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What does “employment at will” mean and can an employer truly terminate an employee for any reason?

Employment in Florida is presumptively considered to be “at will.” This means that unless there is a contract providing otherwise, an employer or an employee can terminate the employment relationship for any reason or no reason at all (and without warning). “At will” also means that an employer can make other decisions regarding an employee’s employment (e.g., changing hours, pay, position or benefits), transfer or reduce an employee’s hours without cause or reason.

Under federal and state laws, an employer may not take any adverse employment action for an illegal reason, such as discrimination or retaliation.

Discrimination. In other words, taking an adverse employment action based on the following reasons is prohibited:

- Race
- Religion
- Color
- National origin
- Sex
- Sexual orientation
- Pregnancy

- Age
- Disability
- Marital Status
- Military Status
- Genetic Information
- Gender Identity or Expression
- Or any other protected characteristic found under applicable law

Retaliation. An employer may not take an adverse action towards an employee for exercising their employee rights, including:

- Reporting unlawful discrimination, harassment, or retaliation
- Filing for unemployment or workers' compensation benefits
- Reporting hazardous working conditions
- Joining or forming a union
- Refusing to participate in an illegal activity
- Objecting to an illegal activity
- Participating in an investigation into alleged violations of the employer

Various federal and state laws protect employees from wrongful termination, including the Americans Disabilities Act, Title VII of the Civil Rights Act, the Fair Labor and Standards Act, the Family Medical Leave Act, and the Florida Civil Rights Act.

Thus, it is important to carefully evaluate with [counsel](#) whether there are any risk factors before proceeding with an adverse employment action (especially a termination).

If we pay an employee a salary, does that mean we are not required to pay the employee overtime?

This is the biggest misconception in wage and hour law. Paying an employee a salary does not *automatically* exempt the employee from overtime pay. All eligible employers are required to pay their employees minimum wage and overtime, *unless they are found to be exempt as a matter of law*.

However, *not all salaried workers are exempt*. Exemptions are based not only on compensation, but also on primary job responsibilities.

The financial consequences of misclassifying workers can be grave and can result in financial penalties from various governmental agencies and lawsuits from aggrieved workers who may be eligible to seek unpaid wages, liquidated damages, and their attorneys' fees and costs.

Thus, it is important to carefully review each employee's job with [counsel](#) to determine whether or not such employee should be characterized as exempt or non-exempt at the outset of employment and also to conduct regular wage and hour classification [audits](#) to ensure that the classifications remain proper through a job change, compensation change or legal change.

Are we required to keep timekeeping records for all employees?

The Fair Standards and Labor Act (FLSA) requires employers to maintain *timekeeping* records for all *non-exempt employees*.

Although *timekeeping* records are not necessarily required for exempt employees, it is encouraged. Further, the FLSA does require employers to keep certain records for *all* employees, both exempt and non-exempt, including:

1. Name
2. Address
3. Date of birth
4. Sex and occupation

5. Time of day and day of the week the employee's work week begins
6. Regular hourly pay rate
7. The basis on which the employee's wages are paid (e.g., \$15 per hour, \$500 per week)
8. Total daily or weekly straight-time earnings
9. Total additions or deductions from wages paid each pay period
10. Total wages paid each pay period

For non-exempt employees, employers must also keep track of hours worked each day and work week, as well as the total premium pay for overtime hours. Employers are required to keep these records for at least three years.

The FLSA does not require employers to use a specific method for timekeeping, so businesses can choose to use timekeeping software, timesheets, or punch clocks. The only requirement is that the records must be complete and accurate.

There are some effective strategies that can be used to bolster the accuracy of timekeeping records.

Complete and accurate timekeeping records can make or break an investigation by the U.S. Department of Labor or a wage and hour lawsuit.

What are some of the risks of hiring an independent contractor?

An Independent Contractor ("IC") is someone who contracts with a company to provide specific services for a project, contract, short-term, or on an as-needed basis but is not an employee. Independent Contractors may be referred to as freelancers or "gig workers."

Employers benefit from working with IC's. Employers do not withhold federal, state, or local taxes from payments made to IC's and can avoid significant tax, wage, and other legal obligations associated with W-2 employees. IC's are not entitled to the employer's benefits programs (e.g., health insurance), or eligible for workers' compensation coverage.

While the financial benefits of working with an IC can be substantial, there are several drawbacks that should also be considered:

- **Misclassification.** This is one of the biggest risks employers face when working with an IC. Worker classification is a highly litigated and complex issue. Improper classification can lead to a host of issues under federal and state laws. Employers may be liable for hefty fines, back taxes, employee benefits, and workers' compensation claims.
- **Audits.** Government agencies such as the DOL, IRS, or Florida Department of Revenue may [audit](#) your business if they believe you have misclassified employees. An [audit](#) may be triggered by a worker filing a claim for unemployment or employee benefits.
- **Lack of control.** Employers have minimal supervision over an IC and many times IC's do not work at the place of business. If there is too much interference or control over the IC's work, there is a greater chance that the IC will look like an employee rather than an IC.
- **Turnover.** IC's usually perform short-term or temporary jobs so it may be difficult to build long-lasting working relationships. As a result, IC's will come and go more often than regular employees. Depending on the industry and required skills, it may also be challenging to find a qualified individual to perform the work needed. Since IC's usually work for more than one business at a time, there is also a chance of them working for your competitors.

