



RESPOND → PLAN → RETURN STRONGER

Small Business HR Compliance

PRESENTED BY

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Overview

1. Independent contractors vs. employees –
How to avoid a costly misclassification mistakes
2. Exempt or Nonexempt employees
3. Arizona's Prop. 206: Fair Wages and Healthy Families Act
4. Posters: Federal and State
5. Recruiting: Job Ads, Applications, Interview Questions
6. Questions

Independent Contractor vs. Employees

**Independent contractor status is defined by law,
not by the parties' agreement.**



Independent Contractor OR Employee

Who is working for me?

- Regular employees
- Temporary employees
- Agency employees
- Independent contractor

Independent Contractor OR Employee

Why hire as Independent Contractor?

Ask yourself: Am I hiring Independent Contractors because:

1. My situation calls for Independent Contractors.
2. I do not want to pay taxes, worker's comp., unemployment insurance, and withholding.

Independent Contractor OR Employee

Before I hire as Independent Contractor

- Level of control
- Supervision
- Skills required for the job
- Who provides the tools and equipment
- Project or ongoing work
- Method of payment
(e.g., hourly vs. by the job.)

Independent Contractor OR Employee

Before I hire as Independent Contractor

- Holds an independent business license.
- Has the ability to hire others / subcontract.
- Where is the work performed?
- Sets own work hours.
- Ongoing work or Project work?

Independent Contractor OR Employee

ABC - TEST

California's ABC Test: – If all 3 conditions can be met then the hire qualifies as Independent Contractor:

- A. The worker is free from the control and direction of the hiring entity in connection with the performance of the work, and in fact;
- B. The worker performs work that is outside the usual course of the hiring entity's business; and
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Independent Contractor OR Employee

Consequences for Misclassification

- Liability for unpaid wages, minimum wage, overtime, failure to keep accurate records.
- Unpaid tax liability, worker's compensation liability.
- Plus, penalties & interest.

Exempt (Salaried) or Non-Exempt (Hourly)

The Department of Labor (DOL) provides guidelines on which employees can be classified as Exempt.

Employees are either exempt or non-exempt from overtime for hours worked over 40-hours in any work week.

Exempt or Non-Exempt

Exempt Employees must meet 2 requirements prescribed by the Department of Labor in order to be able to claim Exempt status.

Exempt
Requirements

Exempt or Non-Exempt

Exempt Requirements

1. Must meet a minimum salary threshold.

Current salary threshold effective 1/1/2020

\$684/week (\$35,568 annually)

The DOL's rule also allows employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10 percent of the standard salary level, in recognition of evolving pay practices.

Exempt or Non-Exempt

2. Must meet a Duties Test

Based on specific described duties by the DOL for certain categories of employees.

Exempt
Requirements

Exempt or Non-Exempt

DOL Exemptions

Most common exemption categories:

- Executive
- Administrative
- Professional
- Outside Sales
- Computer Employees

Fair Wages and Healthy Families Act (Prop 206)

Effective 1/1/2017

Affects all employers, regardless of size and all employees.

- * Sets AZ Minimum Wage
- * Mandates Paid Sick Leave

Fair Wages and Healthy Families Act

AZ Minimum Wage

Current AZ minimum wage: \$12:15 / hour

Increases each January 1 based on a cost-of-living calculation.

Flagstaff min wage \$15 / hour

Exemptions to min wage:

1. Tipped Workers \$9.60/hour
must be a min of \$12.15/hour with tips
2. AZ High School & College Students \$10.33
working part/time no more than 20 hrs/week
3. AZ under 20 \$4.25/hour
training for up to the 90 days from hire

Fair Wages and Healthy Families Act

Paid Sick Leave Record Keeping

It is not enough to grant sick leave.

Strict record keeping rules apply:

1. Employee's rights poster **MUST** be posted in English and Spanish.
2. Payroll records showing earned paid sick time paid for four years
3. Employee's pay stub/check or separate document must show (a) earned (b) taken (c) available sick time.

Fair Wages and Healthy Families Act

Paid Sick Leave
Administration

Employers must:

1. Accrue sick leave
1 hour for every 30-hours worked

Or

2. Grant / Front Load Sick Leave

Starting day 1 of employment.

Fair Wages and Healthy Families Act

Paid Sick Leave
Administration

Employers may:

1. Cap Sick time as follows:

Employers with fewer than 15 employees
up your 24-hours per year

Employers with 15 or more worked
up to 40 hours a year.

