

The Top 5 HR Mistakes Small Companies Make

Presented by
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#1: Not Hiring the Right Person

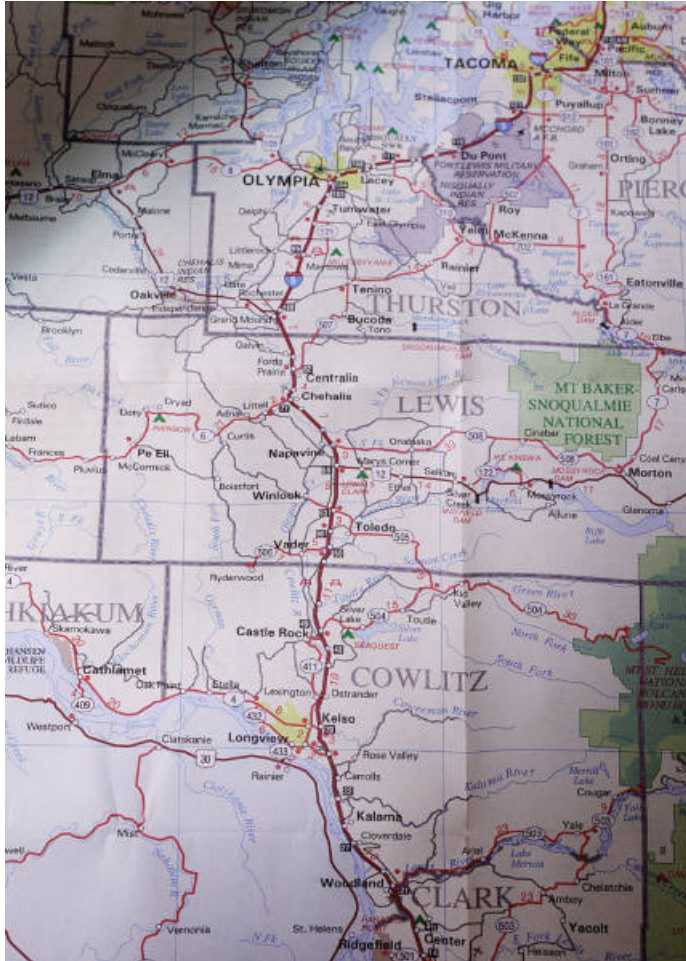
- Hiring someone just because you know them.
- Not having a clear definition of the job for which you are going to hire them.
 - Have a current job description and know what knowledge, skills and abilities are needed.
- Feeling sorry for someone. Hiring someone just to help them out.
 - Making your company a charity is not the road to prosperity.
- Not reference checking them.
 - Do a criminal check at a minimum. Avoid negligent hiring.

Hiring someone just because you know them.

- You brother, son, friend, in-law, neighbor and even spouse may not be your best employee and can often be your worst nightmare.
- If you don't get along with them in your personal life you will not get along with them in your business life.



Not having a clear definition of the job for which you are going to hire them.



- Have a current job description and know what knowledge, skills and abilities are needed.
- Match your candidates background to these KSAs
- Then decide if they are a potentially good employee.

Feeling sorry for someone. Hiring someone just to help them out.

- Making your company a charity is not the road to prosperity.
- There is nothing wrong with helping people. But consider alternatives to putting them to work in your company.



Not reference checking them

- It is easy to do a criminal background and a MVR. Just remember to check their past employment.
- If you don't check their past employment, you may be responsible for any damages.

Nuff Said!



Summary: How To Avoid Bad Hires

- Make sure you have a complete understanding of the knowledge, skills and abilities needed to be successful
- Interview everyone based upon those KSAs
- Reference check **EVERYONE** unless you know for certain the individuals background and history

#2: Ignoring Government Regulations

- There are 26 or more Federal laws/regulations that apply to companies. Only two of them deal with companies larger than 100 employees. These include:
 - Title VII of the Civil Rights Act, Pregnancy, ADEA, Sexual harassment
 - American Disabilities Act, FMLA
 - COBRA, HIPAA, ERISA
 - FLSA or the Wage and Hour laws
 - OSHA
 - Davis-Bacon and other Executive Orders controlled by the OFCCP
- They all require some sort of recordkeeping, the failure of which may lead to fines, lawsuits and even jail time.

