within a standard work week; sets the definition of nonexempt employees; covers equal pay for equal work; and covers child labor laws. (*Note: Hospital and residential care facilities may adopt, by agreement of their employees, a fourteen-day overtime period in lieu of the seven-day work week, if employees are paid at least one and one half their regular rate for hours worked over eight a day or 80 in a 14-day period.*)

FLSA does not require:

- Vacation, holiday, severance, or sick pay
- A discharge notice or reason for discharge
- Holiday or vacation leave
- Premium pay rates for weekend or holiday work
- Pay raises or fringe benefits
- A limit on work hours for employees 16 years of age or older

These are matters for agreement between the employer and the employee.

Child Labor

Although the wording is slightly different, the Fair Labor Standards Act (FLSA) and Oklahoma Child Labor Laws are similar. They differ in that FLSA states that a 14 or 15 year old can only work up to 40 hours in a non school week; while state law sets the maximum at 48 hours. Additionally, Oklahoma has a compulsory school attendance law that must not be violated in order to employ a minor.

Child Labor Laws apply to minors between the ages of 14 and 17. However, there are different regulations for each age group. Minors under 14 years of age may not be employed, while workers who are 18 or above are considered adults and covered by regulations pertaining to the work force in general.

Student workers between the ages of 14 and 15 are permitted to work 3 hours on school days and 8 hours on other days, not to exceed 18 hours per week when school is in session. They are prohibited from working between the hours of 7:00 p.m. to 7:00 a.m. When school is not in session, these workers are permitted to work 8 hours a day, not to exceed 40 hours per week and are prohibited from working hours between 9:00 p.m. to 7:00 a.m. Workers between the ages of 16 and 17 are not regulated on the number of hours they may work per day and there are no prohibited hours for this age group whether or not school is in session.

A "Certificate of Employment" must be on file for each child 14-15 years of age. These are obtained from the school superintendent. Proof of age is required for those under 19. A "Certificate of Employment" is an acceptable proof of age.

Prohibited Occupations - Ages 14 & 15

- manufacturing occupation
- mining operation
- processing occupation
- workplace where goods are manufactured, mined, or processed
- public messenger service
- operation of hoisting apparatus or power driven machinery
- occupations found and declared to be hazardous
- occupations involving transportation of persons or property
- occupations involving warehousing and storage
- occupations involving public utilities
- construction occupations
- retail, food service, or gasoline service occupations involving
 - work performed in or near boilers or engine rooms
 - work in connection with maintenance repair
 - outside window washing that involving work from window sills
 - work requiring use of ladders, scaffolds, or their substitutes
 - cooking or baking (except soda fountains, lunch counters, snack bars, or cafeteria service counters)
 - operation, setup or maintenance of power slicers, choppers, cutters, and bakery mixers
 - work in freezers or meat coolers
 - preparing meats (except for wrapping, sealing, and stocking)
 - loading and unloading goods to and from trucks, railroad cars, or conveyors
 - occupations in warehouses except office and clerical work

With proper screening, you - - the employer - - can weed out the majority of applications and settle on the number of candidates to be interviewed; generally three to five. If the screening process fails to significantly reduce the number of candidates, another look should be taken at the "minimum qualifications." In instances where a large number of qualified candidates are available, you can afford to be a little more choosy with regard to preferences.

Some employers use an applicant rating form in conjunction with the interview process. The form helps to crystallize thoughts about each candidate by rating them on their experience, abilities, and/or aptitudes. Once all of the candidates have interviewed, the form is an excellent reference tool to measure candidates against one another. This can be extremely helpful in making final selection choices.

It is important to be thoroughly prepared for the interview process before interviews are scheduled. Here are some tips:

- 1) Have all the needed information at your fingertips. This generally includes the application form, a pre-established set of interview questions, and the salary range and benefits package being offered.
- 2) Avoid typical interview pitfalls such as making unfavorable comments during the interview, failing to use a uniform process, or making selection decisions based on issues other than job qualifications.
- 3) To ensure a positive interview, ask open-ended questions that require explanations and allow the applicant to respond at his or her own pace.

Here are some things to look for in "body language" during the job interview.

- **Signs of nervousness:** tilting, jumpiness, nail biting, slouching in chair, hand movements
- **Grooming.** Observe shoes, fingernails, makeup, hair, tics, clothing choice, cleanliness, neatness
- **Use of pat phrases or verbal crutches** like "to tell the truth," "frankly," "basically," and "you know"
- **Lapse of memory:** inability to remember dates, job changes and important events

Background and reference checks should be performed to follow-up on the information provided by the candidate. These checks are helpful in weeding out unqualified candidates and narrowing the field to one or two choices. As with all aspects of the interview, background and reference checks must be handled carefully. To avoid stepping over legal boundaries:

- 1) Collect only information that is relevant to the job the applicant is applying for
- 2) Reveal the information obtained only to those making the selection decision
- 3) Establish a clear set of procedures on how the information will be collected and used
- 4) Avoid attempts to collect information from sources the applicants has not authorized
- 5) Collect information in person or by phone; not in writing

Once applications are reviewed, interviews are conducted, and background checks performed, an employer should have sufficient information on which to base a hiring decision.

