

7 Questions Every Employer Should Ask Before Hiring Employees

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Introduction

When people who aren't business owners picture a small business, they tend to imagine a corner store – from 1890. Kids run into a quaint shop for a penny candy, and neighbors meet at the town's five-and-dime. That idyllic view of business may be important to building a sense of community, but it ignores where today's business owners spend much of their time: dealing with payroll, employment regulations, insurance, and employee benefits.

Running a small business in the 21st century may can involve tasks like classifying employees as being exempt or nonexempt, paying workers' compensation insurance premiums, deciding whether your business can afford to offer health insurance, and helping employees prepare for retirement.

With the answers to the seven questions in this book, you'll have information to help you quickly and more effectively deal with employee issues, so you can focus on why you went into business in the first place. Just imagine.

The information in these materials should not be considered legal, accounting, or investment advice, and it should not substitute for legal, accounting, investment, and other professional advice where the facts and circumstances warrant. It is provided for informational purposes only. If you require, legal, accounting, or investment advice, or need other professional assistance, you should always consult your attorney, accountant, or other professional advisor to discuss your particular facts, circumstances, business, personal finance and investment needs.

Chapter 1

What Do I Need to Know About Classification, Compensation, and Overtime Rules?

Today there are many laws and regulations that require your compliance, such as classifying employees as exempt or non-exempt, meeting minimum wage requirements, and providing proper compensation for overtime hours.

In this chapter, you'll learn about:

- The Fair Labor Standards Act (FLSA)
- Employee Classifications
- Compensation
- Regular and Overtime Rates

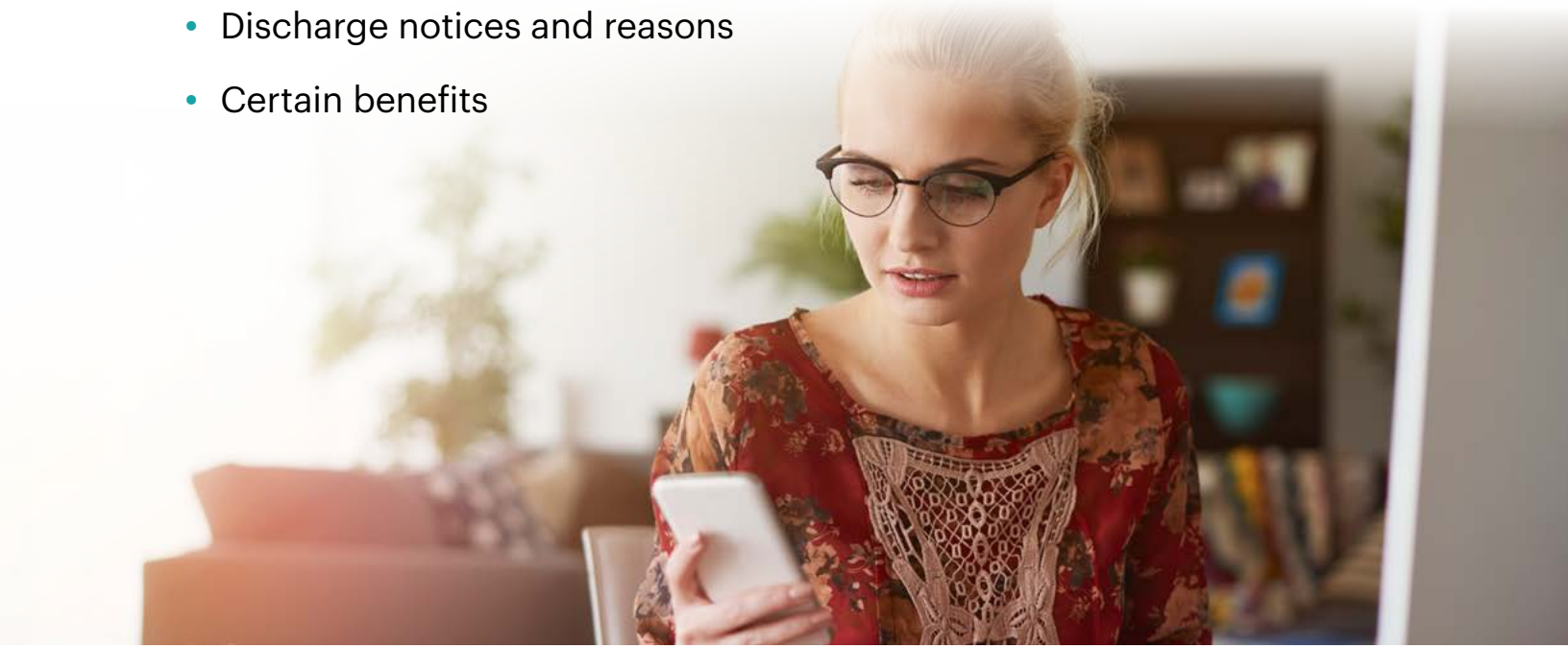


The Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act is a federal law enacted in 1938 to protect workers against unfair employment practices. The law established standards and requirements for minimum wage, child labor, overtime, and recordkeeping. A number of employment practices are not specifically addressed under the FLSA, and are generally determined by the employer through company policy, a collective bargaining agreement, and/or a requirement under state or local law.

These practices can include:

- Vacation, holiday, and sick pay
- Premium pay for hours worked beyond what is required under the FLSA
- Pay frequency
- Full-time vs. part-time status
- Maximum hours worked each day or week (age 16 or older)
- Job performance measurements
- Discharge notices and reasons
- Certain benefits



Employee Classifications

The FLSA and even some state laws divide employees into two classifications, exempt and non-exempt. Exempt status is primarily determined based on job duties and salary level. These employees may be excluded from the minimum wage and overtime provisions of the FLSA or similar state laws. Non-exempt employees are referred to as "covered employees" under the FLSA and are subject to the Act's provisions, including overtime pay.

Because exemptions are narrowly defined, you should review exact terms and conditions on the U.S. Department of Labor (DOL) website at **www.dol.gov** or contact them. In order to be exempt from overtime and minimum wage provisions, the employees must meet the requirements for exempt status under any applicable state or local laws as well.

Who Is Exempt?

Exempt employee positions which usually fall into one of the white collar exemptions: executive, professional, administrative, outside sales, or certain computer professionals, are not required to be paid overtime pay for hours worked over 40 in a workweek. Employees covered under these federal exemptions must:

- **Be compensated at a rate not less than $684 per week ($35,568 per year),**
- **Be paid on a salary basis**, and
- **Perform work considered to be exempt** under the applicable regulations.

Employers should consult state laws and ask legal counsel to review the positions and classifications in order to avoid misclassifying employees. Employees should be informed upon hire or promotion of the exempt or non-exempt status of their position. Employers are encouraged to develop job descriptions for all positions to assist in the classification process. Job descriptions should include job requirements and identify primary job duties and responsibilities.

Compensation

Covered, non-exempt employees must be paid at least the federal minimum wage of $7.25 an hour for the first 40 hours of work each workweek. States and local jurisdictions may establish their own minimum wage rates, and where covered by more than one minimum wage law, employers must follow the provision that is most beneficial to the employee.

If the state's minimum wage is higher than the federal minimum wage, employers must follow the state law, and if the local jurisdiction has a minimum wage higher than either state or federal, the local minimum wage must be followed.

If the state's minimum wage is lower than the federal minimum wage, employers must follow the federal law, assuming the employee is covered by the FLSA.

Federal Minimum Wage = $7.25 an hour.

Overtime Rate = 1.50 x the employee's regular rate of pay.

Non-exempt employees must receive at least minimum wage for all hours worked and time and one-half their regular rate of pay for all hours worked over 40 in a workweek under federal law. State law may require additional overtime pay. Under the FLSA, any work which is suffered or permitted may be considered "hours worked" and therefore compensable time under the Act, even if the work is not requested or approved in advance by the employer.

