



## HUMAN RESOURCES RISK ASSESSMENT

Date: \_\_\_\_\_

Client: \_\_\_\_\_

Number of Employees: \_\_\_\_\_

### **General Assessment**

Do you have an Employee handbook?	<b>Yes</b>	<b>No</b>
Do you have a copy of the IHRS Website Instructions?	<b>Yes</b>	<b>No</b>
Do you have a Labor Law Poster?	<b>Yes</b>	<b>No</b>
Do you have a Workers Comp Poster?	<b>Yes</b>	<b>No</b>
Are the employees files kept in a safe and secure place?	<b>Yes</b>	<b>No</b>
Are the employee I-9 and medical records kept separately?	<b>Yes</b>	<b>No</b>
Does the company have a written Arbitration or Dispute Resolution policy?	<b>Yes</b>	<b>No</b>
Have you ever had any EEOC charges filed against the company?	<b>Yes</b>	<b>No</b>

### **Employment Law Knowledge**

*On a scale from 1-5, with 5 being the highest, what is your knowledge of the following:*

FLSA (Fair Labor Standards Act)	<b>1 2 3 4 5</b>
FMLA (Family Medical Leave Act)	<b>1 2 3 4 5</b>
ADA (Americans with Disabilities Act)	<b>1 2 3 4 5</b>
Title VII of the Civil Rights Act	<b>1 2 3 4 5</b>
COBRA (Consolidated Omnibus Reconciliation Act)	<b>1 2 3 4 5</b>
WARN (Worker Adjustment and Retraining Notification Act)	<b>1 2 3 4 5</b>



### **Hiring Practices**

Do you use a standard Employment Application?	<b>Yes</b>	<b>No</b>
Do you have a job description for each open position?	<b>Yes</b>	<b>No</b>
Have you been trained or are you familiar with appropriate Interviewing guidelines?	<b>Yes</b>	<b>No</b>
Do you consistently conduct background/reference checks?	<b>Yes</b>	<b>No</b>
Does the company provide an orientation program For new hires, and is it consistently applied?	<b>Yes</b>	<b>No</b>
Does the company have a standard checklist for new hires?	<b>Yes</b>	<b>No</b>

### **Performance Management**

Do you have a performance management policy in place?	<b>Yes</b>	<b>No</b>
Are performance issues documented?	<b>Yes</b>	<b>No</b>
Do you have a standard employee review schedule in place?	<b>Yes</b>	<b>No</b>
Do you use a standard employee counseling form?	<b>Yes</b>	<b>No</b>
Do you have a written policy regarding disciplinary actions including termination?	<b>Yes</b>	<b>No</b>
Do you maintain copies of performance reviews, disciplinary actions and terminations on file?	<b>Yes</b>	<b>No</b>

### **Employee Termination**

Do you have a standard employee termination policy?	<b>Yes</b>	<b>No</b>
Do you have a standard employee termination checklist?	<b>Yes</b>	<b>No</b>
Are you aware of the DOL regulations regarding employer responsibilities in instances of employee termination?	<b>Yes</b>	<b>No</b>
Are you aware of employee rights under DOL regulations In instances of employee termination?	<b>Yes</b>	<b>No</b>

### **Overall Business Climate**

Do you maintain an open door policy?	<b>Yes</b>	<b>No</b>
How would you rate the morale at your company?	<b>1 2 3 4 5</b>	



## **HR Best Practices – Legal Compliance**

Once an employer reaches 50 or more employees they are responsible for complying with most employment regulations. The following breakdown should be helpful.

*Employers with at least 1 employee must comply with;*

FLSA (Fair Labor Standards Act)

Employee Polygraph Protection Act

IRCA (Immigration Reform & Control Act)

Equal Pay Act

Federal Income Tax Withholding

Uniformed Services Employment & Re-Employment Rights Act of 1994

FICA (Federal Insurance Contribution Act)

NLRA (National Labor Relations Act)

Consumer Credit Protection Act

Labor Management Relations Act

Uniform Guidelines for Employment Selection Procedures

ERISA (Employment Retirement Income Security Act)

*Employers with 11 or more employees also need to comply with;*

OSHA (Occupational Safety & Health Act –Illness/Injury Recording and Reporting Requirements)

*Employers with 15 or more employees must also follow;*

Pregnancy Discrimination Act

Americans with Disabilities Act

Civil Rights Act of 1964



*Employers with 20 or more employees also need to comply with;*

ADEA (Age Discrimination in Employment Act)

COBRA (Consolidated Omnibus Budget Reconciliation Act)

*Note; in the state of California, employers with less than 20 employees must adhere to the regulations regarding coverage under CAL-COBRA*

*Employers with 50 employees or more also need to comply with;*

FMLA (Family Medical Leave Act)

*Finally, employers with 100 or more employees must comply with the;*

WARN (Worker Adjustment Retraining Notification Act)

