

19.16: Federal Laws and Small Business

Learning Objectives

- Summarize the federal laws relevant to small business



There are very strict definitions of small businesses, usually based on number of employees or average annual receipts. For instance, in the United States an electronics computer manufacturing company can't have more than 1,250 employees and still be considered a small business. A used car dealer must have annual receipts totaling less than \$27 million. A commercial bank, though, is measured by assets, and can't have more than \$600 million, or the US government doesn't consider it a small business.^[1]

The federal government has these restrictions in place to ensure that those who own small businesses can receive the protections and benefits that the government affords them. So it should come as no surprise that there are a few federal laws to abide by and a few federal forms to fill out in order to qualify as a small business.

Where employment is concerned, it is up to the HR professional to stay on top of these rules and regulations. When hiring and managing employees for a small business, here are some of the items you'll need to address.

Federal Employment Laws and Regulations

Federal employment laws protect employees, and these laws apply to businesses of all sizes – including small ones. Let's quickly review some of the more important federal labor laws related to bringing employees into a small business.

- **The Fair Labor Standards Act.** As we learned in an earlier module, the Fair Labor Standards Act (FLSA) sets minimum wage, overtime, and minimum age requirements for employees. It also defines an employee as “exempt” (salaried) or “non-exempt” (hourly). As a refresher, the small business owner will need to pay attention to some of these FLSA details:
- **Definition of a full-time employee.** By federal law, an employee is considered full-time when he or she works thirty hours or more a week, or 130 hours or more a month.
- **Meals and breaks.** Federal law does not require business owners to pay employees for their lunch hours, or any “break” over 20 minutes. The small business owner does need to pay his or her employees for a break that last 20 minutes or less.
- **Child labor laws.** Federal law prohibits children under the age of 14 from working with few exceptions, among them delivering newspapers, or working as actors or performers. Children aged 14 and 15 can work limited hours, and children aged 16 or 17 may work, but cannot be employed in industries considered “hazardous.” The legal working age is 18.
- **Equal Employment Opportunity (EEO) laws.** Title VII of the Civil Rights Act of 1964 prevents an employer from discriminating against an employee or prospective employee because of their race/color, national origin, sex, or religion. Title VII was amended to include sexual discrimination and harassment. Other discrimination laws protect employees against age, pregnancy and disability discrimination.
- **The Family Medical Leave Act.** The Family Medical Leave Act allows employees to opt for extra time off from work to address medical issues. This can include one's own medical treatment, the assistance of a family member with a medical issue, or even the birth of a child. Small businesses with more than 50 employees must make FMLA available to their workers
- **Affordable Care Act.** The Affordable Care Act is a federal law that requires any business with more than 50 employees to either provide healthcare coverage for their workers or pay a penalty for not doing so. Small businesses with more than 250 employees need to file their ACA information electronically.
- **COBRA.** COBRA, which stands for the Consolidated Omnibus Budget Reconciliation Act, allows employees to continue benefits coverage their employers offered as an out-of-pocket expense, should they quit or lose their jobs. Small businesses must comply with COBRA if they offer health insurance, if they have 20 or more employees.

- **Occupational Safety and Health Act.** As we learned in an earlier module, workplaces are required to provide a safe, healthy environment for their employees to conduct business. These laws apply to businesses of all sizes, but organizations with more than 10 employees need to furnish safety and incident reports.
- **Worker Adjustment and Retraining Notification Act.** WARN requires an employer to give 60 days' notice to employees if the business is closing its doors. Small businesses with a hundred employees or more must comply with this regulation.

This is not an all-inclusive list of laws and regulations as they relate to small business employment, but it's certainly a great start.

? PRACTICE QUESTION

<https://assessments.lumenlearning.co...essments/18253>

Employee Identification Number

Now, if you are employed by a small business as an HR professional, the small business owner might have already filed for an Employee Identification Number. Anyone who has filed a corporation, partnership or limited liability company is required to have one, and even if the small business owner is a sole proprietor, one may be needed. The IRS offers an [EIN questionnaire](#) for any small business owner who isn't sure whether one is needed.

EINs provide benefits beyond acting as the tax code for your business in all payroll dealings, etc. EINs provide identity safety for small business owners that are hesitant to use their social security numbers and make the path to business bank accounts, business loans, and business credit a little easier.

It should also be noted that sole proprietors who file as corporations need to file for a new EIN.

Employment Paperwork



I-9 Forms

Is the employee you're hiring legally able to work in the United States? The I-9 Form confirms that information for the U.S. government, by requiring employees to provide the necessary identification to prove citizenship or work eligibility. Employers must check documentation for every new employee they bring on board and complete the I-9 form within an employee's first three days with the company.

Employers who fail to provide the government with the I-9 verification can face civil liability, and courts have ruled that competing businesses can sue employers who employ illegal aliens. It's a good idea, when collecting this information, to keep copies of the identification the employee provides, and if work eligibility is temporary, plans to recheck eligibility should be made.

