

**Holloway Human Resource
Management Consulting**
Workforce Excellence... Simplified

9.5 COMMON EMPLOYMENT-RELATED MISTAKES
And how to avoid them

*When it comes to employment-related lawsuits, employees win over half of them. Below are common mistakes employers can make when dealing with their employees –
– and some tips on how to avoid them.*

1. **An outdated or no employee handbook.** By having an up to date employee handbook an employer is able to clearly define the policies, procedures and expectations for employees. Administering workplace practices consistently helps reduce allegations of unfair treatment. Also, oftentimes handbooks give away too much authority. For example, handbooks often use stepped discipline or require "cause" in order to terminate an employee. An employee handbook should reinforce and not reduce the "employment at will" rules of the workplace. Employees want to know what your work rules are, so tell them! As the laws and your policies change, your handbook needs to reflect those changes.
2. **Asking the wrong questions during an employment interview.** When hiring, employers can inadvertently create potential legal problems by asking the wrong questions. Anyone interviewing applicants should have a refresher course about which questions are legally appropriate and which are not, and then develop a list of behavioral based questions to assess each candidate's suitability and qualifications for the position. Avoid any questions relating to age, arrest record, marital status, race, national origin, religion, disability, and pregnancy. **Rule of Thumb:** If it's not related to the work or the job, don't ask.
3. **No job descriptions.** The Americans with Disabilities Act (ADA) has made it nearly mandatory to have appropriately written job descriptions. This should be the very first step in a proper hiring process. Job descriptions should detail the essential duties, responsibilities and expectations of the position, and be written in a fashion which amply describes the physical tasks required of the job. **Remember:** Once good job descriptions have been written it becomes much easier to fill the position and train and evaluate the employee. Even if you don't have to comply with the ADA, an ADA-style job description that outlines the job's physical and mental requirements and demands can help you avoid workers' compensation claims, and it makes good business sense.

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4. **Not conducting background checks on prospective employees.** A bad hire can be one of the most damaging events that can happen to a company. Conducting reference checks, a criminal background check and verifying and validating information provided by a prospective employee can potentially save you immensely by avoiding productivity and financial losses, lowered morale and time spent dealing with performance and behavior problems. It is completely appropriate to drug test all candidates **following a conditional job offer**. By not doing your due-diligence with prospective employees you may be inviting avoidable problems into your workplace, and possibly exposing yourself to a negligent hiring claim.
5. **Improper payment of overtime to non-exempt employees.** Be careful to properly draw the line between “exempt” employees and “non-exempt” (those entitled to receive overtime pay). Paying employees a salary isn’t enough to avoid overtime. Unless employees are exempt from the FLSA rules by definition, you must pay them 1.5 times their regular hourly wage for all work hours over 40 per week. **Misclassification of employees can bring serious penalties.** Also, look closely at your Independent Contractors – they may actually be employees. It is not unusual for a departing employee to question an “exempt” or contractor classification and demand several years of unpaid overtime and benefits.
6. **Inconsistently documenting work practices.** Federal and State laws are very specific about certain documentation and recordkeeping requirements and the length of time you need to maintain certain records. Beyond the mandated requirements, **a good rule of thumb is:** if an act or activity impacts the employment relationship (which includes any changes in wages, hours, the job, or working conditions) document it. If you don’t, you greatly increase your liability without having written documentation and records.
7. **Failing to educate employees on sexual and other forms of harassment and discrimination.** Make “zero-tolerance for harassment and discrimination” a business priority. Have a written policy which is fair, enforced, and distributed to all employees, and train your supervisors on how to enforce it. Having sound policies and procedures in place for employees to report incidents of harassment or discrimination, and investigating and taking action when a claim is reported **is more critical than ever.**
8. **Avoiding employee performance and behavior issues.** It is not uncommon for supervisors to avoid discussions and not document unacceptable employee behavior and performance. These same employees may also have very positive performance reviews in their files! Three of the most important words in employment law are **"document, document, document."** An employer who appropriately consistently documents and provides feedback on good and bad performance **in a timely manner** is more likely to be successful in defending employment decisions, including terminations, and greatly reduces the risk of costly discrimination or wrongful discharge lawsuits and unemployment insurance claims.

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9. **Not formally evaluating employee performance.** Some employers simply do not believe in conducting performance reviews. When it comes time to defend performance or discrimination complaints, however, these employers often regret their failure to formally document performance (both good and bad) on at least an annual basis. If you do provide evaluations, make sure the reviews are **fair and honest**. It can be just as bad to suffer from "performance inflation" as it is to have no evaluations at all. Performance reviews can be **one of a supervisor's most power management development tools**. Also, an annual performance review meeting is typically not the best time to initially raise performance issues that have been on-going.

9.5 **Not seeking professional assistance to avoid making the first nine mistakes.** It is challenging for an employer to stay up to date with legally compliant employment practices when there are **over 144,000 pages of federal regulations** and thousands more pages of state regulations and case law just dealing with the employment relationship. The key to your company's success is having motivated and productive employees who are focused on your goals. An HR professional will work with you to put legally compliant and sound employment practices and processes in place to help your employees be successful, and help you take action if they aren't.

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Holloway HR Consulting is a southern Oregon-based **comprehensive Human Resource Management consulting firm**, specializing in human resource and management solutions for small and mid-sized organizations.

Fred Holloway, MSIR, SPHR, offers you **over 30 years** of extensive HR and management expertise in organizations ranging from start-ups to Fortune 500 companies.

Smaller private and public sector organizations now have access to a level of **human resources and management expertise** they otherwise might not be able to afford or need on a full time basis. Our areas of expertise include establishing HR functions and best practices, ensuring **legal compliance and sound employee relations practices**, developing employee handbooks and job descriptions, effective performance management and employee development, manager & supervisor coaching, strategic HR planning, organizational training & development, and many others. Whether it's on a long term or project basis, you can now **get the help you need, when you need it**.

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