Other time that may be subject to compensation can include:

- Breaks and meal periods
- Sleeping time
- On-call time
- Time in meetings and trainings
- Travel time

Did You Know?

Every employer of employees subject to the FLSA must post the U.S. DOL minimum-wage notice explaining the Act in a conspicuous place in the workplace.

Regular and Overtime Rates

An employee's regular rate of pay must be at least minimum wage and its calculation should include all remuneration for employment, with the exception of certain payments excluded by the FLSA.

Typically, the regular rate is calculated by dividing total pay for employment in a workweek by the total number of hours actually worked.

Under the Act, the regular rate need not include payments for certain expenses or premium pay for hours worked on weekends/ holidays, nor does it include discretionary bonuses or gifts/ payments.

The Act does not limit the number of hours each week that employees (age 16 or over) may work. The Act, however, requires employers to pay an overtime premium to non-exempt employees who work over 40 hours in a workweek. State laws may differ.

Overtime pay must be at a rate of at least one and one-half times the employee's regular rate of pay.

Generally, employers are not permitted to average the hours of two or more workweeks for calculation purposes. Each workweek is looked at in and of itself for overtime purposes, regardless of pay frequency (for example, weekly, biweekly, semimonthly, or monthly). Overtime pay cannot be waived. Even if the employer announces "no overtime" or the employee signs an agreement to not be paid at applicable overtime rates for hours worked over 40 in a workweek, the employer is still required by law to pay the appropriate overtime rate. If an employee works unauthorized overtime, the employer may take disciplinary action against the employee (e.g., verbal or written warning), but the employee must be paid at the overtime rate for the overtime hours worked.

The FLSA Defines a Workweek as:

7 consecutive 24-hour periods (24 24 24 24 24 24 24), or 168 hours regardless of the day of the week or the hour of the day it starts.

Recordkeeping

In addition, the FLSA mandates that certain records relating to wages, hours, and other items be maintained by employers for at least three years. Records that show how you determined wages must be kept for two years. The act does not specify a particular form in which records must be maintained.

Chapter 2

What Insurance Do I Need?

There are a wide variety of insurance plans and policies offered by carriers across the country, but most can be summed up in two categories: health and health-related insurance, and property and casualty insurance.

In this chapter, you'll learn about:

- Health and Health-Related Insurance
- Property and Casualty Insurance
- Managed Care
- How to Choose the Right Insurance Plan



Health and Health-Related Insurance

To put it simply, health insurance and its related plans are about people. In the case of an accident or illness, these plans can help you, your family, or your employees pay for qualified medical care. Such plans include:

Group Health, Accident, and Life Insurance can give you and your employees access to vital coverage that includes medical, dental, vision, life, and short- and long-term disability insurance. Group insurance plans can cover groups of two or more eligible people, typically:

- An employer
- Two or more employees
- Their families

Voluntary/Supplemental Insurance

Voluntary insurance allows your employees to help determine their own insurance benefits, which they pay for themselves. Voluntary insurance may be used to establish your company's benefits package or supplement your current group benefits.

Individual Medical Insurance

Individual medical insurance covers an individual and/or his or her family. Individual insurance policies and provisions are regulated by the state where the policy is purchased, and are purchased by the individual, sometimes with the advice of a licensed agent.



Group vs. Individual Insurance

Group

Group insurance can be particulary effective option for helping businesses attract qualified job candidatess and reduce employee turnover. Depending on the needs of the business and its employees, group insurance plans can vary.

Individual

Individual medical insurance can help keep rising healthcare costs in check through health, vision, dental, life, and short- and long-term disability plans for you and your family.

Property and Casualty Insurance

Property and casualty insurance covers the physical assets that are vital to your success and that of your business.

This includes:

Workers' Compensation Insurance

If your employees become injured or disabled due to an on-the-job injury or illness, workers' compensation insurance protects your business from lawsuits while covering the necessary medical care as well as lost wages and rehabilitation.

Business Insurance

These plans include several policies that protect your business from circumstances that could negatively affect your operations. Policies include property, casualty, liability, commercial auto, and more.

Individual Property and Casualty Insurance

Individual property and casualty insurance helps protect policy-holders and their families with policies that include personal auto, liability, and homeowners' insurance.

Of the many types of insurance plans available to business owners, only a few property and casualty policies are required by federal or state law. These include workers' compensation, personal or commercial auto, and homeowners' insurance. With property and casualty plans covering a wide variety of assets, it can be difficult to determine the right amount of coverage for each policy on your own. It might be helpful to contact a licensed insurance representative for assistance.

Managed Care

Employers are the principal source of health insurance in the United States, providing health benefits for approximately 157 million non-elderly people in America. But what type of insurance does your company need?

Managed care plans are health insurance plans that contract with health-care providers and medical facilities to provide care for members at reduced costs.

These providers make up the plan's network.

Did You Know?

About 97% of private sector companies with more than 50 employees offer health insurance plans.*



*Source: http://kff.org/other/state-indicator/firms-offering-coverage-by-size/

There are several types of managed care plans:

PPO	Preferred Provider Organization
HMO	Health Maintenance Organization
HDHP	High Deductible Health Plan
POS	Point of Service Plan
EPO	Exclusive Provider Organization

PPO

Members can visit any in-network or out-of-network provider without a referral. This plan offers incentives to use providers within its own network but will allow members to see out-of-network providers with a reduced benefit.

HMO

Requires members to obtain care through health-care providers affiliated with the HMO. Generally, covers routine examinations and immunizations. Requires a designated primary care physician and usually an approved referral from the primary care doctor in order to see specialists.

HDHP

Gives members greater responsibility for their own health care. It is frequently combined with related savings accounts, such as a health savings account or health reimbursement arrangement, which allow employees and employers to set aside pretax dollars for qualified out-of-pocket medical expenses.

POS

Similar to an HMO in that it requires a designated primary care physician, who must handle all referrals. It allows members to self-refer out of network with a reduced benefit and greater expense.

EPO

Limits members to smaller selection of providers in exchange for lower premiums. May require a designated primary care physician. Holds member responsible for 100% of the bill for an out-of-network provider.



How to Choose the Right Insurance Plan

There are many obstacles that must be overcome in order to select a group insurance plan and keep it running smoothly.

You must first research carriers in your area, select plan offerings, obtain quotes, and compare the results to find coverage that fits your needs and budget.

Once a plan is chosen, you will be responsible for administrative tasks such as:

Enrollment Process

- Submit employee forms to the carrier
- Enroll employees
- Set up payroll deductions

Plan Administration

- Continuously coordinate with employees and your carrier to stay on top of enrollment changes
- Remove terminated employees from coverage
- Track eligibility of new hires

There must also be regular communication with employees at different stages of the plan year, to notify them of open enrollment and provide enrollment assistance. In addition, the business owner is responsible for making premium payments on time, staying compliant with IRS regulations, and setting up and administering a COBRA or state continuation program to employees who have lost coverage. You also have the option of integrating a group insurance plan with payroll, which will make the plan easier and more efficient to manage.

Chapter 3

What Benefits Can I Offer to Attract and Retain Talented Employees?

Hanging a “Now Hiring” sign on your window and offering a steady paycheck may not be enough to entice the best employees to work for you, or to stay for long when they do accept a position with your business. What can you do to set your business apart as an employer of choice?

In this chapter, you’ll learn about:

- Common Traits of Star Employees
- Tips for Employee Recruitment and Retention
- Rewards for Exceptional Performance
- Types of Employee Benefits



Common Traits of Star Employees

The following traits can often be found in talented company performers:

Attitude. They believe they are a top performer.

Commitment. They want to excel and are not comfortable working just enough to meet the minimum requirements of the job.

Vision. They have a vision that is far beyond the next paycheck.

Willingness. They want to learn, be held accountable, and take calculated risks.

Energy. They motivate a team.

Reliability. They are not overly influenced by their environment and tend to respond to situations based on facts and information rather than whim or mood.