And must complete and report the EEO-1 form to the EEOC

*Note; Executive Order 11246, requires federal contractors with 50 or more employees and \$50,000 in government contracts must also file EEO-1 report each year*



## **HR Best Practices – Employee Files**

What ***Should*** be included in a basic personnel file:

- employment application and resume
- reference checks
- college transcripts
- job descriptions
- records relating to hiring, promotion, demotion, transfer, layoff, rates of pay and other forms of compensation, and education and training records
- records relating to other employment practices
- letters of recognition
- disciplinary notices or documents
- performance evaluations
- test documents used by an employer to make an employment decision
- exit interviews
- termination records

What ***Should Not*** be included in a basic personnel file:

- medical insurance records
- EEO/invitation to self Identify, disability or veteran status records
- immigration (I-9) forms
- safety training records
- child support/garnishments
- litigation documents
- workers compensation claims



### **HR Best Practices – Interviewing**

The guiding principle behind any question to an applicant is, can the employer demonstrate a job-related necessity for asking the question? It is the intent behind the question that is important. Generally, problem areas are discriminatory questions that are posed based on the applicant's gender, race, age, national origin, religion, or other non-job-related basis. Prohibited interview questions, for example, would be asking women applicants different questions than male applicants, or asking different questions of married female applicants than single female applicants.

The following are examples of what the EEOC may consider to be discriminatory questions:

1. Race – There are no job-related considerations that would justify asking an applicant a question based on race.
2. Religion – There are no job-related considerations that would justify asking about religious convictions, unless your organization is a religious institution, which may give preference to individuals of their own religion.
3. Gender – Generally there are no appropriate questions based on the applicants gender during the interview process. Specifically:
  - Women are no longer protected under state wage/hour laws re: number of hours worked, lifting restrictions, etc.
  - It is unlawful to deny a female applicant employment because she is pregnant, or planning to have a child at some future date.
  - Questions on marital status, number of children, child care arrangements, etc. are not appropriate
  - Questions as to availability to work should be job-related: What hours can you work? What shifts can you work? Can you work on weekends and/or holidays?
4. Sexual Preference – Under certain state and municipal laws, there are no permissible questions regarding an applicants sexual preference.
5. Height and/or weight restrictions – These questions may support gender or national origin discrimination claims unless their relationship to specific job requirements can be demonstrated.



6. Age – Under the EEOC’s Age Discrimination Interpretive Rules issued in 1981, as amended, a request for date of birth on the employment application is permissible, with an appropriate disclaimer shown. In practice, this is not asked on applications. Any recruiting effort that is age-biased such as “recent graduate”, or any question during the interview process that deters employment because of age is unlawful. The Age in Discrimination Act of 1967 bars discrimination against persons age 40 or over.
  
7. Arrest and Conviction Records – Questions relating to an applicants arrest record are improper, while questions of an applicants conviction record may be asked, if job related. The EEOC and many states prohibit use of arrest records for employment decisions because they are inherently biased against the applicants in protected classes. The EEOC has issued a Revised Policy Statement covering the use of conviction records by employers in making employment decisions:
  - (a)The employer must establish a business necessity for use of an applicants conviction record in its employment decision. In establishing business necessity, the employer must consider three factors to justify use of a conviction record.
    - (1) Nature and gravity of the offense for which convicted;
    - (2) Amount of time that has elapsed since the applicants conviction and/or completion of sentence; and
    - (3) The nature of the job in question as it relates to the nature of the offense committed.
  - (b) The EEOC’s Revised Policy Statement eliminated the existing requirement that employers consider the applicants prior employment history along with rehabilitation efforts, if any. The Revised Policy Statement requires that the employer consider job-relatedness of the conviction, plus the lapse of time between the conviction and current selection process.
  
8. National Origin – You may not ask an applicant where he/she was born, or where his/her parents were born. You may ask if the applicant is eligible to work in the United States.
  
9. Financial Status – An interviewer should not ask if the applicant owns or rents a home or car, or if wages have been previously garnished, unless financial considerations for the job in question exist. Any employer who relies on



consumer credit reports in its employment process must comply with the Fair Credit Reporting Act of 1970 and the Consumer Credit Reporting Reform Act of 1996.

10. Military Record – You may not ask what type of discharge the applicant received from military service. You may ask whether or not the applicant served in the military, period of service, rank at time of discharge, and type of training and work experience received while in the service.
11. Disability – You may not ask whether or not the applicant has a particular disability. You may only ask whether or not the applicant can perform the duties of the job in question with or without reasonable accommodation.

Although federal EEO laws do not specifically prohibit any pre-employment questions, the EEOC does look with “extreme disfavor” on questions about age, color, disability, national origin, race, religion, gender or veteran status. Many state fair employment laws do expressly forbid certain types of questions.