Fair Wages and Healthy Families Act

Paid Sick Leave
Administration

- Exempt employees are assumed to work 40 hours per week for purposes of paid sick leave accrual (unless their normal work week is less than 40 hours).
- Part-time, temporary, and seasonal workers are considered “employees” under Prop. 206

Fair Wages and Healthy Families Act

Paid Sick Leave usage

Reasons employees may use paid sick leave

- Employee's own physical or mental illness
- Care for the employee's family member who has a physical or mental illness
- Public health emergency
- To ameliorate the effects of domestic violence, sexual violence, or stalking of the employee or employee's family member
- Other circumstances

**Note "family member" is defined broadly: – A.R.S. § 23-371(H)(5):
Any other individual related by blood or affinity whose close
association with the employee is the equivalent of a family
relationship**

Fair Wages and Healthy Families Act

Paid Sick Leave usage

Unused accrued sick time rolls over to the following year HOWEVER, employer may cap usage of sick time to maximum accrual (24 or 40 hours per year, based on employer size).

NO PAYOUT of unused sick time is required.

Must reinstate unused sick time if re-hire within 9-months from termination.

Fair Wages and Healthy Families Act

Paid Sick Leave usage

**Employers may not ask for proof of illness
UNLESS
Sick time is 3 or more consecutive days.**

- Employers cannot count the use of paid sick leave as an absence that leads to discipline or termination.
- Employers cannot retaliate against employees for using or seeking to use paid sick leave
- Employers may not ask what specific illness caused the absence.

Fair Wages and Healthy Families Act

Paid Sick Leave

Employers do not have to implement a separate Sick Time Policy

IF

There is already a time off policy, e.g., PTO that meets the minimum requirement of Prop 206.

(24-hours / 40-hours based on employer size)

Mandatory Federal and AZ State Posters

Do you regularly update your employment law posters?

Not displaying posters or having outdated posters may cost you!

Mandated Federal Postings

- Minimum Wage (FLSA)
- Job Safety and Health "It's the Law!" (OSHA 3165)
- Employee Polygraph Protection Act (EPPA)
- Equal Employment Opportunity Is The Law (EEO)
- Family and Medical Leave Act (FMLA) –(if 50 or more employees)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)

Mandated Arizona State Postings

- Minimum Wage
- Earned Paid Sick Leave
- Notice to Employees: You are Covered by Unemployment Insurance
- Arizona Law Prohibits Discrimination in Employment
- (Workers' Compensation
- ADOSH – Employee Safety and Health Protection
- Work Exposure to Bodily Fluids
- Work Exposure to MRSA
- Constructive Discharge

Mandated Postings

NOTE:

Many of these postings require both English and Spanish versions

Posters need to be displayed in an area the employees frequent often.

How do you comply with remote employees?

Recruiting: Job Ads, Applications, Interview Questions

Would your employment practices pass the discrimination test?

Recruiting

Job Ads

Things to consider to avoid unintended discriminatory practices:

- **Does the place / venue you advertise your jobs exclude candidates who would qualify for your job? Based on age, ethnicity, gender?**
- **Do the words you use to advertise your job show unintended discrimination?**

Recruiting

Job Ads

Employers should not include any reference to: gender, marital/parental status, unemployment status, race, ethnicity, age, non-job-related disability, national origin or religion in job advertisements.

The U.S. Equal Employment Opportunity Commission (EEOC) is the federal agency charged with enforcing laws prohibiting job discrimination.

Recruiting

Do you ask candidates to fill out a job application?

Does your job application ask for:

Social Security Number

Date of Birth

Driver's License Number

Year Graduated

Education completed – Year

There may be unintended hidden discrimination hiding in your job application.

Job Applications

Recruiting

Interview Questions

What should you ask a candidate?

1. Describe the work environment in which you will most effectively be able to contribute.
2. Tell me about your greatest achievement at work.
3. What are the three most important attributes or skills that you believe you would bring to our company if we hired you?
4. Why did you choose to apply for this job?
5. Any skills related questions.
6. Questions that clarify answers listed on the Application.

Recruiting

Interview Questions

Never ask a candidate:

1. **Where were you born?**
2. **Are you married / Do you have children?**
3. **Do you observe Easter (or other holiday).**
4. **Are you pregnant or planning to have children?**
5. **What is your partner's name?**
6. **Do you need any work accommodations?**

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