

Your Complete Guide To Staying Compliant When Hiring Employees



JUSTWORKS.

Congratulations are in order — you're ready to hire an employee!

Hiring an employee is an important milestone that speaks well to your company's trajectory. A plethora of positives come with hiring. From your perspective, you're growing your business. You'll be able to do more work more efficiently, improving your company's productivity and relieving you of a few of the many hats you've been wearing. With a new employee, you'll have more time to focus on your core strengths. You're also creating a job, giving the local economy a boost.



But hiring is not without its perils. If you lack the requisite knowledge, you could end up with serious headaches down the road. Hiring new people is a complex process that demands compliance with a long list of laws and regulations, such as discrimination laws, tax withholdings, and background check restrictions.

You can see how hiring might get messy without the right help, and that's where our guide comes in. We'll walk you through the labyrinth of hiring compliance, point out common mistakes, and show you how to avoid them.

What Not To Ask in an Interview

Believe it or not, your responsibility begins before you've even hired someone. The interviewing process is often ground zero for employment law violations. Inappropriate interview questions can run afoul of discrimination laws, potentially resulting in a lawsuit. Here are a few thorny topics that might come up during an interview and tips for handling them legally.

1 Age



What NOT to ask:

How old are you? How long have you been working?



What to ask:

How long have you been working in this industry?

Age discrimination laws cover all applicants and employees 40 and older. Unless you have to confirm a minimum age for employment purposes, don't ask about age or even high school and college graduation dates.

2 Pregnancy



What NOT to ask:

Are you pregnant? Do you plan on getting pregnant in the future?



What to ask:

What are your long-term career goals? Is there anything you foresee interfering with regular attendance or your ability to work overtime?

Asking questions about pregnancy, children, or maternity leave violates gender discrimination laws. Just don't bring it up.

3 Race, Ethnicity, National Origin



What NOT to ask:

Are you a United States citizen? What is your native language? What is your birthplace or national origin?



What to ask:

Are you authorized to work in the U.S.? What languages do you speak, read, and write fluently?

Don't ask questions or make comments about race, ethnicity, or national origin.

4 Religion



What NOT to ask:

What religious holidays do you observe?



What to ask:

Are you able to work our required schedule?

Also, avoid asking about affiliations with organizations such as clubs, unions, and social groups. Professional associations are fair game.

5

Drug Use and Criminal History



What NOT to ask:

Have you ever used illegal drugs? Have you ever been arrested?



What to ask:

Do you currently use illegal drugs? Have you ever been convicted of a crime?

You can run into trouble with the Equal Employment Opportunity Commission if you make decisions based on an applicant's criminal history that result in discrimination against members of certain ethnicities or races.

Initial Precautions: Drug Testing and an Offer Letter

Once you have a candidate in mind, there are a few more tasks to complete before hiring. First, drug testing prospective employees is always a good idea. Employees under the influence file worker's compensation claims at much higher rates. Remember to follow state and federal laws when obtaining consent.

While it might seem like superfluous paperwork, an initial offer letter is one of the smartest precautions you can take. A clear offer letter puts the employee and employer on the same page, which helps forestall wrongful termination suits. Here's what to include:

- 1 Title and position
- 2 Starting salary or hourly wage
- 3 Expected start date
- 4 Any benefits the employee will be entitled to
- 5 Statement that the employment is at will, followed by a clear explanation of what that means and how the at-will relationship can be altered in the future
- 6 While this is optional, you might want to include any non-compete and nondisclosure agreement expectations. For example, will your employees be free to work for competitors in the near future or start their own companies and hire away your employees?

How to Stay on the IRS' Good Side

With any new hire comes a slew of tax paperwork. First, you'll need an employer identification number (EIN). You'll use this number on tax forms and other paperwork for the IRS.

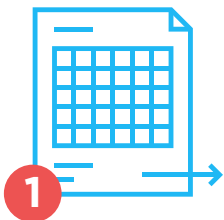


Next, you'll have to verify the employee's eligibility to work in the U.S. and complete an I-9 form. Do this within three days of hiring. You don't have to submit this form to the government, but you need to keep it on file for three years after the hire or one year after termination, whichever is later. If you don't complete an I-9 properly, you could get slapped with hefty fines, so be sure to read up on I-9 compliance.