The following list is representative of unacceptable and acceptable questions to ask during the course of an interview:

<b><u>TOPIC</u></b>	<b><u>UNACCEPTABLE</u></b>
Reliability	Number of Children?
Attendance	Who is going to babysit? What religion are you? Do you have pre-school age children at home? Do you have a car?
Citizenship/National Origin	What is your national origin? Where are your parents from? What is your maiden name
For Reference Checking	What is your fathers surname? What are the names of your relatives?
For Arrest and Conviction	Have you ever been arrested?
Disabilities	Do you have any job disabilities?
Emergency	What is the name and address of the relative to be notified in case of an emergency?



**TOPIC**

**UNACCEPTABLE**

Credit Record

Do you own your own home?  
Have your wages ever been garnished?  
Have you ever declared bankruptcy?

Military Record

What type of discharge did you receive?

Language

What is your native language?  
Inquiring into how the applicant learned to read, write or speak a foreign language.

Organizations

List all clubs, societies and lodges to which you belong

Race or Color

Complexion of skin  
Coloring

Workers Comp

Have you ever filed for workers compensation?  
Have you ever had any prior work injuries?

Religion or Creed

Inquiring about applicants religious denomination, religious affiliations, church, parish pastor or religious holidays observed

Gender

Do you wish to be addressed as Mr., Mrs., Miss or Ms.?

Address

What was your previous address?  
How long did you reside there?  
How long have you lived at your current address?  
Do you own your own home?

Education

When did you graduate from high school or college?

Personal

What color are your eyes or hair?  
What is your weight?



**TOPIC**

**ACCEPTABLE**

Reliability	What hours and days can you work?
Attendance	Are there specific times that you cannot work? Do have responsibilities other than work that will interfere with specific job requirements such as traveling?
Citizenship/National Origin	Are you legally eligible for employment in the United States? Have you worked under a different name?
For Reference Checking	None
Arrest and Conviction	have you ever been convicted of a crime? If so, when, where and what was the disposition of the case?
Disabilities	Can you perform the duties of the job you are applying for?
Emergency	What is the name and address of the person to be notified in case of an emergency. (request only after the individual has been hired).
Credit Record	Credit references may be used if in compliance with the Fair Credit Reporting Act of 1970 and the Consumer Reporting Reform Act of 1996.
Military Record	What type of education, training, work experience did you receive while in the military?
Language	inquiry into languages the applicant speaks and writes fluently. (if the job requires additional languages).



<b><u>TOPIC</u></b>	<b><u>ACCEPTABLE</u></b>
Race or Color	None
Workers Compensation	None
Religion or Creed	None
Gender	None
Address	None
Education	Do you have a high school diploma? Do you have a university or college degree?
Personal	Only permissible if there is a bona fide occupational qualification.



## **JOB CANDIDATE INTERVIEW GUIDE**

The Job Candidate Interview should be an exchange of information and feelings and the development of an understanding between two involved people.

### **Objectives of “The Interview “**

1. To obtain information from the candidate which will help to appraise personality, character and motivation; to judge appearance and personal characteristics face-to-face.
2. To clarify data on the application form, apparent inconsistencies, time gaps or other missing information.
3. To obtain additional information not contained in the application.
4. To inform the candidate about the job and the Company, and if the candidate appears to be desirable, to sell the Company with persuasion.

Your final decision of whether to hire or not will be largely based on your interview. Take the time to do it thoroughly.

Casual or informal interviewing is inadequate and leads to:

- ◆ sizing people up by appearance
- ◆ picking people because of personality
- ◆ failing to get the facts

1. Choose an appropriate place. An area of privacy is a must.
2. Allow ample time.
3. Pre-plan the interview with specific objectives and the techniques you want to use.
4. Put the prospective employee at ease.
5. Ask effective questions.
6. Listen to what is being said.
7. Listen to what is not being said.
8. Thank the Candidate. Recognize every employment interview, whether you hire the person or not, as a public relations opportunity.
9. Use separate sheet of paper to make notes or post-it notes. Do not write on application.



## **The Interview Profile**

Although a selection interview should be allotted as much time as necessary, the typical interview lasts approximately 30 - 45 minutes

### **Examples of Questions - Who, What, When, and Where**

To help you toward a more constructive interview, a series of questions is listed below. They are not listed in order of importance, and you might have other questions that better suit your purpose.

Asking questions like these, however, will help you to "size up" your applicant, and to determine just how well he measures up to being the kind of person you want to employ. A person's work experience is important and a natural and easy place to start the interview. A key question here might be:

- ◆ One of the things we want to talk about today is your experience.
  - Would you tell me about your last four jobs?
- ◆ In addition to knowing what the candidate does on the job, it is vital to know how he feels about what he does. The response of the candidate to the type of questions that follow may well reveal such feelings and attitudes.
- ◆ How do you feel about your present job?
- ◆ What are some of the problems you encounter in doing your job?
  - Which frustrates you the most?
  - What do you do about them?
- ◆ How do you feel about the progress you have made with your present company?
- ◆ In what ways do you feel your present job has helped you to take on even greater responsibilities?
- ◆ What would you say was the most and least enjoyable job you ever had, and what are your reasons for feeling this way?
- ◆ What do you feel has been your greatest frustration on your present job, and why do you feel this way?
- ◆ What are some of the reasons you had for leaving your last job?
  - (Always look for more than one reason for a voluntary resignation).
- ◆ What is your general impression of the last company for which you worked?