So how do you attract and keep these employees? How can you prevent them from moving to another company? It can often be as simples as offering benefits and rewards that let your employees know you value their work and contributions.



Tips for Employee Recruitment and Retention

Developing top talent takes time, patience, and an eye on the future. Here are five ideas for finding and attracting the best talent:

- Consider implementing a branded recruiting website. The place to get the word out is over the Internet. Consider establishing your presence there.
- Automate job board postings. Having a wide Internet presence, without the added workload, is a great way to get the word out about your organization and the types of opportunities you represent.
- Implement web-based applicant-tracking software. Tracking software can greatly reduce your workload, allowing you to focus on activities with the highest return.
- Leverage total compensation summaries to help you make sure you are paying employees competitively.
- Look for quality, not quantity. As applicant pools go up, raise your standards and select from more qualified applicants.



Rewards for Exceptional Performance

Once you've hired employees, one way to boost retention may be to offer rewards. There are two types of rewards that you can offer your employees: intangible and tangible. An intangible reward is something that cannot be seen, touched, or physically measured.

Intangible

Intangible rewards let top performers know that you care about them and value their contributions, can raise engagement levels because they help people feel connected, and cost less than other reward types.

Such rewards may include:

Recognition – Give your top performers credit in meetings and/or in emails to higher level managers.

Empowerment – Get the employee involved in solving your company's most challenging problems or empowering them to help make an impactful decision.

Praise and verbal appreciation – Simply say, "Great job!"

Tangible

A tangible reward is something that can be seen, touched, or measured.

Such rewards include:

Learning development opportunities/ training – Investing in an employee's career development may produce a return through the employee's hard work and appreciation.

The gift of time – Allow an employee to come in late or leave early one day.

Gift cards

Bonus/cash – Keeping in mind that some tangible rewards can be considered taxable income for employees.



Types of Employee Benefits

Offering a complete and attractive benefits package that fits your employees' needs can also help retain employees. Providing health insurance, life insurance, flexible spending accounts, and retirement plans is essential these days when trying to retain top employees.

Additional benefits that aren't as common, but are increasing in popularity, include:

- Work from home options
- Financial rewards, such as stock options
- Dental and vision coverage
- Outside "work" courtyards
- Flexible scheduling (i.e., four 10-hour days)
- Onsite daycare

Chapter 4

How Do I Make Benefits More Affordable?

You want to offer an attractive benefits package to your employees. But how do you know what you can afford?

In this chapter, you'll learn about:

- Health Care Reform
- Cafeteria Plans
- 401(k) Retirement Plans
- Professional Employer Organizations (PEO)



Keep a couple of things in mind when shopping for benefits.

1. If you think that your employees' portion of the cost of a certain benefit is going to be more than they can afford, there may be no reason to have it.
2. Remember that companies that offer comprehensive benefits packages generally have happier employees and experience less turnover. This can mean significant savings in training and recruiting costs.

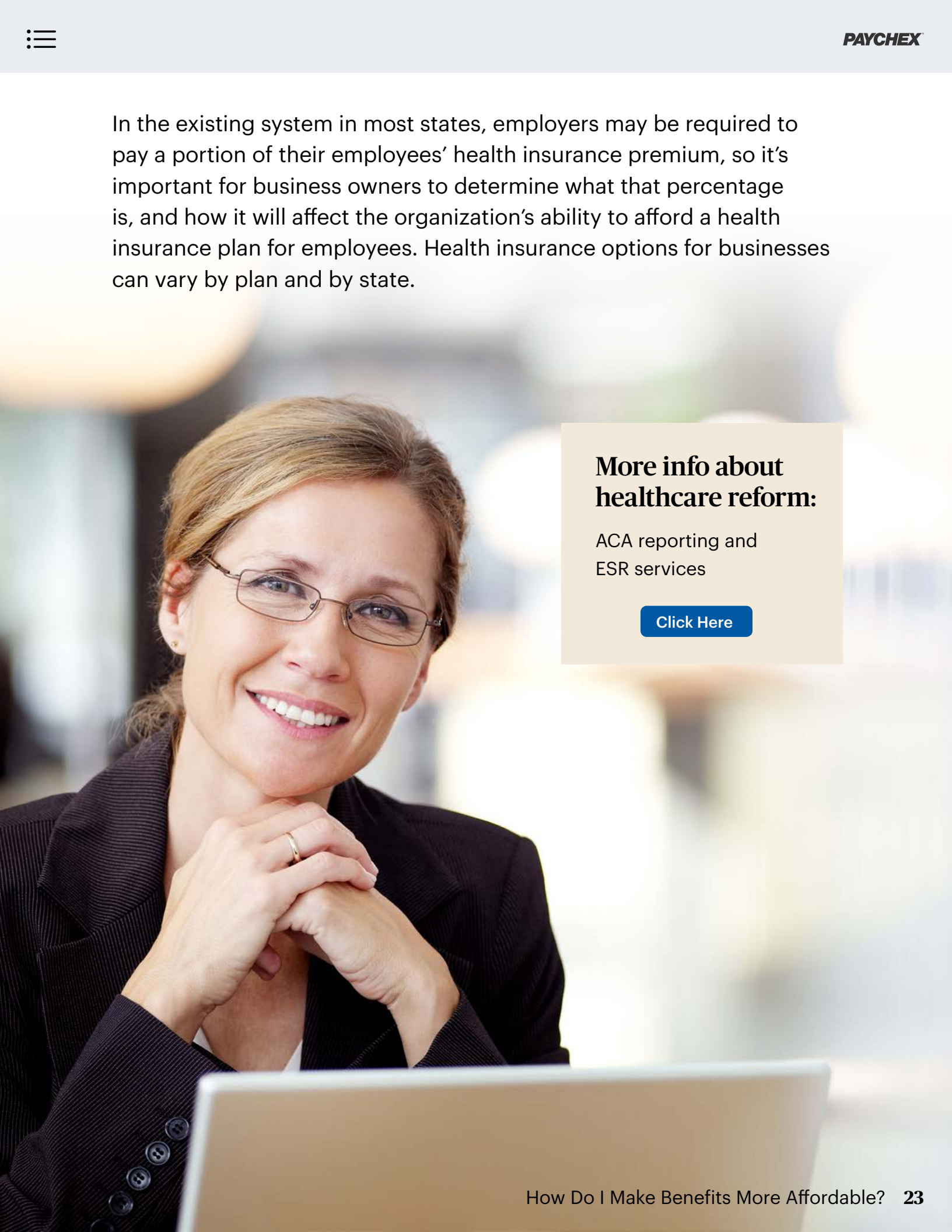
Certain benefits can also offer tax savings to you as an employer. Research items that might make benefits more affordable for your company.

Health Care Reform

Many small businesses assume they can't compete with large companies that offer group health plans. In fact, group insurance is available to companies who employ as few as one person, with plan options that cost less than traditional indemnity policies and HMOs.

The Affordable Care Act (ACA) is focused on making health insurance more affordable for both individuals and employers. The Affordable Care Act provides access to a federally facilitated online marketplace which gives small businesses and individuals a place to compare and shop for insurance coverage.

In the existing system in most states, employers may be required to pay a portion of their employees' health insurance premium, so it's important for business owners to determine what that percentage is, and how it will affect the organization's ability to afford a health insurance plan for employees. Health insurance options for businesses can vary by plan and by state.



More info about healthcare reform:

ACA reporting and ESR services

Click Here

Small Business Health Care Tax Credit

This credit helps small businesses afford the cost of covering their employees and is specifically targeted to those with low- and moderate-income workers. The credit is designed to encourage small employers to offer health insurance coverage for the first time or maintain coverage they already have. It may provide a tax credit of up to 50% of the employer's contribution towards an employee's premium for single-only coverage but is limited to 2 consecutive years, to qualifying non-tax-exempt* businesses that offer health insurance to employees and meet these criteria:

- Have fewer than 25 full-time equivalent employees (FTEs).
- Have average annual wages of less than $54,000 (as adjusted for inflation in 2018).
- Contribute at least 50% of the total premium cost for each enrolled employee.
- Coverage must be purchased through the Small Business Health Options Program (SHOP) beginning in 2014. However, there may be exceptions for small businesses located in regions where no SHOP coverage is available.