Consequences of Ignorance

In 2010 the USDOL, the EEOC and the IRS have all announced increased investigative and compliance efforts. No longer satisfied with civil remedies they are seeking criminal charges. These charges may include:

- Increased fines
- Seizure of personal property, including vehicle and houses of officers
- Charges of felonies of conspiracy and harboring
- Charges of tax evasion
- Loss of Federal contracts
- Jail sentences

How To Avoid Problems

- Know what laws apply to you. Different laws apply to different size companies.
 - (If you leave me a business card I will send you the list of laws by company size.)
- Constantly update your knowledge. These laws are not static. They get added to or new laws get passed.
- If you can do it, have a good HR person on staff or a good consultant to call.

#3: Misclassifying Employees

- The Fair Labor Standards Act requires that employees classified as non-exempt be paid overtime.
- Solis reiterated this by saying "*If someone is stealing your wages, you can and should call the Department of Labor.... We can help, and we will help. If you work in this country, you are protected by our laws. And you can count on the U.S. Department of Labor to see to it that those protections work for you.*"

Exempt vs. Non-Exempt

- To be considered an Exempt employee:
 - Must be paid a salary of at least \$455/wk
 - Must meet the duties test for executive, administrative, professional, computer or outside sales definitions.
- Non-exempt employees must be paid for hours worked greater than 40 in a week.
 - Can be paid on a salary basis or an hourly basis.
- You cannot avoid overtime by paying someone a salary. Salary DOES NOT MEAN Exempt.
- Title means NOTHING, it is duties that are important.

Independent Contractors

Calling someone an independent contractor does not make them so.

The general rule is that an individual is an independent contractor if you, the person for whom the services are performed, have the ***right to control or direct only the result of the work and not the means and methods of accomplishing the result.*** Facts that provide evidence of the degree of control and independence fall into three categories:

- **Behavioral**: Does the company control or have the right to control what the worker does and how the worker does his or her job?
- **Financial**: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
- **Type of Relationship**: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Independent Contractors-

The ABC Test

Under statute and case law, an "employment" relationship will exist (unemployment insurance coverage is required) unless and until the employer is able to demonstrate that all three parts of the so-called "ABC Test" are met. Those tests are:

- A. Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and
- B. **Such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed;** and
- C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

#4 Documentation

- Documentation is the bane of managers and supervisors. They hate doing it and HR hates keeping track of it.
- But PROPER documentation will save you
 - money,
 - heartache and
 - time

#4: Proper Documentation

- First step in documentation is an Employee Handbook.
- Hiring requires certain documentation.
 - I-9 – Required by Immigration
 - Payroll records- Required by the FLSA
 - Tax records- Required by the IRS
- Termination requires certain documentation.
 - Records of disciplinary actions

#4: Keys to Proper Documentation

- Document as situations happen.
- Keep notes on all employees, not just a few.
- Use objective criteria.
- Support job-related observations with facts, but avoid conclusions.
- Focus on deficiencies, not causes.
- Remember that others will read your document.

#5: Not Rewarding Employees

“In a poll conducted by human-resources consultant Right Management at the end of 2009, 60% of workers said they intended to leave their jobs when the market got better.” *WSJ Online 5/25/2010*

#5: Not Rewarding Employees

Taking “advantage” of employees during a recession is bad for business. It causes turnover. Turnover is expensive. And many companies are finding that people are harder to find the second time around.

#5: Not Rewarding Employees

- Not paying people their “worth” is a short-term solution that causes turnover.
- Proper evaluation is not just about money. It is about encouraging good work behavior and results and correcting “not-so-good” behavior.
- Communicating constantly is rewarding. People like to be informed.
- Recognition and appreciation is rewarding too.

Federal Government is Stepping Up Compliance Efforts

- The USDOL has hired 250+ Wage and Hour investigators
- OSHA has hired 100+ new inspectors
- The IRS has hired more investigators to seek out contractor classification violations
- The EEOC has stepped up efforts to search out wage discrimination
- The White House has formed the National Equal Pay Enforcement Task Force and will be targeting Federal Contractors

Legislation Does Not Go Away

- We are dealing with laws that have been in existence since the 1930's.
- There are 14 or more pieces of HR related legislation (other than Healthcare) pending at this moment.
- Biggest among these are:
 - Employee Free Choice Act
 - Paycheck Fairness Act
 - Healthy Families Act
 - Paid Vacation Act
 - Patriot Corporations Act
- Once enacted we live with these. Educate yourselves and contact your legislators.

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