W4 Forms

If an employer is withholding taxes on behalf of the new employee, a W4 form will be required. The W4 form includes information about marital status, number of dependents, and any additional taxes the employee may want to have withheld. This information is then used to calculate withholding amounts for the employee.

Employees can make changes to these withholdings based on their changing preferences. It's important to understand that employers should not give advice on how the employee fills out the tax withholding form to avoid any liability.

W2 Forms

W2 forms are issued to employees at year end, completed with the amounts of money withheld on each employee. How much in federal, state, and city taxes have been withheld, a record of money contributed to a 401(k) program, Medicaid payments and more are included in this form. The employee will use this to file his or her year-end taxes.

Job Applications

Job applications should be on file for every employee a small business brings into its company. Job applications usually provide a statement asking the employee to verify that all information provided is true and correct, and another portion of the job application normally states that the employer has the right to conduct background checks on that employee.

Any small business that relies on the special skills of an employee to do their business – for instance, if the business provides plumbing services – the job application allows the employer to confirm that the employee is licensed to do his or her job.

Other Employment Tasks

The checklist doesn't stop at forms and filings when it comes to bringing employees into a small business. Some other items to keep in mind:

- **Register with state employment agencies.** We could spend a whole lot of time going state by state, talking about the requirements for bringing employees onboard in your small business. State hiring systems do everything from helping the employer withhold state income tax, to making sure that employees are up to date on their child support and alimony payments. Unemployment tax and workers compensation is also done through the state, and a small business may need to pay into these funds to cover their workers in case of an accident or layoff.
- **Required workplace posters.** The federal government requires that businesses post information in public areas that employees can reference about their rights as employees. Those federal laws we discussed above should be at the fingertips of your employees, and it's required that businesses hang posters for their employees' reference. Any small business with more than 50 employees is required to post a Family and Medical Leave Act poster (FMLA), and an Occupational Safety and Health Act poster and a Fair Labor Act poster is required for all employers. These and other required posters can be ordered from the U.S. Department of Labor.

? Learn More: California State Laws

The HR professional at a small business has a big job to do, keeping the small business compliant with state and federal laws. But some states, like the state of California, go a little bit further to protect the interest of employees. Let's take a look at what the state of California requires, over and above that which the federal government mandates.

Here are some of the additional protections and regulations California provides its workforce over and above the stipulations of federal labor laws:

- **Four-Hour Minimum Shift.** Federal law does not have any minimum requirements for work shifts, but California labor laws requires that employees who usually work an eight-hour shift be paid for a minimum of four hours if they're sent home early, or if they have to check in daily to see if they've been scheduled for work.
- **Overtime Law.** Federal law requires that employees be paid 1.5 times their hourly rate if more than 40 hours are worked in a single week, and that overtime can be accrued for a shift that lasts up to 24 hours. In California, non-exempt (hourly) employees are entitled to 1.5 times their hourly rate if they work over an eight-hour day, and twice their hourly rate if they work over a twelve-hour day.
- **Minimum Wage.** As of September 2019, California's minimum wage is \$12 per hour, with some local areas exceeding this. Federal minimum wage is \$7.25 per hour.
- **Meals and Rest Breaks.** Employers can be penalized for not giving their employees breaks at the appropriate times, while federal law has no specific requirements around meals and breaks.
- **Vacation Pay.** If an employer offers paid time off (PTO), California law dictates that the PTO for that employee never expires and can be cashed out when employment is terminated, either voluntarily or involuntarily.
- **Layoffs.** The California WARN Act states that if an employer lays off more than 50 workers in a one-month period, closes a business or relocates, they are required to give their employees 60 days' advance notice or two months of pay and benefits. Federal law requires small businesses to do this if they have a hundred or more employees.
- **Final Paycheck Law.** California requires that a worker be paid his final paycheck the same day if he is fired. If the employee quits, the final paycheck must be issued within 72 hours of the employee's departure.
- **Off-the-clock work.** In California, there is no such thing as "off-the-clock" work. If you are forced to work off the clock or if your employer knows you're doing work off the clock, you're entitled to be paid for that work.
- **Paystub law.** Workers in the state of California are to be given a paystub with their paycheck, and failure to do so could result in a \$4,000 penalty under California labor code.

Remember that every state will have different laws and protections, so it's essential to know the laws of the state you live in.. California labor laws are generally more “pro-employee” than federal labor laws and are in fact some of the most pro-employee laws in the United States. This doesn't mean that other states don't put some specific laws in place to protect their workforce, and HR professionals should be aware of all the labor laws for every state in which the small business is hiring.

Other Sources

Fleischer, Charles H. *HR for Small Business: an Essential Guide for Managers, Human Resources Professionals, and Small Business Owners*. Naperville, IL: Sphinx Pub., 2009.

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1. "[Table of Size Standards](#)." Small Business Association. ↵

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