*The maximum credit for tax-exempt businesses is 35%. To be eligible for the maximum tax credit, employers must have average annual wages of no more than $26,000 (as adjusted for inflation in 2018) and have no more than 10 FTEs.

FTEs are defined by the IRS as all employees**, (including seasonal employees who work more than 120 days during the preceding tax year).

The number of FTEs in the preceding tax year would be determined using the following steps:

1. Calculate the aggregate number of hours of service (but not more than 2,080 hours of service for any employee) for all employees.
2. Divide the total hours of service in step (1) by 2,080. This is the number of FTEs.

The due date to claim the small business health care tax credit is dependent on the business tax year end date and type of business.

Don't offer group coverage?

You can still help your employees get covered.

Click Here

How to claim the tax credit.

- Non-tax-exempt employers eligible for the tax credits can take the credits on their annual income tax returns with an attached Form 8941.
- Tax-exempt businesses must use Form 8941 to calculate the credit and then may claim it on line 44f of IRS Form 990-T.

Business Type	Must Submit Claim By
Sole Proprietors Some Partnerships filing Form 1040	April 15
Corporations filing Form 1120	The 15th day of the 3rd or 4th month of the following tax year, depending on the company's fiscal tax year. Visit the IRS website for more information.
Non-Profits filing Form 990T	The 15th day of the 5th month of the following tax year

Note: All entities can file for extensions.

Companies that already offer health coverage to their employees may apply for a credit to offset the cost of premiums. Business owners are encouraged to check with their tax advisors for details on how Health Care Reform and tax credits affect their businesses.

** The following individuals are not considered employees for purposes of the credit: owners of the small business, such as sole proprietors, partners, shareholders owning more than 2% of an S corporation or more than 5% of a C corporation; spouses of these owners; and family members of these owners.



Medical Loss Ratio

The Affordable Care Act requires health insurance issuers to submit data on the proportion of premium revenues spent on clinical services and quality improvement, also known as the Medical Loss Ratio (MLR).

The MLR provision requires that:

- A minimum percentage of premium payments collected by health insurance carriers must be applied toward medical claims and/or quality improvement.
- Small group and individual plans must have had 80% of premiums applied toward payment of claims and/or quality improvement.
- Large group health plans must have applied at least 85% of premiums toward the payment of claims and/or quality improvement costs.

Each year carriers who do not meet these thresholds are required to issue rebates of the excess premium payments to either the affected businesses or policyholder. Rebates will be issued no later than September 30 following the end of the plan year.

Cafeteria Plans

Section 125 Plans

Section 125 plans allow employees to pay for certain benefits on a pretax basis, effectively reducing their taxable income and your Social Security (FICA) liability. Named after a part of the Internal Revenue Code, Section 125 plans enable employees to set aside pretax dollars for any qualified medical, dental, or dependent-care expenses. As an employer, you can also save on a variety of taxes, including FICA and federal income. This savings also includes state unemployment taxes in some states, and employers should contact their accounting professional for specific state details.

Premium Only Plan

A Premium Only Plan (POP) is a simple way for employees to reduce health insurance costs while maximizing their tax savings potential. With a POP, employers allow employees to pay a portion of their employer-sponsored group health insurance premiums on a pretax basis through payroll deductions, which reduces their taxable income and helps them save on FICA, federal, and (where applicable, see chart) state and local taxes as well. By reducing employees' taxable income, a POP also helps reduce your company's payroll taxes; see the following example:

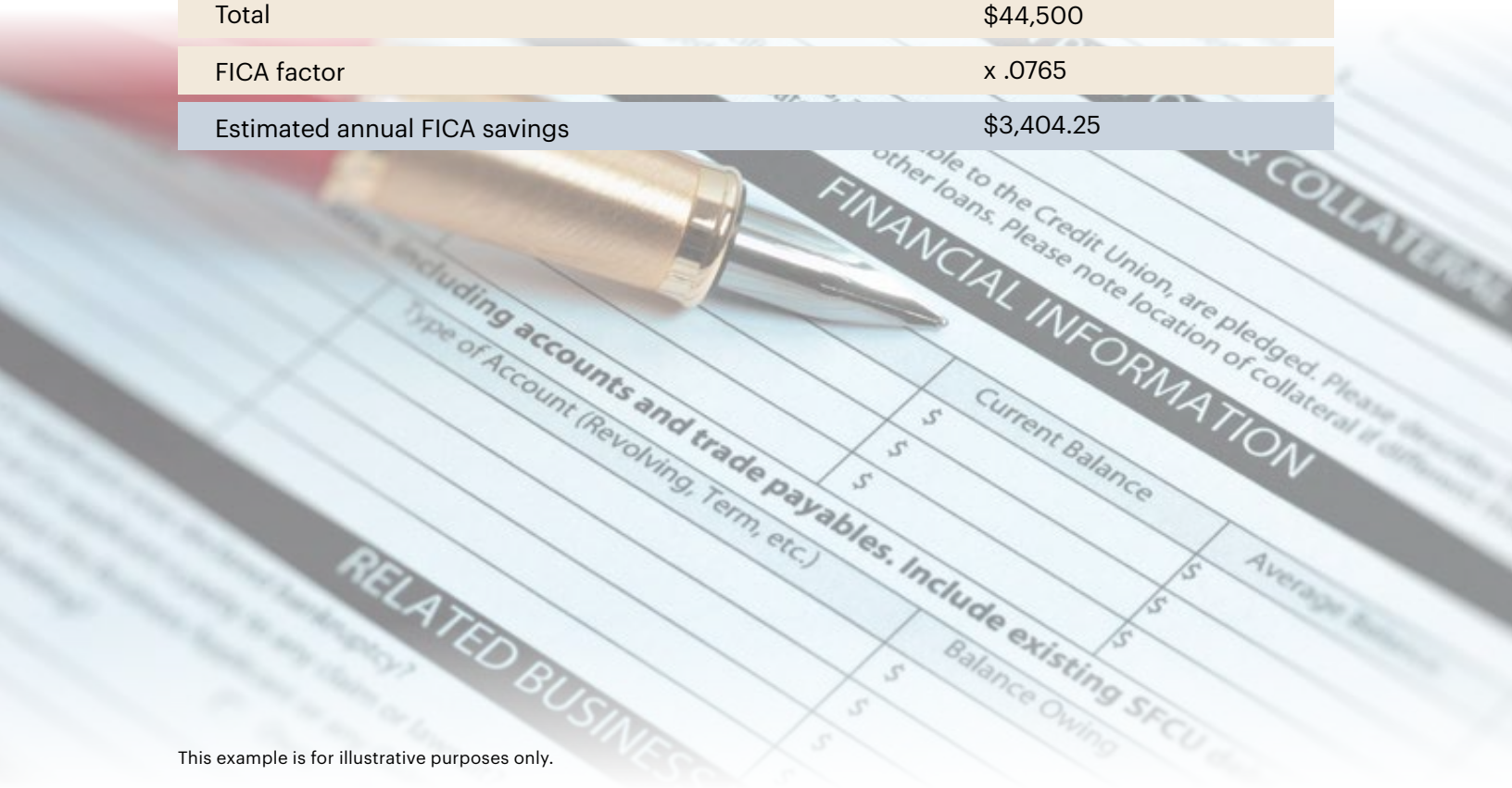
Employer	
Example shows 15 employees, each contributing $1,200 in pretax medical contributions annually.	
Pretax medical contributions	$1,200
Number of employees	x 15
Total employee contributions	$18,000
FICA factor	x .0765
Estimated annual FICA savings	$1,377

This example is for illustrative purposes only.