The decision to hire an employee versus an IC requires careful consideration. A qualified and knowledgeable [labor and employment](#) attorney can evaluate the unique needs of your business and help guide you through the complexities of working with an IC.

Can I mandate that my employees be vaccinated?

As vaccines against COVID-19 become widely accessible, many employers are considering whether they can mandate their employees to get vaccinated as a condition of employment. In most cases, the answer is yes, subject to certain limitations.

Although COVID-19 vaccines remain optional, the federal government has stated that employers may lawfully require vaccines for employees who enter the workplace, provided that employers comply with the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act.

Employers who mandate the vaccine are required to provide reasonable accommodations for employees, who for medical or religious reasons, do not get vaccinated, unless providing an accommodation would pose undue hardship on the operation of the employer's business. The analysis for undue hardship depends on whether the accommodation is being requested for a medical reason (ADA) or a religious one (Title VII).

While the Equal Employment Opportunity Commission (EEOC) has provided some guidance for those who wish to mandate the vaccine, employers must tread carefully and consult with counsel before proceeding with a mandate.

Before instituting a mandatory vaccination policy, employers should provide clear guidelines and train managers on how to handle accommodation requests from employees. If managers are not properly trained, the company can run afoul of anti-discrimination laws which can lead to lawsuits.

An experienced [labor and employment](#) attorney can help you create policies tailored to the unique needs of your business while ensuring [compliance](#) with all federal, state, and local laws.

Are all employers required to carry workers' compensation coverage?

With a few exceptions, all employers in Florida with four or more employees, whether full-time or part-time, are legally required to provide workers' compensation insurance to their employees. Workers' compensation insurance covers medical bills and lost wages if an employee is injured on the job, regardless of fault.

Employers who fail to carry the proper coverage face severe penalties, including hefty fines and stop-work orders. A stop-work order requires the employer to immediately cease all business operations until the State finds that the employer has complied with the coverage requirements and paid any penalties. Additionally, employers are strictly prohibited from interfering with or retaliating against an employee's rights under the workers' compensation laws.

[Consulting](#) with an experienced [labor and employment](#) attorney can save you money and help ensure your business has the proper coverage, limit potential liability relating to a workers' compensation claim, and if needed, a referral to a workers' compensation attorney within the firm.

What documents are required or recommended for proper employee onboarding?

"Onboarding" is the process of integrating a new employee into your business and company culture after hire. A new employee usually reviews and signs important paperwork during the onboarding process. This includes documents required by law, as well as forms specific to your business.

Generally, onboarding documents include:

- I-9, W-4, and possibly other tax forms
- Employment contract, non-compete and/or confidentiality agreement
- Job description and expectations
- Direct deposit form
- Emergency contact information
- Instruction/training manuals
- Benefits information (e.g., health insurance, retirement plans)
- Employee handbook (company policies and procedures)

The required and recommended paperwork varies depending on the size of the employer, the location of the company, the employee, and the position.

An experienced [HR Consulting](#) attorney can help you implement a comprehensive onboarding process tailored to meet the unique needs of your business. A thorough process will not only help your new employees transition into their new position—it can also lead to better job performance, increased productivity, and employee satisfaction.

What is employee offboarding and why is it important?

The process of when an employee leaves a company is commonly referred to as "offboarding." Proper offboarding processes are crucial regardless of the circumstances leading up to an employee's departure.

Offboarding is different for every business and the complexity depends on the employee's position and reason for leaving. The process usually includes:

- Communicating the employee's departure (internal and external)
- Transferring the employee's work, duties and/or responsibilities, or finding a replacement
- Disconnecting employee access to workstations and systems
- Recovering company assets (e.g., company cellphone or computer)
- Revoking access to company accounts and information
- Proper paperwork, including considering a separation/severance agreement
- Exit survey or interview
- Resignation letter or acknowledgment of termination
- Employment contract, non-compete and/or confidentiality agreement
- Benefits information (e.g., explanation of ongoing benefits, retirement plan, unemployment insurance)
- Final payroll information (last paycheck, unused vacation time, PTO, sick days)

Implementing and adhering to the proper policies and procedures is especially crucial following the termination of an employee. Having the proper process in place can prevent legal disputes (e.g., wrongful termination, contract/compensation disputes), as well as mitigate potential security risks (access to sensitive information).

The departure of an employee is inevitable. Knowing your business is prepared will give you peace of mind and save you money. An experienced [labor and employment](#) attorney with specialization in [HR Consulting](#) attorney can help you implement a comprehensive offboarding process catered to your business.

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