- ◆ Most jobs have pluses and minuses; what were some of these minuses of your last job?
- ◆ Do you consider your progress on the job representative of your ability, and why?
- ◆ Where would you rank this job with other jobs you have held? What are some of your reasons for ranking it?
- ◆ How many hours do you feel a person should devote to his job?
- ◆ What do you feel is a satisfactory attendance record?
- ◆ The way the candidate feels about people, his co-workers, and supervisors, has an important part to play in determining his job success. Here are some questions that will help the interviewer explore this important area:
  - ◆ What kind of person was your supervisor?
  - ◆ What are some of the things about which you and your supervisor disagreed?
  - ◆ What do you feel were your supervisor's greatest strengths?
  - ◆ In what areas do you feel your supervisor could have done an even better job?
  - ◆ How do you feel about the way you or others in the department were treated by your supervisor?
  - ◆ In what ways has, your supervisor helped you to further your capabilities?
  - ◆ What are some of the things your supervisor did that you particularly liked or disliked?
  - ◆ How do you feel your supervisor rated your job performance? What evidence do you have to support this conclusion?
  - ◆ What did he feel you did particularly well?
  - ◆ What were his major criticisms of your work? How do you feel about these criticisms?
  - ◆ What kinds of people do you like working with? What kind of people do you find it most difficult to work with? How have you successfully worked with this type of person?
- ◆ It is valuable to know how a person regards himself. To learn more about this, the interviewer might ask such questions as:



- ◆ How would you describe yourself?
- ◆ As a person, what do you feel you could most improve upon?
- ◆ As a person, what would you consider your greatest strength?
- ◆ Are there certain things you feel more confident in doing that others don't? What are they and why do you feel this way?
- ◆ Do you like selling? Why or why not?
- ◆ How do you ordinarily react to someone trying to sell you a product?
- ◆ It is necessary for the interviewer to know what the candidate's job objectives are and what he is looking for, or wishing to avoid, in a job or career. Here
- ◆ Again, proper questions can be of great help in obtaining such information.
- ◆ What are some of the things in a job that are important to you and why?
- ◆ What are some of the things you would like to avoid in a job, and why?
- ◆ What do you want from your next job that you are not getting from your present job?
- ◆ What is your overall career objective? What are some of the things, outside of your job, that you have done or that you plan to do that will assist you in reaching this objective?
- ◆ To what kind of a position would you expect to progress in five years?
- ◆ Ten-years?
- ◆ What are your current wage expectations? How have you arrived at this figure? What would you consider satisfactory salary progression from this point?
- ◆ Why do you think you might want to work in our company?
- ◆ Why are you interested in seeking new employment?

**Questions an Interviewer has to be careful asking or is  
Prohibited from asking**

- ◆ **Do not ask the candidate his or her date of birth.**
- ◆ **Do not ask the candidate what church he or she attends or the name of his or her priest, rabbi or minister.**



- ◆ **Do not ask candidates whether they are married, divorced, separated, widowed or single.**
- ◆ **Do not ask candidates how many children they have unless you ask both male and female.**
- ◆ **Do not ask who will care for the children while the candidate is working unless you ask both males and females.**
- ◆ **Do not ask the candidate if they own a car.**
- ◆ **Do not ask the candidate where a spouse or parent works or resides.**
- ◆ **Do not write anything on the application form.**
  - This is a good place for the use of post-it-notes.
- ◆ **Do not ask the candidate if he or she is for or against unions or whether the candidate was ever a union member.**

### **Interview Listening**

Real listening goes far beyond hearing, particularly in an interview. When we hear, we are merely taking in information; however, when we listen we are actively involved in the process of comprehending.

How does active listening come about? What are the tools which can help us become an active listener?

Ask for Clarification. Often a candidate will generalize or only give you part of a story. Encourage him/her to explain and give complete information. How can we help the candidate clarify the information?

- ◆ Ask for examples of the situation.
- ◆ Request evidence for the information.
- ◆ Query the candidate's reasons for his/her statements.
- ◆ Encourage a complete set of information.
- ◆ Probe for 'more substantial information'. Examples are:
  - "What do you mean by...?"
  - "How do you mean..."
  - "What led you to that conclusion?"
  - "What else might support this?"



### **Reflect the Candidate's Information**

To help you gain insight into the candidate's information, you can mirror the information given. How can we effectively mirror what the candidate has told us?

Tell the candidate what you think he/she is trying to say.

Ask the person if what you've said is correct.

Listen for the person's support or further explanation.

