**HUMAN RESOURCES FACT SHEET**

This fact sheet is intended to provide you with general background information and should not be considered to be legal advice. You should consult with an attorney before taking any of the actions or relying on any of the information discussed below.

Is The Person Working For The Company An Independent Contractor Or Employee?

A Contractor is hired to perform a particular task and the business owner does not have a lot of control over the person or how the task is done. A Contractor is even free to do work for a competitor. An Employee is under the direction and control of the employer, who provides the place to work, makes the rules, can set the schedule, discipline, etc. The IRS has specific rules governing who can be an Independent Contractor. Contractors are governed by contract, and both businesses and Contractors can be held liable for breach of contract. See [http://www.irs.gov/businesses/small/article/0,,id=99921,00.html](http://www.irs.gov/businesses/small/article/0,,id=99921,00.html).

Employees are governed by a much more complex set of laws at the federal, state and local level. Failure to follow these laws could lead to business and personal liability. Generally, employees in North Carolina are “at-will” which means that either the employee or the employer may end the relationship without liability. There are many exceptions to this rule. If you are considering terminating someone’s employment consult an attorney first. See discussion of an “at-will” employment: [http://www.nclabor.com/wh/ fact%20sheets/eaw.htm](http://www.nclabor.com/wh/fact%20sheets/eaw.htm).

**FEDERAL EMPLOYMENT LAWS**

The EEOC (Equal Employment Opportunity Commission) enforces a broad range of federal laws collectively prohibiting discrimination against an employee because of his/her protected class: race, color, sex, religion, national origin, age (over 40) and perceived/actual disability. These laws also prohibit sexual harassment and harassment against a person because of their protected class. Some of the laws the EEOC covers include Title VII of the Civil Rights Act of 1964, The Americans with Disabilities Act, The ADA Amendments Act of 2008 and the Rehabilitation Act of 1973. Most business owners receive discrimination complaints when two people who do not share the same race, gender, age, religion, national origin, etc. are treated differently in the same or similar circumstances, either on purpose due to a prejudice or by neutral policies which end up favoring one group over another statistically with no real business reason. These laws become applicable to businesses at different times and depend on the number of employees you employ. More detailed information and guidance on these Federal laws can be found at [http://www.eeoc.gov](http://www.eeoc.gov).

The Department of Labor enforces many federal employment laws, including wage and hour laws (how to classify people as exempt [paid a salary] and nonexempt [paid an hourly wage]), the minimum wage rate hourly people must be paid, the need to pay time and one-half for hours worked over 40 in a work week by a nonexempt person) child labor laws, the Family Medical Leave Act, USSERA, ERISA, payroll laws, etc. These laws govern everything from employee benefits to military leave to record keeping requirements. For fact sheets explaining the federal laws that may apply to your business see [http://www.dol.gov/compliance/laws](http://www.dol.gov/compliance/laws) and [http://www.dol.gov/esa/whd/](http://www.dol.gov/esa/whd/).

The U.S. Bureau of Citizenship and Immigration Services enforces the nation’s employment eligibility requirements. All employers must inspect certain documents acceptable for proving that a person may legally work in the United States and fill out an I-9 form that they keep on file for each employee showing that this verification of right to work has been completed. There are criminal penalties against employers who do not complete I-9’s or who accept obviously fake documents.

The Internal Revenue Service and the State Department of Revenue require employers to withhold payroll taxes. Employers, owners, officers or employees of a business that willfully fail to pay withheld payroll taxes or collect payroll taxes can be held liable for 100% of taxes owed plus interest.

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**WHO ARE WE?**

NC LEAP (North Carolina Lawyers for Entrepreneurs Assistance Program) is a project of the North Carolina Bar Association (NCBA) and the NCBA Foundation that provides free legal services to low-wealth entrepreneurs who are in the process of starting or expanding their businesses through: direct legal representation, small business legal clinics and the production of self-help materials. NC LEAP attorneys are volunteers and experts in their fields who want to give back to their communities.

To learn more about us visit our Web site: [www.ncbar.org/ncleap](http://www.ncbar.org/ncleap)

Or call 1-800-662-7407

Or write NC LEAP, PO Box 3688, Cary, NC 27519
MAJOR NORTH CAROLINA STATE LAWS


The North Carolina Wage and Hour Act parallels most Federal laws and applies to all businesses in the state. However, in addition to regulating minimum wage, overtime, and recordkeeping, North Carolina has particular laws on final paychecks, legal deductions, working hours for minors and their need for a certificate to work, etc. Small business owners are most likely to run afoul of these laws by inappropriately classifying employees as independent contractors, failing to keep adequate records etc. For more information see [http://www.nclabor.com/wh/wh.htm](http://www.nclabor.com/wh/wh.htm) and [http://www.nclabor.com/wh/Wage_Hour_Act_Packet.pdf](http://www.nclabor.com/wh/Wage_Hour_Act_Packet.pdf).


Workers Compensation Insurance: Businesses with at least three employees (which include owners, family members, full-time and part-time employees) must purchase Workers Compensation insurance for use by an employee who is injured on the job. For more information about your obligations and questions you may have see [http://www.comp.state.nc.us/hnic/pages/hbsklnd.htm](http://www.comp.state.nc.us/hnic/pages/hbsklnd.htm).

Unemployment Insurance Tax: Businesses must also collect and pay a share of unemployment insurance tax for their employees. This insurance replaces some pay in the event an employee loses his or her job for just about anything except severe misconduct. Instructions on what your obligations are, how to open an account, who to pay, how to make or defend a claim, etc. can be found at [http://www.ncesc.com/splash.asp](http://www.ncesc.com/splash.asp).


Posters: Employers must post many Federal and State posters. Here is a link to the required posters and where to order them free of charge: [http://www.nclabor.com/posters/posters.htm](http://www.nclabor.com/posters/posters.htm).

An ounce of prevention...

QUICK TIPS

Remember these things when you start planning your business:

1. Know the difference between an employee and an independent contractor. Calling someone an independent contractor doesn’t mean that they are one from a legal perspective. The test that determines whether someone is an independent contractor is complex. It is good practice to have a written agreement for independent contractors that spells out what you are contracting them to do. Make sure an attorney helps you draft that agreement. Have the contractor sign the agreement and maintain a copy with your other contracts. This practice will help you if you later need to differentiate independent contractors from employees.

2. Keep appropriate records. North Carolina law requires you to keep appropriate records for your employees. You should have information about your employees including their full legal name, address, date of hire, title while working with you, records of hours worked and records of what you have paid them including withholdings.

3. Have employment policies and make sure they are accessible to your employees. Creating employment policies (with the help of an attorney) will help you clarify your expectations, obligations and rights. Make sure that employees know that the employment manual is not a contract and that their employment remains at will.

4. Document, document, document! Keep records of changes in an employee’s employment status. When an employee is doing well, document it. When they aren’t doing well, document it. This habit may prove useful if you’re facing litigation over termination or an adverse employment action.

5. Beware e-mail! E-mail is a trap for the unwary employer because it creates a permanent record. Employers are more likely to become casual and inappropriate via e-mail than in a conversation or in a letter. Treat e-mail just as you would any other mode of formal communication. Better be safe than sorry.