Hiring employees carries many new responsibilities. Some of the labor laws and employee issues are included in this guide. This guide is not comprehensive and is meant as a starting point for your understanding of an employer's responsibilities. To assist in your further understanding of employer duties, go to your local library to research other resources.

**RECORDS WHICH EMPLOYERS MUST KEEP**

According to “A Summary of Wisconsin’s Labor Standards” available from the Department of Workforce Development (DWD), Equal Rights Division, employers must keep the following employee records for at least three years:

- Name, home address, birth date
- Dates employment began and ended
- Time of day work began and ended *
- Total daily and weekly hours worked
- Rate of pay for each payroll period
- Amount of each deduction and the reason
- Output of employee, if paid on other than a time basis

* When meal periods are deducted from work time. This information is not required when work ceases on a regularly scheduled basis.

**NEW HIRE REPORTS**

Beginning January 1, 1998, all Wisconsin employers are required to report the name, address, birth date, social security number and start date for every employee. The report must be received by the Department of Workforce Development within 20 days of hire. The report must include your company’s name, payroll address, and federal employer ID number. Rehires beyond a 90 day break must be reported. New Hire Reporting is required by the new federal welfare reform act. This new requirement is designed to help government child-support agencies track non-custodial parents who are behind in their payments, especially those who change jobs frequently. For information on new hire reports, **call the Department of Workforce Development 888-300-4473.**
**WORKER’S COMPENSATION**

Wisconsin employers must carry special insurance to cover liability due to work-related employee injury or illness. Employers must carry worker’s compensation if:

- You have three or more employees; or
- You have paid wages of $500 or more in a calendar quarter; or
- If you are a farmer who employs six or more workers on the same day for any 20 days in a calendar year.

Please see the Independent Contractor section of this Guide for important facts on Independent Contractors Status and Wisconsin Worker’s Compensation law. While Wisconsin law requires employers to carry worker’s compensation insurance, the state is not the insurance carrier. Most private insurance companies provide worker’s compensation. Contact your insurance agent for more information.

In addition, you can contact:  
**Department of Workforce Development (DWD)**  
Worker’s Compensation Division  
PO Box 7901  
Madison, WI 53707  
(608) 266-1340

**UNEMPLOYMENT COMPENSATION**

Unemployment Insurance (UI) coverage for employees must be contributed by employers if one of the following conditions exist:

- If you (the employer) paid $1,500.00 in wages in any calendar quarter in any calendar year.
- You employed one or more individuals in employment for some part of a day in 20 or more weeks in any calendar year. The weeks need not be consecutive and part-time employees must be included in the employee count.
- If you are engaged in agriculture and you employ 10 or more persons for some part of a day in 20 or more weeks during a calendar year or the payroll for this work is at least $20,000 in any calendar quarter.
- If you are an employer of persons working in domestic service, you are subject to paying UI taxes if the wages for this work are $1,000.00 or more in any calendar quarter.
- If you are a nonprofit organization which is classified by the Internal Revenue Service and have four or more employees working on the same day for 20 weeks within a calendar year.
- Other nonprofit organizations fall under the commercial employer’s conditions for liability.
- General conditions under which any employer will be liable for UI taxes:
  - You’ve paid any wages for Wisconsin employment and you have a liability for that year under the Federal Unemployment Tax Act (FUTA) or;
  - You’ve taken over part or all of the business of an employer already covered under the law.

For more information on state unemployment insurance, contact:  
**Department of Workforce Development (DWD)**  
Division of Unemployment Insurance  
PO Box 7942  
Madison, WI 53707  
(800) 247-1744

For more information on federal unemployment compensation, call the IRS, 1-800-829-1040.
INDEPENDENT CONTRACTORS

It is very important to distinguish the difference between an employee and independent contractor. The State of Wisconsin presumes that a worker is an employee unless an employer can prove otherwise. Failure to properly classify the employee or independent contractor may lead to serious financial and legal problems for your business. If you classify a worker as an independent contractor when in reality this person is an employee, and if you remain in violation, you may be liable for a payment of back taxes, interest, and penalties. Wisconsin employers must prove that both of the following conditions exist for a worker to be considered an independent contractor:

- The individual has been and will continue to be free from the employing control or direction over the performing of his/her service, both under the contract and in fact.

AND

- That such services have been performed in an independently established trade, business, or profession in which the individual is customarily engaged.