Flexible Spending Account

A Flexible Spending Account (FSA) provides a way for employees to pay for qualified out-of-pocket health and dependent care expenses not covered by your benefit plans. As a pretax benefit, it's also a powerful savings tool. Participants designate a portion of their salary (up to the lesser of the IRS or plan maximum) to be deducted on a pretax basis and deposited into the plan, effectively reducing their taxable income along with your Social Security (FICA) payroll tax liability. See the following example of your potential employer savings:

Employer	
The example below shows 15 employees each contributing $1,200 in pretax medical contributions, five employees each contributing $3,500 in dependent-care expenses, and nine employees each contributing $1,000 in unreimbursed medical.	
Pretax medical contributions	$1,200 x 15 = $18,000
Dependent-care contributions	$3,500 x 5 = $17,500
Unreimbursed medical expenses	$1,000 x 9 = $9,000
Total	$44,500
FICA factor	x .0765
Estimated annual FICA savings	$3,404.25



This example is for illustrative purposes only.

Rules for FSAs

The government guidelines for health FSAs may affect your benefit options. The most significant are:

Stand-alone health FSAs must be offered in conjunction with a group health insurance plan. If an employer offers a stand-alone FSA without a companion group health plan, they may be subject to a penalty.

Employers have the choice of offering their employees either 1) a rollover of unused FSA funds of up to $570 into the next plan year, or 2) the FSA grace period for unused funds for 2½ months into the next plan year.

401(k) Retirement Plans

Today, small businesses of any size can establish a 401(k) plan that is cost-effective and easy to implement and administer.

Remember, offering a retirement plan can provide the following benefits:

- Greater success in recruiting and retaining qualified employees
- Increased employee morale
- Reduced employee turnover
- Employer contributions to a qualified retirement plan are tax deductible
- Investment earnings are not currently taxed
- Employer may participate



Tax Break for Plan Startups

If you establish a new 401(k) plan, your business may be able to claim a tax credit for part of the common and necessary costs of starting the plan. The credit equals 50% of the cost to set up and administer the plan and educate employees about the plan, up to a maximum of $5,000 per year for each of the first three years of the plan.

Did You Know?

Employers can receive a tax credit of 50% of plan set-up, admin and employee education costs up to $5,000/yr. for the first three years of the plan.

Saver's Credit

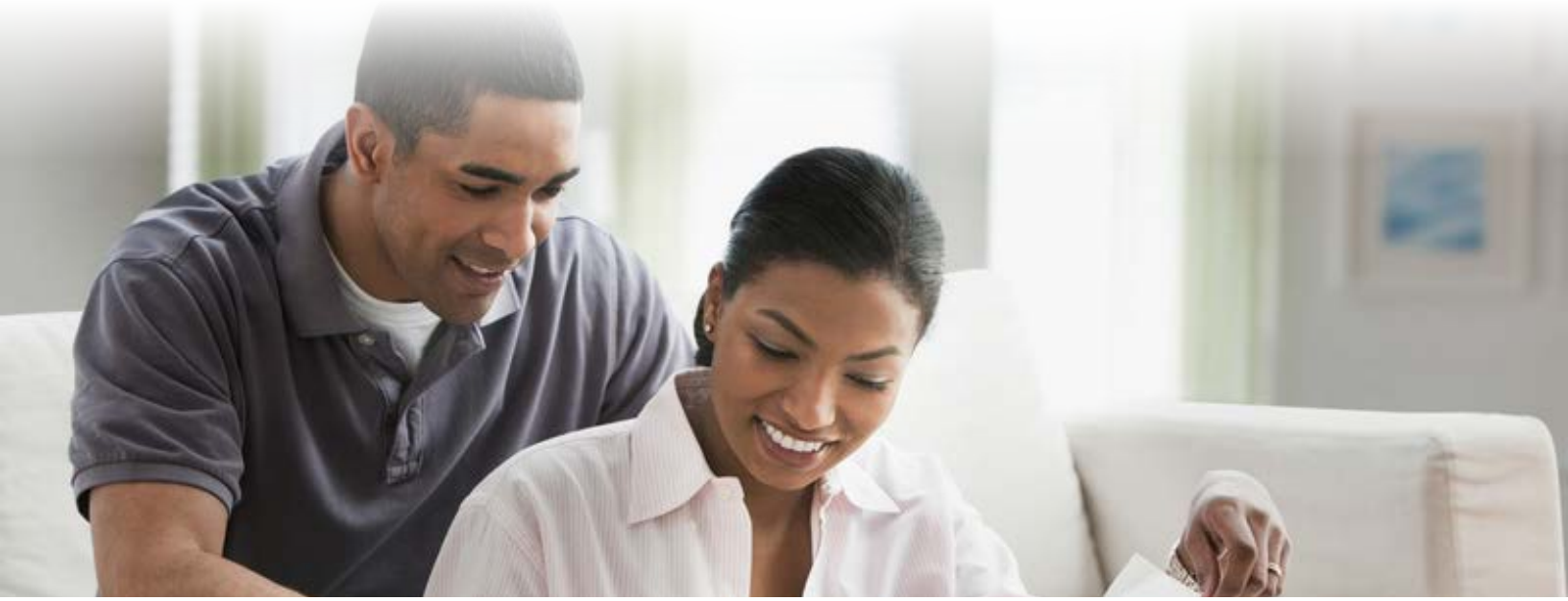
Participants may also be eligible for added savings through the "Saver's Credit" — employees should ask their tax advisor if they qualify. The credit is generally a portion of the eligible contributions made to a retirement plan or IRA and favors low-income individuals.

Participants may be able to take a Savers Credit of up to $1,000, or $2,000 if filing jointly.

To claim the credit, the participant must be age 18 or older, not have been a full-time student during the calenda year, and not claimed as a dependent on another person's return.

Professional Employer Organization (PEO)

A PEO generally assists small companies in managing their HR tasks and certain administrative services. PEOs are increasingly popular for small businesses because they may handle most of the HR administration, while offering the business owner access to a wider range of employee benefits that are usually more affordable for large-scale businesses.



The PEO remits client employers' payroll taxes and files the associated documents as needed under its own identification numbers when applicable by law. The client company continues to direct the employees' day-to-day activities, while the PEO assists with the administration of most of the human resources and payroll functions of the company.

Ultimately, a PEO can provide expertise in human resources and help employers manage increasingly complex employee-related matters, such as:

- Health benefits
- Workers compensation
- Payroll and payroll tax
- Unemployment insurance benefits



Chapter 5

How Do I Pay Employees Accurately and Handle Deposits, Returns, and Taxes?

As a business owner, paying your employees may seem like a simple process. Instead, it can be fraught with regulations and choices that can affect your cash flow.

Paying business taxes can also be challenging. Business owners may often find it exasperating and exhausting to maneuver through the rules and regulations that determine how much should be paid in taxes, and to whom.

In this chapter, you'll learn about:

- Employee vs. Independent Contractor Classification
- Paying Employees
- Employee-Paid Taxes
- Employer Tax Deposits
- Tax Returns



As an employer, you have many payroll-related obligations, including compensating your employees for all time worked. If you have not been responsible for payroll in the past, understanding how to handle the proper tax deductions, deposits, and returns can seem daunting. A general understanding of some common payroll terms may help.

Employee vs. Independent Contractor Classification

It is important to determine if individuals providing services for your business are employees or independent contractors under all applicable laws.

An "employee" is defined differently under different laws and regulations, but generally would include a worker who performs services for you where you have the right to control what will be done and how it will be done, even if the individual has been granted some freedom of action.

Generally, a business owner or contractor who provides services to other businesses and is considered self-employed. When working with an independent contractor you will usually have the right to control or direct only the result of the independent contractor's work and not how it will be done.

If you misclassify an employee as an independent contractor, you may be held responsible for paying back employment taxes for that worker as well as back pay and overtime payments.