Examples are:

- ◆ "If I understand you correctly, you feel you were unable to do both jobs?"
- ◆ Improving Your Own Technique

### **Don't Interrupt**

Listen carefully throughout the interview, and don't interrupt, except with encouraging noises like "uh-huh", and "I see" and "Yes, I understand." Don't break the flow of the candidate's words and thoughts as long as they're relevant.

### **Pay Attention:**

This may sound obvious, but you'll appreciate it when you realize that the candidate speaks at 150-200 words per minute, but you can comprehend 600-800 words per minute. You tend to let your mind wander and explore while the candidate is talking. You may miss something important while your mind is occupied that way.

### **Silence:**

Once in a while candidates seem to run out of things to say...yet you want them to continue. Try letting the silence build up for a few moments. They'll find it uncomfortable and start talking again. Many interviewers find it uncomfortable, too, and hurry to fill in the void. Be patient and relaxed, you may learn something from the direction taken on the new tack.

### **Level of Language:**

Use language candidates will understand, but don't talk above or below their level of comprehension. Don't imitate their manner of speaking either, if it is of a type unnatural to you.

### **Note Taking:**

Do take notes; some minor item of importance may be important in connection with data you get later. Abbreviated notes will do. You should review your notes after the interview and organize them to reflect the strengths and weaknesses of this particular candidate and make them a permanent part of the candidate's file.



### **Frequent Interview Errors**

**Halo Effect** - The interviewer permits one or two favorable traits of a candidate such as a good appearance or an ability for self expression to bias the interviewer's judgment favorably on entirely unrelated traits.

**Talking too much** - Our egos sometimes get in our way when we are interviewing and we can't resist the urge to tell the candidate about ideas, our experiences and ourselves. An interviewer who does this will probably not obtain sufficient information to make a good selection decision. We learn more about candidates when they're doing the talking.

**Failure to listen** - Many times our attention is diverted from what the candidate is saying. Sometimes we are thinking ahead to what we are going to say next.

**Impatience** - Sometimes we will interrupt before a candidate has completed a thought. This can deprive us of much valuable information. An interviewer sometimes terminates the interview before obtaining sufficient information for a sound selection decision.

### **Summary**

Don't let the tremendous amount of information presented above overwhelm you. It is only presented to help you develop your skills as an interviewer. Interviewing, just like sporting events, takes much experience and practice. With experience and practice, you will become a much better interviewer. The information presented here is to help you achieve this end.



### **HR Best Practices – Background Checks**

Background checks of potential employees can help verify information supplied on applications and in interviews and may uncover additional important details. For example:

- Professional references from former employers and co-workers can supply firsthand observations about applicants interpersonal skills, work ethic and attitude, response to pressure, punctuality, and reliability.
- School records can verify applicants dates of attendance, grades, and degrees.
- Consumer reports can reveal money problems that might create temptation if applicants are hired for positions involving independent control over client or corporate financial accounts.
- Conviction records can reveal criminal tendencies that might raise safety or security risks and expose employers to negligent hiring claims.
- Driving records can show whether applicants are suited to positions that involve operating motor vehicles

It is recommended that a basic background search be conducted for every employee. This search should contain at minimum, a Criminal Background Search.



## **HR Best Practices – Employee Discipline and Documentation**

Proper documentation of employee disciplinary actions is extremely important, regardless if the disciplinary action results from a violation of a major work rule or policy or from incidents that the employer perceives as less significant. Employers that do not document disciplinary actions regardless of their significance will have a much harder time defending disciplinary terminations if legally challenged with a claim of discriminatory or wrongful discharge.

There is really no recommended format for documenting disciplinary actions, nor must doing so be a complex or time consuming process. Documenting disciplinary actions simply means writing down events as they took place.

Disciplinary documentation may be as formal as using specially designed forms or as informal as making notes on a ruled legal pad or piece of scrap paper. However, it is important to document events while they are still fresh in the minds of supervisors or managers.

Many employers find it necessary not only to document employee performance or disciplinary issues but also to train managers and supervisors regarding company policies and procedures.

During such training sessions, some employers stress the importance of documenting any inappropriate conduct that is observed and what disciplinary action was taken, as well as dates, times and places. Remember that many documents may be rendered useless as a defense mechanism if not properly dated, etc.

A wide range of methods may be utilized for documenting employee performance or disciplinary issues, so deciding on a specific format or method to use will strictly be a matter of internal policy decision making.

While some employers prefer extensive reports on each incident—including possible witness statements and any available supporting evidence—others may require only a simple hand-written format. Keep in mind that it is not the actual format of documentation that is of importance but rather that the events be properly documented.