State Guidelines

Independent contractors are required by Wisconsin Worker’s Compensation law to obtain a Federal I.D. number (FEIN). In Wisconsin, a social security number cannot be substituted for a FEIN and does not meet the legal burden of independent contractor status. When requesting a FEIN from the IRS, you must inform the IRS that you are required by Wisconsin Worker’s Compensation law to have a FEIN.

Any independent contractor who does not have a FEIN and is injured on the job can be construed as an employee of the business for which work was done, and could, in fact, file for worker’s compensation from that business.

If you employ the services of independent contractors, ALWAYS ask the independent contractor for their FEIN number to protect against a potential worker’s comp claim. In addition, businesses should make sure the independent contractor meets all criteria in the state’s nine-part test for independent contractor status:

- Maintain a separate business
- Obtain a Federal Employer Identification Number from the Federal Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on the work or service in the previous year.
- Operate under specific contracts
- Be responsible for operating expenses under the contracts
- Be responsible for satisfactory performance of the work under the contracts
- Be paid per contract, per job, by commission or by competitive bid
- Be subject to profit or loss in performing the work under the contracts
- Have recurring business liabilities and obligations
- Be in a position to succeed or fail if business expense exceeds income

It is important to note that if an independent contractor files a worker’s compensation claim against the business for which they are doing work, and the business disputes the claim, the judge will look at the status of the claimant at the time of injury. In other words, they must have met the nine-part test at the time of injury to qualify as an independent contractor. Otherwise, they will be considered an employee and the business will be heavily fined for not carrying worker’s compensation in addition to being responsible for the dollar amount of the claim.

For protection against this kind of situation, a business can buy a worker’s compensation policy on an "if any with no payroll" basis. At this time, the policy is less than $1,000; the business is rebated 80% of the policy amount if by year’s end they can prove no payroll was issued. Be sure to ask the insurance company at the front end what proof they will require when audited at the end of the year so that no surprises ensue. If the individual is defined as an employee, make sure you are withholding the proper taxes. Contact:
Wisconsin Department of Revenue  
Compliance Bureau  
PO Box 8902  
Madison, WI 53708  
(608) 266-2776

If the individual is defined as an employee, you will need to comply with worker’s compensation rules/requirements. (See the previous section, WORKER’S COMPENSATION).

**Federal Guidelines**
For tax purposes, the IRS provides three categories that must be evaluated for degree of control and independence to determine if an individual is an independent contractor or employee. The categories and a brief summary of the evidence the IRS examines are as follows:

- **Behavioral control:** Does the business control how the work is done?
- **Financial control:** To what extent does the worker have unreimbursed expenses, make the service available to others, have an investment, and have the potential to make a profit or a loss.
- **Type of relationship:** Are there written contracts describing the business relationship; is it an indefinite or permanent working relationship, and to what extent are the services performed a key aspect of the company’s business?

If you want the IRS to determine if an individual is an independent contractor or employee, file Form SS-8.

For more information on the IRS Guidelines, call 1-800-829-3676 or (414) 271-3780 in Milwaukee for a copy of the IRS booklet *Publication #15 “Circular E, Employer’s Tax Guide,” Publication #910 “Guide to Free Tax Services”* or visit the IRS Website at [www.irs.gov](http://www.irs.gov) or the Wisconsin Department of Revenue Website [www.dor/state.wi/us](http://www.dor/state.wi/us) or the Minnesota Department of Revenue at [www.taxes.state.mn.us](http://www.taxes.state.mn.us).

**MINIMUM WAGE**
The *Wisconsin Minimum Wage* law requires that an hourly minimum wage rate must be received by employees who are covered by the law. The overtime law also mandates that employers pay overtime rates to most employees who are required to work more than 40 hours per week. Regardless of age, workers must be paid 1 ½ times the regular rate of pay for all hours in excess of 40 hours a week.

Wisconsin sets minimum hourly wage rates which employers must use to pay minors under age 18 and adults. This law also applies to all private and public employers, including non-profit organizations, regardless of whether they are covered by the federal minimum wage law. A separate minimum wage rate exists for employees who receive tips or gratuities from patrons. Deductions may also be made for board and lodging, within limitations which vary by type of employment and the employee’s age.

**Effective September 1, 1997**

**General Minimum Wage Rates:**

<table>
<thead>
<tr>
<th>Type of Employment</th>
<th>Minimum Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opportunity Employees</td>
<td>$4.25</td>
</tr>
<tr>
<td>Adults: $4.55</td>
<td>Minors: $4.20</td>
</tr>
</tbody>
</table>

**Minimum Wage for Tipped Employees:**

- $2.33 per hour
- $2.13 per hour

**Minimum Wage Rates for Agricultural Employees:**

- Adults: $4.55
- Minors: $4.20
An "Opportunity Employee" means an employee who is not yet 20 years old and who has been in employment status with a particular employer for 90 or fewer consecutive calendar days from the date of initial employment.

