

# Five Tips on Ensuring Your Company Avoids Labor Law Risks

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Texas' labor laws, though more friendly than most states, still require some basic compliance. Ultimately, I've found that the greatest risk in the area of labor law has to do with poor leadership practices---that is, a disgruntled current or ex-employee files a complaint with the Texas Workforce Commission due to mismanagement and now your company is exposed. A business owner could face serious fines if a government agency finds a company in violation of Texas's labor code regulations.

1. **Update your Employment Law Posters** - The Texas Workforce Commission and the federal governments require employers to post information related to wages, hours and working conditions in an area frequented by employees where it may be easily read during the workday. The number of posters required is determined by the size and nature of your business but could total up to 5 or more. Companies can obtain the required Texas and federal posters free through <http://www.dol.gov/osbp/sbrefa/poster/matrix.htm> and <http://www.dol.gov/osbp/statemap.htm> . Some online retailers offer approved combined posters that will save wall space. Employers should study and make sure they understand the regulations on these posters to determine which regulations are applicable to their business so they can answer questions from employees.
2. **Pay Close Attention to How Employees *and* Contractors are Defined** –
  - a. Exempt or Non-Exempt? Many small business owners make the mistake of paying all or many of their employees a straight salary to keep payroll a simple process. This can be a very perilous approach as employers most probably will violate overtime rules which have very stiff penalties. Study the Texas Workforce Commission orders at <http://tlo2.tlc.state.tx.us/statutes/docs/LA/content/word/la.002.00.000061.00.doc> to know the legal requirements for overtime wages, breaks and lunch periods for workers. A critical area many small businesses fail to recognize is the proper classification of employees, as they apply to mandatory overtime pay - exempt from overtime or not exempt. This can be an area for which companies may need professional advice, but the general rule is that every employee should be paid hourly and paid overtime according to the TWC orders unless the proper testing is done to make a case for an exemption which typically applies to four-year-degreed professionals, top managers or true supervisors with authority.
  - b. Independent Contractor or Employee? It's a common business practice both in small and large companies to supplement staffing with outsourced, contract employees. But, are they contractors or employees? The difference is critical. The penalties for misclassifying an employee as an independent contractor can be quite severe. They may include an intrusive government audit, which frequently leads to the employer having to pay back taxes and fines to the government. Also, workers who were misclassified as independent contractors may bring civil lawsuits to recover lost wages and benefits from the employer, and may even recover their attorneys' fees and costs of suit. Also, there has been a recent trend towards class action lawsuits against employers in this area, which can be quite expensive to defend. The safest bet is to apply the federal contractor test. For more information: <http://www.twc.state.tx.us/twcinfo/rules/ch821.doc>
  - c. Legal Work status The immigration authorities are under increasing pressure to enforce the laws and experts agree that enforcement will increase. There have been some well-publicized raids countrywide. The I-9 employment form must be completed properly by every employer on every employee, even U.S. citizens. These documents must be completed properly and kept up to date

if certain documents are presented on an employee's legal status to work in the United States. As a further measure, employers should also use the government's free service to verify that the Social Security numbers being presented by applicants are valid, which will reduce the chances that you are hiring an illegal alien. Instructions for verification -- <http://www.ssa.gov/employer/ssnvspamphlet.htm> The government is using tax filings with mismatched or invalid Social Security numbers to look for employers who knowingly hire workers who are in the United States without proper labor authorization. Stricter enforcement of these regulations has already greatly intensified across the country with recent raids on some large manufacturers.

3. **Respect Employees' Privacy and Secure Personnel Files** - Today the law protects the privacy of employees with some pretty severe sanctions against employers who violate a person's medical privacy or identity, even if unintentional. Separate personnel information into three files –
  - a. A personnel file---containing payroll tax forms, or basic job information in it such as training documents, performance reviews and disciplinary or commendation notices.
  - b. A separate confidential file with medical, credit, background check results, benefits and personal family or dependent information. Generally speaking, if an employer has a benefits broker administering the company's benefits plans, employee benefits information should be shifted to the broker.
  - c. A separate I9 file containing I9 forms and supporting documentation for all employees.

Supervisors or other interested management must be restricted in their access to the personnel file only. Also make sure these files are always secured in a fire-proof cabinet, preferably in a locked room. A good primer on securing employee information: [http://www.ahmcp.com/articles/employer\\_records.html](http://www.ahmcp.com/articles/employer_records.html).

4. **Implement an Effective Performance Management System Early** – A fundamental business practice is to set annual objectives, accompanied by supporting financial budgets and operational goals by department. However, small companies often stop there. They avoid establishing a system of accountability that cascades company goals down to individual employees---opting to keep things loose and fluid as business conditions warrant. The danger of this practice is exposure on multiple fronts:
  - a. Employees are unclear on the deliverables that are of greatest criticality in their job
  - b. For companies that plan to “pay-for-performance”, this is **the** practical means to track performance and make fair pay decisions
  - c. When employees fail to meet expectations, their first question when confronted is “what were your expectations?”
  - d. Employees want to know where they stand---when done well; this is the fairest means of direction and recognition.
5. **Define the Company's Policies and Procedures** – Even if it's a basic employee handbook, establishing the company's position on harassment and discrimination immediately lowers risk. Further, this establishes the “rules of road” for your company as well as how basic administration works within the company.

*Tip 5A --- have Bridgepoint conduct an HR Audit to review your overall HR practices. The Audit will establish a baseline of understanding as to any critical exposure. Plus, you'll gain insight as to how you can improve your HR practices to ensure the company maximizes its employees' productivity.*