## **HR Best Practices – Terminations**

Before an organization decides to terminate an employee for performance reasons, there are several issues to consider:

- Thoroughly investigate and review the facts. If action is required after a major incident, walk away from the situation for a brief cool down period before making any important decisions. If suspension of the employee is necessary to allow time for the investigation, then consider that alternative.
- Allow time for all parties to review the details of the situation.
- Find and obtain statements from witnesses.
- Talk with the employee to get his/her perspective.
- Obtain and review all related current and prior documentation.
- Outline the facts of the most recent situation.
- Examine the employees previous discipline history.
- Examine records of employees with similar infractions and compare the discipline imposed then with the disciplinary action considered now.
- Determine if the employee is in a protected class. If so, determine if there has been disparate treatment (intentional) or treatment that has resulted in disparate impact (not intentional, but nevertheless discriminatory) for this employee.
- Review the facts of the investigation with an objective third person.
- Pinpoint the basis for the possible discharge.
- Determine if the discharge violates any federal or state laws.
- Discuss your decision with and HR professional (iMPACT HR Solutions), employment attorney, corporate counsel, or final decision maker.
- Determine the best time and place and carry out the discharge calmly, in a direct but compassionate manner. Consider including a witness in the meeting, if appropriate.
- Document what was said and what was done at the termination meeting.



## EMPLOYEE TERMINATION PROCEDURES

It is important for both iMPACT HR Solutions and our Client Partners to keep a healthy and viable SUTA rating. To achieve this goal, the following procedures have been developed to ensure that Unemployment Insurance is only awarded to those employees that deserve it, and to reduce the instance of inappropriate benefit awards to employees that should not be eligible.

When terminating an employee, please be sure to adhere to the following procedures:

1. Consult with your iMPACT HR Solutions Human Resources Department prior to releasing the employee to verify that all relevant documentation regarding the employee has been completed. This should include any written or verbal warnings, counseling sessions, tracking information, signed copy of the employee acknowledgement regarding the IHRS handbook, etc...
2. Go to [www.impacthrsolutions.com](http://www.impacthrsolutions.com) and select **Forms**. Next go to the **Payroll** tab and download a copy of The IHRS Employee Termination Information Form.
3. Complete the IHRS Employee Termination Information Form.
4. Fax a copy of the IHRS Employee Termination Information Form and any supporting documentation, i.e. employee write ups, verbal warnings, detailed counseling sessions etc... directly to your iMPACT HR Solutions Human Resources Department at **770-777-1600**.
5. If you receive any further documentation from the Department of Labor after termination, be sure to fax it directly to your iMPACT HR Solutions Human Resources Department at **770-777-1600**.

If you have any questions regarding the aforementioned procedures, please don't hesitate to contact Matt Opprecht – Director of Human Resources at **770-475-7111**.



## **HR Best Practices – Employee Resignations**

Although there is no requirement to accept a two week notice, providing that there is no existing employment contract between the parties to honor such a notice of resignation, there are several reasons employers should not respond to a two week notice by terminating the employee.

1. If an employer declines to accept a two week notice, the employer is, in effect, terminating the employee. Therefore, the former employee has the right to claim unemployment insurance if his or her future employment plans should, for some reason, be eliminated. Also, such a termination may provide former employees with a possible wrongful termination claim if they leave under adverse circumstances. Consult an HR professional (iMPACT HR Solutions) or employment attorney for information on wrongful termination.
2. Employees generally expect professionalism from their employers, including the expectation that departing employees will provide a two week notice before leaving their position. In fact, some employee handbooks specifically state that employers expect such a notice. If employers terminate employees on receiving a notice of resignation, future departing employees may be reluctant to provide such a notice for fear that they will be terminated immediately and they will not receive compensation for their last two weeks of employment.

If you feel strongly that a resigning employee should leave immediately for any reason, we suggest that you tactfully inform the employee that he or she will be compensated for the following 2 weeks and that it is not necessary to remain on the premises after the close of business that day.



## **HR Best Practices – FLSA Overtime Regulations**

Employees who are not exempt from the Fair Labor Standards Act are entitled to overtime pay at time-and-one-half their regular rate of pay for all hours worked exceeding 40 hours per week. Your state may have different thresholds per day or per week; these state rules apply if they provide more generous pay to the employee or if you are not covered by FLSA.

You should count as overtime any hours employees spend performing primary work duties, as well as time spent standing by at your company's request. You also have include hours employees spend performing unauthorized work, if that work benefits your company and a supervisor knows, or has reason to believe, the work is being done and permits employees to do it.

You must include in overtime calculations time spent in the following:

- Primary work duties exceeding 40 hours a week.
- Preliminary or postliminary duties (preparation done before or after work) if the activities are specified under contract or are customarily considered work.
- Travel between work locations during the work day
- Work related travel on weekends or holidays that corresponds to an employees normal working hours.
- Mandatory training.
- Meal breaks, if the employee is frequently interrupted.
- Vacation, sick, or personal leave, if your company has an established practice of including such time in overtime calculations.

You generally do not have to include the following time when figuring overtime pay:

- All meal periods of at least 30 minutes, if the employee is completely relieved of work duties.
- The time it takes to travel or commute between home and work.
- Voluntary training or meetings not directly related to the employees primary duties that take place outside the employees regular work hours.
- Paid vacation
- Holidays and sick leave.