**CHILD LABOR LAWS - MINORS**

The state requires every employer who hires a minor between ages 12 and 18, or who permits a minor to work at any "gainful occupation," to insure that the employer has a valid work permit issued by the state for that minor. The only exceptions to work permits are agricultural work, apprenticeships, domestic service, public entertainment, and volunteer work for non-profit organizations.

The following information must be provided to a state child labor permit officer, usually located at any school office, before a work permit can be issued:

- Proof of age (birth record or baptismal certificate)
- Employer’s written intent to hire, including job duties to be performed, and the hours and time of day
- Parental/guardian written consent (the employer’s written statement may be countersigned)
- Social Security card
- $5.00 permit fee, paid by the employer (the employer must reimburse the minor if he or she pays for the permit no later than the first paycheck)

Minors are also protected by other laws and regulations which restrict their hours of labor, the time of day they may work, and the types of work they may do, depending on their age. All employers of minors except those hiring minors for domestic or agricultural work are required by law to display the Child Labor and Trades Information poster, ERD 9212P which is attached at the end of this guide.

**Maximum Days per Week:**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Monday</th>
<th>Tuesday</th>
<th>Wednesday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newspaper Delivery &amp; Agricultural Work</td>
<td>7 days</td>
<td>7 days</td>
<td>7 days</td>
</tr>
<tr>
<td>Other Work</td>
<td>6 days</td>
<td>6 days</td>
<td>6 days</td>
</tr>
</tbody>
</table>

**SPECIAL RULES**

Children between ages 12 and 13 may only be employed as: caddies, in agriculture, domestic service, street trades, school lunch programs, or for a parent or guardian who own the business. Children between ages 16 and 17 must be paid time and one-half for work in excess of 10 hours per day or 40 hours per week, whichever is greater. Following the end of work, 8 hours of rest is required before the start of work the next day. To order the complete child labor regulations – Wisconsin Administrative Rules for a fee of $5 plus tax, contact:

*Document Sales and Distribution*
*PO Box 7840*
*Madison, WI 53707*

To obtain a free copy of "A Summary of Wisconsin’s Labor Standards" contact:

*Department of Workforce Development*
*Equal Rights Division*
*PO Box 8928*
*Madison, WI 53708*
*(608) 266-6860*

**SEXUAL HARASSMENT**

The state of Wisconsin’s Fair Employment Law prohibits discrimination against job-seekers or employees based on age, sex, race, color, national origin, ancestry, creed, handicap, arrest or conviction record, sexual orientation or marital status. This law also prohibits harassment because of membership in one of these groups and includes a prohibition against sexual harassment. Retaliation against a person filing a complaint, assisting with a complaint or
opposing discriminatory practices is also prohibited. The States Equal Rights Division enforces the Fair Employment Law and they have copies of the laws and interpretive materials. Contact:

**Wisconsin Department of Workforce Development**
**Equal Rights Division**
**PO Box 8928**
**Madison, WI 53708**
**(608) 266-6860**

**Definition**
According to the Small Business Forum Fall 1992 article, “Preventing Sexual Harassment in a Small Business,” you should be aware of the harassment issue because lack of knowledge about sexual harassment will not relieve your liability for your employees’ actions. Nor does the complainant’s consent to the behavior relieve the employer of liability.

The Equal Employment Opportunity Commission’s (EEOC) Guidelines and the courts have held that unwelcome sexual advances, requests for sexual factors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment under any of the following four conditions:

- When such behavior is either explicitly or implicitly part of a manager’s or supervisor’s decision to hire or fire someone.
- When such behavior is used to make other employment decisions such as pay, promotion or job assignment.
- When such behavior has the purpose or effect of unreasonably interfering with the employee’s work performance.
- When such behavior creates an intimidating, hostile, or offensive work environment. To fit the EEOC’s definition, sexual harassment in the workplace must have two characteristics: it is unwelcome and unwanted, and it has an impact on an employee’s job or work environment.

For more information, contact:

**Equal Employment Opportunity Commission (EEOC)**
**310 W. Wisconsin Avenue, Suite 800**
**Milwaukee, WI 53202**
**(414) 297-1111**

**Prevention**
The Small Business Forum article also lists a process to help prevent sexual harassment from occurring in the workplace.