For more information about employee classifications, refer to **Chapter 1.**

Paying Employees

The frequency at which you pay your employees is generally determined by state statute. Options may include:

- Weekly
- Bi-weekly (every two weeks – some months may have three pay periods)
- Semi-monthly (twice per month)
- Monthly

Employers can usually establish the actual pay day as long as they adhere to the applicable pay frequency law mandated by the state. Where permitted, employers may also elect to (or may be required to) pay employees using a mixed pay frequency, i.e., some employees could be paid weekly, and others paid monthly.

Compensation:

Compensation includes but is not limited to remuneration for all compensable hours worked. Workers may be compensated in cash or other form of payment where permitted under applicable law. A worker's compensation may include regular pay, overtime, vacation pay, sick pay, commissions, bonuses, and fringe benefits.

For some types of businesses, like restaurants, payrolls can be more complicated because there are several forms of compensation with varying tax treatments that can make up an employee's paycheck.

Examples of possible restaurant compensation:

- Compensation paid by the employer
- Tips and gratuities
- Banquet tips
- Service charges
- Meals
- Lodging

Taxing on Tips:

In situations where employees receive tips, all tips are taxable to the employer and employee for Social Security and federal unemployment tax until the employee's taxable compensation reaches the wage base limits for these taxes. All tips are fully taxable for Medicare and federal income tax. Generally, states and localities follow federal laws regarding the taxability of tips.

Employee-Paid Taxes

If you have employees, you may be required to withhold specific employment taxes from their pay, including:

- **Federal Income Tax –** The amount to withhold is based on IRS withholding tables, the employee's taxable compensation and marital status, number of allowances, and exemptions that the employee reports on Form W-4.
- **Social Security and Medicare (FICA) –** The Federal Insurance Contributions Act (FICA) provides a federal system for old-age, survivors, disability, and hospital insurance. Employees are required to contribute a percentage of their wages to support the financing of this system, with employers generally making matching contributions. All of these benefits are supported by the Social Security portion of FICA, with the exception of hospital benefits; this benefit is supported by the Medicare portion.
- **State and Local Income Tax –** Every employer who pays employee wages is required to withhold income taxes from each payment of taxable wages, if required by the state or local taxing agencies. Not all states have withholding tax, and many states do not have local taxing jurisdictions that affect payroll.



Some employers face particularly complicated state income tax situations. Those who conduct business operations in multiple states must meet the requirements of all the states involved. The same is true for those who have what may be called "dual-state" situations (employees living in one state and working 100% of the time in another state, or employees working in more than one state during a single pay period).

- **State Unemployment Insurance (SUI) –** SUI is primarily an employer-paid tax; however, a few states require employees to contribute to the state's unemployment compensation program as well.

Employer Tax Deposits

Employers are responsible for depositing employee-paid and employer-paid taxes on a schedule enforced by the federal, state, or local tax agency. Depending on the amount of tax liability, deposits may be due

- Quarterly
- Monthly
- Semiweekly (twice per week)
- Daily (made in specific situations)

Important

To avoid possible penalties and interest, make sure you know your federal deposit frequency and deadline for deposits.

At the end of each tax year, the IRS sends notices to all employers notifying them of their deposit frequency for the new year. The employer remains responsible for depositing federal taxes at the correct frequency even if a notice is not sent by the IRS, or if the notice was sent incorrectly. Using a payroll provider can shift some of the actual duties of depositing your taxes, but you as the business owner are ultimately responsible for paying your taxes on time. Be sure to do your homework!

Employers mandated for EFTPS (Electronic Federal Tax Payment System) must make their payments electronically, and generally file Form 941, Employer's Quarterly Federal Tax Return, quarterly to reconcile taxes calculated with taxes paid. Failure to pay taxes on time may result in a penalty being assessed by the tax agency.

State and local withholding is paid directly to the state or local agency based on a deposit schedule mandated by that tax agency.

As the employer, you may be required to pay the following taxes:

- **Social Security and Medicare (FICA) –** Along with your employees, you are required to contribute to Social Security and Medicare. You are liable for the entire tax regardless of the amount actually withheld from employees. Employers and employees are responsible for paying FICA taxes. Both parties are responsible for contributing 6.2% for social security and 1.45% for Medicare, for a total contribution of 15.3%.
- **Federal Unemployment Tax –** The Federal Unemployment Tax Act (FUTA), in conjunction with state unemployment insurance programs, provides payments to workers who lose their jobs. FUTA tax is used strictly to pay administrative costs and fund state programs as needed. The act established the employer tax that finances the federal unemployment program. An employer's liability for this tax begins January 1 of the year in which certain conditions are met.

  When you become liable, you're liable for the entire year, not from the point when one of the conditions was met. FUTA is strictly an employer tax, so no part of this tax can be deducted from employee wages. Employers mandated for EFTPS must make these payments electronically. Each covered employer must file a Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, annually to report taxable wages paid during the year and reconcile quarterly FUTA tax deposits.

- **State Unemployment Insurance (SUI) –** The SUI program pays the actual benefits to unemployed workers. Employers are responsible for paying SUI tax based on the number of employees in the business and a rate assigned by the state. All states require employers to pay SUI tax. SUI is closely tied to the federal unemployment insurance program, FUTA, which is collected from employers; however, compensation benefits are paid from the state fund. If the state fund is depleted, the state may borrow from the federal government.

  Each state has a limit on compensation that is taxable for SUI. The wage limits vary by state. Generally, each state assigns every subject employer a tax rate once a year based on their experience or merit rating.

- **State Disability –** A few states require that an employer or employee contribute to a state-mandated disability program. The primary purpose of disability taxes is to provide benefit payments to employees absent from their jobs because of illness, accident, or disease not related to their employment. Disability taxes provide the fund from which this type of insurance is paid. Plans vary by state, with employers paying the full amount in some states, and employers and workers sharing the cost in others.

When a disability plan is 100% funded by employer contributions, and an employee receives benefits from that plan, the benefits must be included as part of the employee's compensation. When the plan is 100% funded by employee money, any benefits the employee receives are tax free. In plans where both employers and employees contribute, employees are taxed only on that portion of the benefit related to employer contributions.

Tax Returns

Most state and federal agencies require employers to report using tax returns, employer, and employee wage and tax information each quarter, and Forms W-2 and W-3 each year. These returns usually include the employee's:

- Name
- Social Security number
- Gross wages paid for the quarter

This information is used to verify an employee's eligibility for state unemployment insurance and the amount of compensation benefits to be paid. Tax returns are also used to reconcile the tax deposits remitted; some tax payments can be sent when the return is filed.

Return	Function	Quarterly
Form 941: Employer's Quarterly Federal Tax Return	Reports wages and taxes for federal income tax, employee social security and Medicare tax, and employer Social Security and Medicare tax.	Quarterly deposits if over
Form 940: Employer's Annual Federal Unemployment Tax Return	Reports wages and taxes for FUTA. Although deposits are made quarterly, if over $500, the return is filed annually.	$500; annual filing
Form W-2: Wage and Tax Statement	Reports individual employee wages and taxes. One copy given to employees; another copy filed with the Social Security Administration (SSA)	Annually
Form W-3: Transmittal of Wage and Tax Statements	Summarizes information reported on Forms W-2. Filed with the SSA along with copies of Forms W-2.	Annually
SUI	Reports wages and SUI tax on state-specific form.	Quarterly
Withholding	Reports wages and taxes for state and local withholding.	Varies by agency

Chapter 6

How Do I Handle Wage Garnishments and Child Support?

You've just received a court order or IRS levy demanding that you garnish the wages of one of your employees. What do you do? A good place to start is with a general overview of the different types of garnishments and what they can mean to your employee – and your business.

In this chapter, you'll learn about:

- Types of Wage Garnishments
- Child Support
- Garnishments and Payroll



Types of Wage Garnishments

A wage garnishment is any legal or equitable procedure through which some portion of a person's earnings is required to be withheld by an employer for the payment of a debt.