### **HR Best Practices – FLSA – Compensatory Time vs. Overtime**

Unless the time off is given in the same work week as the extra work, you cannot offer compensatory time in lieu of overtime pay to workers who are covered under the Fair Labor Standards Act if you are a private sector employer.

FLSA requires the employer to pay non-exempt employees cash wages equal to one-and-one half times their regular hourly rate of pay for all hours worked in excess of 40 hours in a single workweek. Compensatory time-off programs for exempt employees present no problems under FLSA.

An exception to the FLSA general prohibition against granting non-exempt employees time off in lieu of overtime are compensatory time-off programs at public entities such as a state, political subdivision of a state, or an interstate agency.



## **HR Best Practices – FLSA – Non-Exempt Employees**

Overtime is time worked in addition to an employee's regularly scheduled hours during a work cycle.

### **A. Eligibility for Overtime**

1. In accordance with the Federal Labor Standards Act (FLSA), non-exempt employees are eligible to receive overtime pay at a rate of one and one half times their regular pay for time worked in excess of 40 hours per work week.
2. Exempt employees are not eligible for overtime; they are expected to work as many hours as required to perform the duties of the position.

### **B. Scheduling and Working Overtime**

Before overtime is worked, the employee must have written approval from his or her supervisor. Overtime is considered a condition of employment, and refusal to accept it when reasonable notice has been given is cause for discipline, up to and including termination. At the supervisors discretion, an employees work schedule may be adjusted during the workweek to avoid overtime.

### **C. Time Worked**

Approved paid absences, including but not limited to sick leave, vacation leave, holiday leave, FMLA, military leave, jury and witness duty, funeral/bereavement leave, and voting time off, are not counted as time worked for the purposes of computing overtime.

### **D. Compensatory Time**

Employers cannot allow accrual of compensatory time for non-exempt employees, and should not allow accrual of compensatory time for exempt employees.



### **HR Best Practices – FLSA – Exempt Employees**

In accordance with the Fair Labor Standards Act regulations, exempt employees who are required to be paid on a salary basis may not have their pay reduced for variations in the quantity or quality of work performed. Employees who feel their pay has been improperly reduced should report this immediately following the procedures specified below.

#### **Provisions Mandated by the Salary Basis Rules**

1. Exempt employees normally must receive their full salary for any week in which they perform any work, without regard to the number of days or hours worked. However, exempt employees need not be paid for any week in which they perform NO work for the organization.
2. Deductions from pay cannot be made as a result of absences due to the circumstances listed below. Such improper pay deductions are therefore specifically prohibited regardless of the circumstances. Companies violating this policy could be subject to investigation of their pay practices.
  - a. Jury Duty
  - b. Attendance as a witness
  - c. Temporary Military Leave
  - d. Absences caused by the employer
  - e. Absences caused by the operating requirements of the business
  - f. Partial day amounts other than those specifically discussed below
3. The few exceptions to the requirement to pay exempt employees on a salary basis are listed below. In these cases deductions may be permissible as long as they are consistent with other company policies and practices.
  - a. Absences of one or more full days for personal reasons other than sickness or disability (partial days must be paid).
  - b. Absences of one or more full days due to sickness or disability.
  - c. Fees received by the employee for jury or witness duty or military leave may be applied to offset the pay otherwise due to the employee for the week. However, no deductions can be made for failure to work for these reasons.
  - d. Penalties imposed by infractions of safety rules of major significance. *(Note: Company policy on safety should be very clear regarding major vs. minor safety violations and the consequences of such violations. A deduction from pay as a penalty for violations of major safety rules can be made in any amount.)*
  - e. Unpaid disciplinary suspensions of one or more full days in accordance with company policy.
  - f. Deductions for the first and last week of employment, when only part of the week is worked by the employee, as long as this practice is consistently applied to all exempt employees in the same circumstances.
  - g. .



### **HR Best Practices – FLSA – Categorizing Exempt Employees**

The status of exempt employees under the Fair Labor Standards Act has nothing to do with how many hours per week they work or are regularly scheduled to work. To be exempt from FLSA's overtime pay requirements, employees must have certain duties and must be paid on a salary basis, rather than by the hour or by the job. The number of hours they work is not a factor.

FLSA establishes five categories of employees who are exempt from overtime including: **executives, administrative employees, professionals (learned and creative), outside salespersons, and computer-related professionals. An employee must meet one of the exemption tests to be considered exempt.**

If you are sure your employees meet all the requirements for exempt status, it is probably to your advantage to treat them as exempt from overtime. Their salaries will cover all hours they work, no matter how many per workweek. You won't incur extra costs if employees work beyond 40 hours per workweek. On the other hand, you can't reduce the salaries of exempt employees because they work fewer hours or produce less than scheduled or expected.