- **Secure and Convey the Support of All Top Managers.** This is very important because the accepted working environment comes from the top officials down. This environment is apparent in written, spoken, and unspoken terms of the ones in charge.

- **Establish a Complaint Procedure.** Effective procedures will allow your business to handle the problems, before complaints are made to an external agency. The procedure should be flexible and should offer more than one route for employees to complain or get more information. It’s best to have the option of going around or above the supervisor. Or the employee should be able to complain to two or more designated individuals, who are credible, objective and sensitive to the subject of sexual harassment. Confidentiality may not be appropriate, depending on the situation, because the rights of all parties must be protected and the accused has the right to know the accuser. Also, the complaint does not have to be in writing or signed but take notes about the allegation. Once you know of the allegations, you should take the necessary steps to resolve the problem.

- **Write a Policy Statement.** Write and post a sexual harassment policy statement either in your employee handbook or on your bulletin boards. A good policy has at least four effects:
  1. Demonstrate management’s understanding of the issue and its commitment to eliminating the problem.
2. Establish and make known the procedures for handling instances of sexual harassment.
3. Begin to educate employees about the problem.
4. Encourage employees to come forward with their complaints.

Your policy should include these elements:
1. Purpose of the policy.
2. Legal definition of sexual harassment.
4. Importance of the problem.
5. How employees should handle harassment.
6. How the organization handles incidents or complaints.
7. Disciplinary action.
8. Names and phone numbers of individuals to call.

- **Provide Training and Education.** A good training program should consist of presentations and workshops that are divided into separate sessions for top managers and general-level employees. Each workshop should include teaching methods (lecture, presentation, discussion, question-and-answer exercises) that are most appropriate for the employees. Each session should be tailored to the employees’ needs.

**TERMINATION OF AN EMPLOYEE**

State law does not require advance notice of termination of employment by either the employer or the employee. In order to avoid having an employee handbook interpreted as an “implied contract,” do not require two weeks notice before quitting. Ask for appropriate notice to have an orderly transition so employees who provide a two weeks resignation notice will receive unpaid accrued vacation benefits. However, only factory employers may be subject to a payment penalty for discharging without notice, if they require a payment penalty from the employee for quitting without notice. If such a notice is agreed upon by both parties in advance, either in writing or implied, the person breaking the agreement may be subject to a civil action if brought by the aggrieved party. If an employee quits or is let go, he or she shall be paid in full by no later than the date on which the employee regularly would have been paid under the employer’s established payroll schedule.

**EMPLOYEE HANDBOOKS**

A good employee handbook should serve as an informational tool describing the company’s policies, procedures, and the expectations of the employee. The handbook should also be drafted to avoid legal problems, most importantly so it will not be interpreted as a legal contract. Consult an expert or research the possible resource list (mentioned at the end of this guide) to assist you in drafting or updating your employee handbook.

A handbook should contain the following important items:
- Statement that your business is “An Equal Opportunity Employer” in all personnel decisions.
- An “At Will” statement. Definition: “Employee may be fired at any time, for any reason, no reason at all, or a poor reason, as long as the discharge is not based on discrimination as protected by statute.” The employee is also equally free to resign at any time. There are exceptions to the “At Will” doctrine, such as written contracts or implied contracts. Written contracts include union agreements or individual contracts. A contract may be implied because of the nature of the wording or the verbal statements made in the handbook.
- **Contract Disclaimer.** The handbook should not constitute an express or implied employment contract. Disclaimers should also cover benefits, bonuses, pensions, and employer rules.
- **Right to Amend.** State that the handbook does not constitute a guarantee of operating procedures or terms of employment. This statement should also include that the company can change, rescind or adopt new policies.

A three ring binder is probably the best method for maintaining an employee handbook. Revisions can be made and added without having to reprint the entire manual. Each page in the manual should also be dated to reflect its timeliness. Renew and update your handbook at least annually. The manual should also include a separate tear-off employee acknowledgment page which can be filed in the employee’s personnel file.

As for the content of the handbook, these are the 10 important policies that you should address:
- The At-Will Provision (mentioned above)
- Harassment Policy
- Equal Employment Opportunity Policy (mentioned above)
- Leave of Absence Policy
- Pay and Overtime Pay Provisions
- Benefits
- Discipline
- Grievance Procedures
- Acknowledgment by the Employee
- Right to Revise or Update (mentioned above)

**RESOURCES**

Following is a list of suggested readings to help with your understanding and to assist in your drafting of employee handbooks.


*Any opinions, findings and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U. S. SMALL BUSINESS ADMINISTRATION.*

s:handout/employ-gde