Most garnishments are made by court order — an employer may receive a letter that expressly requires the company to garnish the wages of one of their employees. Employers must comply with a wage garnish request, and usually need to start garnishing wages and remitting payments to the appropriate party as soon as the order is received. Garnishments are time-sensitive, and failure to process the garnishment within the allotted time frame can lead to penalties.

Common Types of Garnishment Withholdings

- Child Support
- Court Order
- Tax Lien
- Loan Garnishments



When served on an employer, garnishments are taken from the employee as part of the payroll process. Title III of the Consumer Credit Protection Act limits the amount of an employee's earnings that may be garnished and protects an employee from being fired if pay is garnished for only one debt. The amount of pay that can be garnished is based on an employee's disposable earnings, which is the monies left after required payroll deductions are made. Title III protects employees by limiting the amount of earnings that may be garnished in one week to the lesser of two figures:

1. 25% of the employee's disposable earnings, or
2. The amount by which an employee's disposable earnings are greater than 30 times the federal minimum wage.

Did You Know?

Tips are generally not considered earnings for the purposes of the wage garnishment law.

The law protects everyone receiving personal earnings, i.e., wages, salaries, commissions, bonuses, or other income – including earnings from a pension or retirement program. Tips are generally not considered earnings for the purposes of the wage garnishment law.

Wage garnishments continue until the entire debt is paid or arrangements are made to pay off the debt. As an employer, you can be held liable for the full garnishment amount, plus other expenses such as the costs of litigation, if you do not initiate a garnishment as required.

Child Support

In the case of child support, the law allows employers to garnish up to 50%-65% of an employee's disposable income. The amount of garnished wages varies, but it's mostly dependent on whether a spouse is supporting another spouse/child. Once an employer receives a child support court order, they must notify the employee that they will be making the wage garnishment. An employee can contest the garnishment with the court.

Each state uses its own formula to calculate a child support amount, which is based on:

- Payee's income and consideration of the number of children, or combined income of both parents, with consideration of both parents' number of children.

Employers may garnish up to 50% - 65% of an employee's disposable income for child support.

In most states, a child support obligation ends when a child reaches the age of majority, which is usually 18 to 21. If a parent is obligated to pay child support until age 18, and that child support order covers multiple children receiving a lump-sum amount every month (such as $300/per month), the parent must continue to pay that amount until the youngest child reaches age 18 to 21.



Garnishments and Payroll

It is a good idea for your payroll department to have a garnishment process or checklist for setting up a garnishment.

Garnishment Checklist

For a printable version of this Garnishment Checklist

Click Here

Note: If an employee is responsible for more than one garnishment, you are responsible for ensuring the amount of the payroll deduction is within the limits established under the Consumer Credit Protection Act.

Garnishment Checklist

- ☐ Date stamp the garnishment order, so you have a record of the day of receipt.
- ☐ Verify that the garnishment order is legal and valid.
  - Does it belong to one of your employees?
  - Is it from a valid source?
  - Was it received on proper documentation?
- ☐ Check to see if the issuer needs a response. You are not obligated to send one if:
  - No response is included with the garnishment, or
  - State or federal laws do not require a response.
- ☐ Return the response, if necessary, to the issuer.
- ☐ Inform your employee of the garnishment order by the deadline, if any. Most garnishment order documentation includes:
  - A part to distribute to the employee, and
  - A deadline for distribution.
- ☐ Explain to the employee how the garnishment will be handled through payroll.
- ☐ Set up the garnishment deduction in the company payroll system.

Depending on the type of garnishment and the state jurisdiction, the payment due dates for the garnishments may vary. As a best practice, the payroll department can process the garnishment payments so that the checks are available for mailing on payday or before. If for any reason a garnishment check is issued for less than the amount stated on the garnishment order, a letter of explanation should accompany the check. Due to the complexity of processing garnishments, you may also consider contracting with an outside provider to collect and remit garnishments.

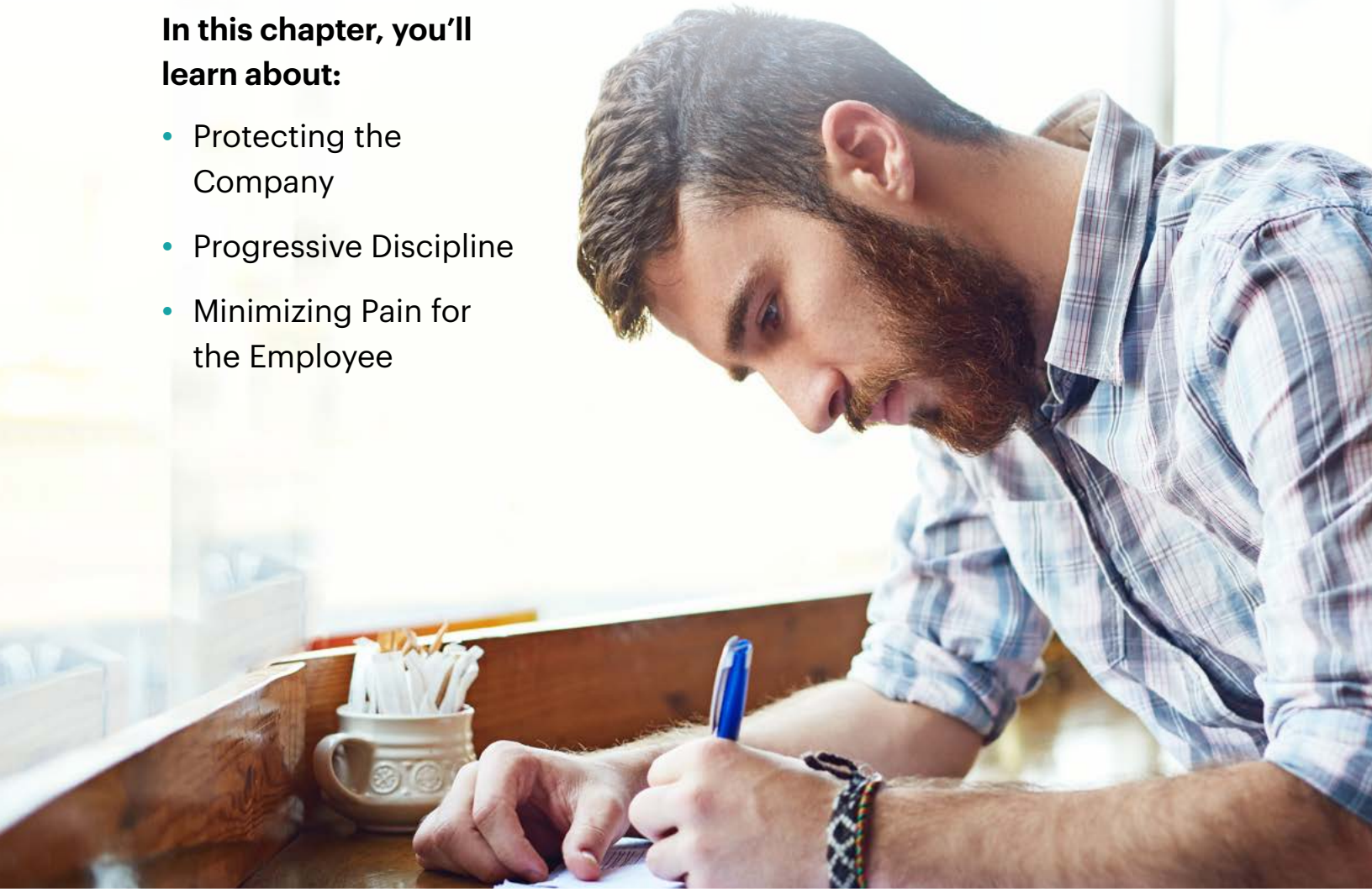
Chapter 7

What Do I Need to Know About Terminating Employment?