### **HR Best Practices – FLSA – On Call Policy**

To provide “call” compensation to an employee who maintains his/her availability during off-duty hours to come back to work to perform emergency or needed procedures the following guidelines should be observed:

1. On-call status begins after the completion of the workday and continues until resuming work the following workday, unless a defined length of time is determined prior to the time the call commences.
2. Employees will be considered engaged by the employer from the time they leave home (or when they receive the call) until the work is completed. This time will be considered worked time and will be recorded as such on the time record by the employee. Circumstances causing an increase in travel time should not be included in the same time worked.
3. Call pay cannot be taken when an employee is:
  - Taking vacation, holiday, birthday, personal day.
  - Absent for illness.
  - Absent for funeral leave.
  - On a leave of absence.
  - Not able or available for work.
4. An employees compensation for call status will be for each whole hour that the employee makes himself/herself available during off –duty hours and will be paid at the rate approved by the administrative staff.
5. An employee who is on call must meet the following criteria to receive pay:
  - Thoroughly check the working status of the pager/cell phone before call status begins and maintain it in operational mode at all times.
  - Stay within pager/cell phone range.
  - When notified, must call number within 5 minutes.
  - Arrive in the work unit within 30 minutes or less after receiving the call.
  - Arrive in “fit” condition.
6. If an employee does not meet the criteria as defined in # 5, he/she/ will forfeit the call pay from the time of the first attempt to contact him/her to the end of the call period.
7. When an employee is called back, this work time will be paid at the employees regular rate of pay or at his/her overtime rate if they have already worked the required hours.



## **HR Best Practices – FMLA**

The Family and Medical Leave Act (FMLA) applies to public employers of any size and private employers of 50 or more employees. (some state laws are similar to the FMLA and apply to employers with fewer than 50 employees).

Employees entitled to take leave under FMLA must have been employed by the employer for at least 12 months (not necessarily consecutively), and they must have worked at least 1,250 hours for the employer in the 12 months preceding the beginning of the leave. Covered employees are entitled to 12 work weeks of leave during any 12 month period for one or more of the following conditions:

- The birth of a child.
- The placement of a child with the employee for adoption or foster care.
- The need to care for a spouse, son, daughter or parent with a serious health condition.
- A serious health condition that makes the employee unable to perform any one of the essential functions of his or her job.

**Employers are not required to pay employees for FMLA leave, but they must continue any employer provided group health insurance during the term of the leave. Additionally, upon completion of the leave, employees must be returned to their former positions or to positions that involve the same or “substantially equivalent skill, effort, responsibility and authority”.**

Additionally, upon return to work, employees are entitled to immediately resume all benefits they had prior to leave, such as life insurance, disability insurance, and profit sharing. Employees cannot be required to “re-qualify” for such benefits.



### **HR Best Practices – Investigating a Sexual Harassment Claim**

When an employee complains of sexual harassment, the employer must take the complaint seriously. Employers have an obligation to investigate promptly and take appropriate action to minimize legal liability, not to mention restoring the trust and morale of its employees. The individual conducting the investigation needs to be knowledgeable about the organization and its employees and be able to gather all the facts in an objective and professional manner. The following are guidelines when conducting an investigation.

- Interview the employee claiming sexual harassment. Assure the employee that no retaliatory actions will be taken and that he/she should report any incident of retaliation. Listen carefully and write down all the facts, such as dates, times, witnesses, etc.. Use open ended questions, such as what, when, where, and how.. Let the employee tell the story without interruptions.
- Interview potential witnesses.
- Interview the accused (use same guidelines as above). Inform the accused that retaliation is strictly prohibited.
- Attempt to reconcile conflicting statements.
- Make a final decision. If sexual harassment has occurred, apply and document appropriate discipline.
- Follow up periodically with the employee claiming sexual harassment to ensure that no further incidents or retaliation occurred.
- Document all follow up visits.
- All investigative documentation should be kept separate from personnel files.
- Consider reiterating the sexual harassment policy to all the employees.



### **HR Best Practices – Job analysis in regard to ADA**

Employers need to know the job they are hiring for. Through job analysis, the employer can determine the job's essential functions and the criteria for determining whether an individual can carry out the essential functions, with or without accommodation. The job analysis process involves 3 steps:

1. **Obtain job information** – capture information about the job tasks in terms of the nature, frequency, intensity, duration, impact and perceived importance to the job.
2. **Analyze data** – the core of the process; where the job's main purposes are revealed and essential functions are distinguished from non-essential ones. Focus on essential functions and maintain a broad outlook on ways of achieving desired job results.
3. **Document conclusions** – relevant job facts and conclusions should be documented so they are not prejudicial to people with disabilities. The need for correlation between a jobs documentation must always be consistent with the results of the analysis done, and it's level of detail can never exceed the level of detail provided by the analysis.

In short, be certain to distinguish between the jobs essential and non essential functions. Good job documentation supports decisions about who is qualified for a job with or without reasonable accommodation.