Prohibited Occupations - Ages 16 & 17

Minors under 18 may not be employed in any hazardous nonagricultural occupation or occupation that is considered detrimental to health and well-being. This minimum age applies even when the minor is employed by the parent or guardian. Prohibited occupations include working in:

- manufacturing and storing explosives
- motor vehicle driving and outside help
- mining
- logging and saw milling
- power driven woodworking machinery
- exposure to radioactive substances
- power driven hoisting services
- power driven metal forming, punching, and shearing machines
- slaughtering, meat packing, processing, or rendering
- power driven bakery machinery
- manufacturing brick, tile, and kindled products
- power driven circular saws and guillotine shears
- wrecking, demolition, and shipwrecking operations
- roofing operations
- excavation operations

As an employer, you must be aware of all of your obligations under federal and state laws that prohibit employment discrimination based upon a number of issues. **Equal employment opportunity is the law!** While such antidiscrimination laws apply to every aspect of the relationship between an employer and employee like compensation, promotions, work assignments, working conditions, and firing practices, it is in the hiring process that most small businesses make their major mistakes. Be sure that you, and others who might do hiring for you, be aware of all applicable statutes:

CIVIL RIGHTS ACT

"prohibits against employment discrimination in hiring, firing, compensation and terms, conditions, privileges of employment on the basis of race, color, religion, sex, or national origin prohibits any business practice that is not based on a job requirement which has unequal consequences for persons of a different race, color, religion, sex, or national origin."

AGE DISCRIMINATION ACT

"it is unlawful for an employer to fail to, refuse to hire, to discharge, or otherwise discriminate against individuals 40 years of age or older with respect to compensation, terms, conditions, or privileges of employment because of age. . . . to forcibly retire an employee. . .to give preference because of age to one person over another within the protected age group."

AMERICANS WITH DISABILITIES ACT

"prohibits private employers from discriminating against individuals with disabilities. . .prohibits retaliation against an employee for taking any action pursuant to the act. . .requires employers to provide reasonable accommodations to the disabled including making existing facilities accessible. . .to provide special equipment and training. . .to arrange part-time or modified work schedules in order to employ the disabled."

It is also important to note that businesses that wish to do business with the federal government are required to adopt affirmative action programs to employee minorities; women, people with disabilities, and Veterans. These affirmative action programs go way beyond just the mere elimination of discrimination. Under these programs, employers must consciously make an effort to hire more women and minority group members and to upgrade the pay and responsibility levels of groups that have historically been the subject of discrimination. (Note: EEOC poster P/E-1 must be posted where employees can see it at all times. Contact the Oklahoma Employment office for information on obtaining this poster.)

As an employer you are required to keep detailed records regarding your reasons for hiring (or not hiring), promoting (or not promoting), and increasing compensation (or not increasing compensation) on all employees. This documentation is necessary in the event that your firm is ever required to prove that it has not discriminated against certain job applicants or employees. The best method of keeping such records is through a formalized employee manual that clearly

documents your company's policies and procedures with regard to personnel issues. Once established, and followed to the letter, such documentation is difficult to dispute.

Other issues you must keep in mind as an employer include:

FAMILY AND MEDICAL LEAVE ACT

"entitles employees to take up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons. The leave entitlement is for: the birth or placement of a child for adoption or foster care; the care of an immediate family member (spouse, child, or parent) with a serious health condition or of the employee who is unable to work because of a serious health condition."

(Note: U.S. G.P.O. Poster 363-608 - Your Rights Under The Family and Medical Leave Act of 1993 must be posted where all employees may see it. Contact the Oklahoma Employment office for information on obtaining this poster.)

EMPLOYEE POLYGRAPH PROTECTION ACT

"prohibits most private employers from using lie detector tests either for pre-employment screening or during the course of employment."

(Note: WH Publication 1462 - Employee Polygraph Protection Act must be posted where all employees can readily see it. Contact the Oklahoma Employment office for information on obtaining this poster.)

OCCUPATIONAL SAFETY & HEALTH PROTECTION ACT

"provides job safety and health protection for workers by promoting safe and healthful working conditions."

(Note: GPO Poster 355-763 OL3 - Job Safety and Protection must be posted where all employees can readily see it. Contact the Employment office for information on obtaining this poster.)