

KEY HR ASPECTS FOR INTERNATIONAL COMPANIES: A CHECKLIST FOR ESTABLISHING A PRESENCE IN THE UNITED STATES

If you are an international company that is interested in investing or doing business in the United States (U.S.), we have prepared this summary of some of the complex and ever-changing U.S. employment laws that you may encounter.

1. Employment Practices:

I-9 Form:

Make sure your staff is legally authorized to work in the United States. This includes having all employees complete an I-9 Employment Eligibility Verification Form <http://www.uscis.gov/files/form/i-9.pdf>, with accompanying documentation upon commencement of their employment. The Form I-9 requirement is enforced by the U.S. Citizenship and Immigration Service (USCIS), formerly known as the Immigration and Naturalization Service (INS).

At-Will Employment:

Employees in the United States are typically hired “at-will” (by law), which means that either the employee or the employer can end the employment relationship at any time. All documents presented to employees should include reminders of this employment relationship.

Interviewing do’s and don’ts:

One of the keys to successful recruitment and retention of employees is the interviewing process. Developing a hiring plan that addresses all steps – posting the

job through onboarding - will enhance your chances for success. Confirm that each applicant fills out an application for employment, verifying the truthfulness of the information provided and authorizing a background check verifying education, employment, a criminal background report, or a credit check on someone who will be handling money. Also, a comprehensive job description describing all of the essential requirements and duties of a job is a must under the Americans with Disabilities Act (ADA) and may help protect you from claims of disability discrimination. Under the ADA, it is illegal to ask questions about an employee’s past illnesses, injuries or medical condition. It is also recommended that you avoid questions pertaining to leaves taken by the employee in the past or workers compensation injuries suffered. Questions on other subjects can also run you afoul of anti-discrimination laws. Avoid any questions soliciting information on any of the following subjects:

- Age
- Race or ethnicity
- Candidate’s ancestry, birth place, or native language
- Religion, religious customs or holidays
- Sex or gender or sexual preferences
- Pregnancy or medical history
- Family or marital status
- Childcare arrangements

Focus your questions instead on the candidate's ability to perform the essential functions of the job. For more information, see how the ADA impacts job applicants. <http://jobsearch.about.com/cs/employmentlaw/a/ada.htm>

New Hire Forms:

A new employee should be given an offer letter <http://humanresources.about.com/cs/policysamples/a/joboffer.htm> when they start with the organization. The letter notifies employees of employment obligations during and after employment, reiterates the at-will employment relationship and should enclose a proprietary information agreement for the employee to sign.

2. Benefits and Compensation

Choose a benefits and compensation package for your employees that is appropriate and competitive for your industry. Experts like TriNet can provide insight into comparable benefits and compensation information relative to your company's size and industry.

Get help from experts

Because navigating HR and employment law issues can be confusing, don't hesitate to reach out to HR experts such as TriNet. We've been helping entrepreneurs of small to mid-sized businesses realize their ambitions by being their essential HR partner. As their Trusted Advisor, we help them contain HR costs, minimize employer-related risk, and relieve the administrative burden of HR, thus helping them focus on their number one priority— their business.

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3. How to Best Handle Employee Performance Concerns and Terminations

Documentation is key:

When performance issues arise, it is vital to prepare a document explaining the issue, what occurred, when and where it occurred, etc. This documentation should be reviewed by the manager with the employee and the employee should sign off on the document, acknowledging that the performance discussion occurred. The document should clearly state the consequence if the employee does not improve his/her performance or behaves inappropriately again. It is also a good idea to follow-up with the employee after a pre-determined time (10 days for example) to review how the employee is doing with regards to improving their performance.

Final Pay Requirements

Specific federal and state laws exist defining when and how a terminated employee must be paid. Check with the experts and proceed with caution.