

HOW TO HIRE MY FIRST EMPLOYEE IN THE USA

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

Before hiring your first employee, you need to get an employment identification number (EIN) from the U.S. Internal Revenue Service. The EIN is often referred to as an Employer Tax ID or as Form SS-4. The EIN is necessary for reporting taxes and other documents to the IRS. In addition, the EIN is necessary when reporting information about your employees to state agencies. Apply for EIN online at [IRS.gov](https://www.irs.gov).

1) *According to the IRS, you must keep records of employment taxes for at least four years.* Below are three types of withholding taxes you need for your business:

- **Federal Income Tax Withholding** - Every U.S. employee must provide an employer with a signed withholding exemption certificate (Form W-4) on or before the date of employment. The employer must then submit Form W-4 to the IRS.
- **Federal Wage and Tax Statement** - Every year, employers must report to the federal government wages paid and taxes withheld for each employee. This report is filed using Form W-2, wage and tax statement. Employers must complete a W-2 form for each employee who they pay a salary, wage or other compensation. Employers must send Copy A of W-2 forms to the Social Security Administration by the last day of February to report wages and taxes of your employees for the previous calendar year. In addition, employers should send copies of W-2 forms to their employees by Jan. 31 of the year following the reporting period.
- **State Taxes** - Depending on the state where your employees are located, you may be required to withhold state income taxes. Most companies use a payroll service to handle the tax reporting and filing.

2) *Register with Your State's New Hire Reporting Program* - All employers are required to report newly hired and re-hired employees to a state directory within 20 days of their hire or rehire date in the state in which you have employees working. Many states have a centralized, online registration function which will allow the company to complete one application for all applicable taxes.

3) *Obtain Workers' Compensation Insurance* - All businesses with employees are required to carry workers' compensation insurance coverage through a commercial carrier, on a self-insured basis or through their state's Workers' Compensation Insurance

4) *Post Required Notices* - Employers are required to display certain posters in the workplace that inform employees of their rights and employer responsibilities under labor laws.

5) *File Your Taxes* - Generally, employers who pay wages subject to income tax withholding, Social Security and Medicare taxes must file IRS Form 941, Employer's Quarterly Federal Tax Return. For more information, visit [IRS.gov](https://www.irs.gov).

7) *Complying with standards for employee rights in regards to equal opportunity and fair labor standards is a requirement.* Following statutes and regulations for minimum wage, overtime, required benefits and child labor will help you avoid error and a lawsuit. See the Department of Labor's Employment Law Guide for up-to-date information on these statutes and regulations. Also, visit the websites for Equal Employment Opportunity Commission and Fair Labor Standards Act (FLSA).

8) *A job description should be created for the employee.* Each new title should have a separate job description. This job description should include duties/tasks of the position, education and/or experience requirements, FLSA Status - exempt or non-exempt, hours required, skills required, physical activities required. Job description

should be signed off on by employee. As their title changes, a new job description should be signed for the new title.

9) A "Policy and Procedures Manual" or "Employee Handbook" should be established. This will cover many topics such as the companies Mission Statement and Code of Ethics as well as required notices such as EEO Notice, FLSA Notice, FMLA Notice, CHIP Notice etc. It will also explain subjects such as office hours, compensation and payroll procedures, health insurance and benefits, safety policies and procedures, leave and attendance policy and benefits (sick time vacation time holidays etc.), Anti-Harassment Policy, Smoking Policy, Dress Code, Computer and Information Technology Policy, Drug-Free Workplace Policy etc. Employees should sign off on a form stating that 1) they received a handbook or 2) they understand that the handbook is available to them on line or through company intranet.

10) If company is granted Federal Government Contracts then new employee must be entered in the USCIS website "E-Verify" (www.uscis.gov). To confirm legal employment status of employee.

DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

The Employment Contract can be broken down in two (2) parts 1) The employment letter and 2) The Employment Agreement. The employment letter should outline specifically the position title, salary, bonuses, (relocation bonus, sign-on bonus etc.), leave benefits, start date, office location, required work hours, prerequisites to hire such as successful completion of drug testing and/or background check, date orientation will take place, instructions on what to do with new hire forms etc.

The Employment Agreement will cover specific information that helps the employer if there is ever an employee disagreement. Employee salary and start date are noted in the Employment Agreement. If applicable, these are topics that can be covered in the Agreement - professional standards, post employment non-complete/solicitation requirements, confidentiality agreements, employment mediation procedures, payback clauses etc. Both the employment letter and the employment agreement should be signed by the employer and employee.

CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

The IRS has published the 20 factors that its auditors use as guidelines in resolving the employee-or-contractor/consultant issue. In short, it depends on the type of work they are doing and the length of time. If they have their own office and supplies and you are just using them as a "Consultant" then I would suggest setting up a "Consultant Agreement" with them. This is similar to the "Employment Agreement" but describes topics such as - Scope of Services, Time frame/Date the Agreement is good through, location of services, terms and conditions of payment, confidentiality agreement, tax provision stating that they are responsible for all federal, state and local taxes. It should also note who the contact is within the company that is responsible for the assigned work and time frame for final product. This agreement should be signed by both the employee and employer.

If it is determined that the position is truly a consulting/contractor position, an IRS Form 1099-Misc. will need to be filled out by the employer. This form reports income to the consultant of more than \$600 in one year. The consultant will then use this to file their yearly taxes. The consultant is responsible for all federal, state and local taxes on their income. The consultant should provide Form W-9 (Tax Payer Identification Number Certification) to the employer.