Finally, you'll need to set up records for withholding taxes. On or before your employee's first day, get a signed withholding exemption certificate, known as a W-4, and submit it to the IRS. Visit your state's tax site to find out if you're also required to withhold state taxes. Every year, you'll need to file a W-2 detailing your employee's withheld wages and taxes, as well as IRS form 941 for employers.

Registering With and Reporting to the State

At the state level, you have two tasks ahead of you:



Report your new hire to the appropriate state agency for child support tracking purposes.



Register with your state's department of labor (DOL) in order to facilitate payment into the unemployment compensation fund.

The compliance rules are a bit more complicated when hiring remote workers. A remote worker is considered an employee of his or her state, not your company's home state. This means you'll have to deal with the department of labor, I-9 forms, and payroll taxes of that state.

Purchasing Worker's Compensation Insurance

Every business that has employees must carry worker's compensation insurance through a commercial carrier or be self-insured through a state program. Worker's compensation insurance protects your company if an employee suffers a job-related illness or injury. A worker's comp policy will pay the employee benefits, thus reducing costly injury-related litigation. Most major carriers offer worker's comp policies. Depending on your state's laws, you may also have the option of participating in a state-sponsored insurance program or offering proof of self-insurance.

Posting Required Notices

Federal law requires some employers to post certain posters in the workplace that inform your employees of their rights and responsibilities under employment laws. The poster that nearly all employers must display is the Fair Labor Standards Act (FLSA) minimum wage poster. Depending on your company's characteristics, you may also have to post additional notices, such as the Occupational Safety and Health Administration (OSHA) poster. The DOL website has a Poster Adviser to help you figure out what you need to display.

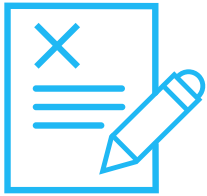
3 Common Hiring Mistakes, and How to Avoid Them

You can't take compliance with employment laws seriously enough. If you're audited and found noncompliant, the associated costs may be too much for your business to absorb. To ensure that doesn't happen to you, we've compiled a list of the most common mistakes employers make when hiring employees.



Conducting overly broad background checks

On one hand, not performing a background check can result in an action against you for negligent hiring if your employee then commits a tort of some kind (e.g., assault). On the other hand, an overly broad background check can cause trouble too. If you perform a background check, get consent, restrict it to job-related information, and keep the results confidential.



Improperly filing new-hire paperwork

Remember that you only have a few days after hiring to file certain paperwork with the IRS. Make sure you complete the W-4 and I-9 properly. Even if you're certain your employee is authorized to work in the U.S., you could face fines for not completing the I-9 form correctly. Also, be sure to start a personnel file for each new hire. Document performance reviews, policy violations, and reasons for performance-based termination, if applicable.



Having an insufficient employee handbook

The employee handbook makes clear what you expect from your employees and what they can expect from you. Explicitly enumerating company policies can help you if lawsuits or claims arise down the road. For example, an employee can't make a worker's comp claim for an injury that resulted from a violation of company policy.

Hiring a new employee is good news for the future of your business, but it also comes with a host of compliance issues. We've hit the major compliance roadblocks you might encounter in hiring your first employee and covered common mistakes to avoid. It's a lot of information, so to help you put it all together, here's a simple new-hire checklist to guide you. **Congratulations and best of luck as an employer!**

New-Hire Checklist

1 Before Recruiting

- Write a clear job description that enumerates all the essential functions of the job. Remember, you can't ask applicants if they have a disability that prevents them from doing the job. You can, however, ask them if they can perform all the essential functions as outlined in the description.
- Obtain an employer ID number (EIN) for tax purposes. You can apply online, by fax, or via mail.
- Write an employee handbook. You'll improve retention by making your company standards clear.

2 Interviews and Background Checks

- Write down your interview questions and stick to them. Be consistent from applicant to applicant in what you ask. Avoid questions about race, gender, disability, ethnic origin, citizenship, age, and religion.
- Get written consent for any background checks you perform.
- Drug test prospective employees with their consent.

3 Offer and Hiring

- Send an offer letter that states the job title, salary, starting date, benefits, and describes at-will employment status.
- Complete the I-9 form within three days of hire.
- Get a signed W-4 form from your employee on or before the first day of work.
- At the state level, register with the department of labor and the new-hire reporting agency.
- Purchase worker's compensation insurance.
- Post required notices.

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Everything you need to take care of your team.



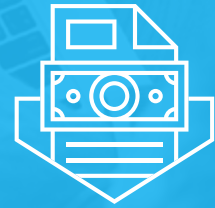
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