The termination of an individual's employment can feel like such a final act, but it's really just another part of the employee lifecycle. If a situation arises where termination is necessary, supervisors and managers should consider how to cause the least disruption to the company as well as the exiting employee.

In this chapter, you'll learn about:

- Protecting the Company
- Progressive Discipline
- Minimizing Pain for the Employee



Protecting the Company: Communicating an Employment-at-Will Employment Relationship

During the hiring process, it is generally considered a best practice to have all applicants complete a company employment application that includes employment-at-will disclaimer language, except where state law dictates otherwise. Also, the hiring process can be more successful when relying on an up-to-date job description for the position. Once hired, employees should generally be given a copy of their current written job description and a copy of the employee handbook, which should include an employment-at-will disclaimer (where applicable) and other company policies. Employers are encouraged, as a best practice, to have employees sign a form acknowledging receipt of the employee handbook, which also typically includes language regarding the employment-at-will status of the employment relationship where applicable. This acknowledgement generally asks the employee to attest to having read and understood the policies. Signed receipt pages may be retained in the employee's personnel file.

In most states, where the employment relationship is not controlled by an employment contract or collective bargaining agreement, employment is generally considered "at-will." All employers, however, are at risk for claims of discrimination and/or wrongful discharge when terminating employees.

To mitigate exposure to such claims, employers should consider whether they have a specific, job-related reason for the termination, which might include:

- Documented misconduct and violation of company policy
- Unsatisfactory performance of clearly communicated performance standards
- Organizational change/change in small business model

Progressive Discipline

Progressive discipline is an established process that employers may use to attempt to change employee behavior, in addition to citing performance issues and/or violations of company policy. Using progressive discipline involves taking disciplinary steps with employees, where the consequences may increase in severity if performance issues and/or violations continue.

The use of progressive discipline can help give the employee clear expectations and make the employee aware of the consequences if poor performance or misconduct does not improve.

Progressive discipline also helps the employer create a paper trail of documentation that can be useful should an employee file a wrongful termination or discrimination claim, or if the company wants to fight a claim for unemployment benefits.



Four Stages of Progressive Discipline:

1. **Verbal Warning**

   Typically, a first infraction or performance issue may result in a verbal warning. A verbal warning may be as simple as the supervisor bringing to the employee's attention the performance deficiency or behavioral problem and reiterating expectations. Or, the verbal warning could involve a formal meeting where the employee is counseled regarding performance or behavioral problems and given a plan for improvement.

2. **Written Warning**

   When a verbal warning fails to correct the performance or behavioral problem, or if the infraction was severe enough, employers typically issue a written warning as a next step. The written warning is a formal disciplinary measure that documents the nature of the performance or behavioral problem, prior warnings that may have been given for similar offenses, and consequences that may occur if the problem is not corrected. A written warning should be signed by both the supervisor and the employee.



3. **Final Written Warning and Suspension**

   Once an employee has received both verbal and written warnings, or if the circumstances are severe enough, you may decide to take more drastic measures if the problem still is not corrected. Final written warning and suspension may be appropriate when performance or behavioral issues continue. The employee may be given a final written notice or suspension for a specific amount of time. The final notice may indicate that termination will follow if there is another infraction.

4. **Termination**

   When all prior attempts to improve performance or correct undesirable behavior have failed, or the severity of the incident warrants immediate dismissal, termination is the final step of the progressive discipline process. Terminations may have additional legal ramifications depending on employment contracts and collective bargaining agreements, and it may be a good idea to consult with legal counsel before taking this action.



Minimizing Pain for the Employee

The way an employee is informed of the termination of their employment may impact whether he or she will sue for wrongful discharge and whether the employee would be successful in their claim. Consider the following steps: *

- **Avoid beginning the conversation with small talk** or beating around the bush. Make it clear that the employee has been terminated – tell them immediately. Make it clear that the termination decision is final and inform the employee of their last day of employment.
- **Avoid personal references or accusations** that cannot be proven. Maintain a professional demeanor. In some states, an employer is not legally required to disclose the reason for termination. To do so could potentially expose your company to litigation.
- **Have a witness present,** preferably another member of management or a representative from your human resources department.
- **Be prepared for the employee's reaction.** No matter how much an employee may suspect that it was coming, employment termination is a traumatic event. The employee may respond with anger or tears. Do not react; concentrate on listening and avoid defensive comments or counterattacks.
- **Request the return of company property**, including the employee handbook, and discuss other issues that need to be finalized.
- **Provide notification of health insurance continuation coverage** (COBRA) and certificate of creditable coverage where required. This information should be reviewed prior to the termination meeting and handled in compliance with the law during the termination meeting.
- **Maintain confidentiality.** The details of the termination should be kept confidential to the extent possible.

* This list is not all inclusive, as the action will depend on the circumstances of the separation from employment. Employers are encouraged to consult with legal counsel to review their termination procedures to help mitigate exposures to litigation.

Procedures may differ where employees are represented by a Collective Bargaining Unit and/or have signed an employment contract.

Make sure to address the issue of the employee's last paycheck. Comply with state final pay requirements and let the employee know when/how they will receive their final paycheck.

Be sure to include earned but unused paid time off where consistent with past company policy or required under state law.



Resources

Start the Conversation

We've given you a brief overview of seven important questions to consider across the employee management spectrum. And with that knowledge comes a choice: learn how to handle every eventuality across the employee lifecycle so that you can better avoid potential pitfalls and take advantage of hidden opportunities, or work with a company that can help you put that knowledge to work for you today.

Call 800-322-7292 to schedule an appointment with a Paychex HR representative. We'll discuss how Paychex can help meet your ongoing HR needs and give you the freedom to answer two important questions for yourself. "What do I like most about being a business owner?" and "How can I start doing more of that?"

Resources on Paychex WORX

Refer to the resources at Paychex WORX for detailed information on any of the seven questions covered in this book. Helping to solve your payroll and HR issues with insights, answers, and action, Paychex WORX is your source for valuable resources to help you stay informed in an ever-changing HR landscape. In addition to the seven questions, you'll find timely articles, infographics, videos, webinars, white papers and guides on topics including:

- Startup
- Payroll and taxes
- Human resources
- Employee benefits
- Business insurance
- Compliance

Resources (Cont'd)

Helpful Links

U.S. Department of Labor (DOL)

Get in-depth information on federal employment laws and regulations straight from the source.

Top 20 Requested Items

A convenient grouping of the most requested pages on the DOL website, with topics like COBRA continuation coverage and frequently asked questions.

Small Business Resource Center

A useful list of DOL enforcement agencies and contact information.

Internal Revenue Service (IRS)

Find information on how certain employee benefits plans can save you and your employees on taxes.

Health Savings Accounts and Other Tax-Favored Health Plans

Get help preparing your tax return regarding tax-advantaged health benefits.

SCORE

SCORE mentors deliver FREE, confidential, valuable advice for your business needs. Whether you are a start-up or an existing business, our mentors will help you reach customers and achieve your goals.

Paychex WORX

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About Paychex

Paychex, Inc. (NASDAQ:PAYX) is a leading provider of integrated human capital management solutions for payroll, benefits, human resources, and insurance services. By combining its innovative software-as-a-service technology and mobility platform with dedicated, personal service, Paychex empowers small- and medium-sized business owners to focus on the growth and management of their business. Backed by 50 years of industry expertise, Paychex serves more than 710,000 payroll clients as of May 31, 2021 across more than 100 locations in the U.S. and Europe, and pays one out of every 12 American private sector employees. Learn more about Paychex by visiting **www.paychex.com**, and stay connected on Twitter and LinkedIn.

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To learn about how Paychex Flex® could be the right HR tech for your business, visit: **payx.me/RightTech**.

How Paychex Can Help

Paychex has the technology, services, and experience to bring a comprehensive human capital management solution to your business. Our products address the time-consuming administrative tasks that may keep your HR department from becoming a full-time partner at the C-suite level. We invite you to review our wide range of business solutions and contact us for more information.

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