

Head Start A to Z: Human Resources Part I

Handouts

These handouts are not intended as legal advice. It is recommended that you seek advice from a lawyer, with experience in practicing labor law in your state, to ensure your program is in compliance with all laws and regulations

Major Federal & State Labor & Employment Laws & Regulations

This list provides links to major federal and state labor and employment laws and regulations. Your compliance with aspects of these laws may be dependent on the type and size of your organization, in addition to your number of employees. The type of employee, whether full-time, part-time, temporary or consultant also effects whether or not and how certain laws apply. It is recommended that you review information directly from the government agency responsible for enforcing the law or regulation.

The majority of labor and employment laws and regulations are overseen by the federal Department of Labor. <http://www.dol.gov/>. They include:

Fair Labor Standards Act (FLSA) –Wage and Hour laws: prescribes standards for wages and overtime pay, which affect most private and public employment.

Family Medical Leave Act: requires employers of 50 or more employees to give up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth or adoption of a child or for the serious illness of the employee or a spouse, child or parent.

Occupational Health and Safety Act (OSHA): Safety and health conditions in most private industries are regulated by OSHA or OSHA-approved state programs, which also cover public sector employers.

Employee Retirement Income Security Act (ERISA): regulates employers who offer pension or welfare benefit plans for their employees

Here's a link to a list of those and other major federal labor and employment laws with short explanations and further links to more detailed information: <http://www.dol.gov/opa/aboutdol/lawsprog.htm>

Many of the laws and regulations stipulate that you post a summary of the laws for your employees. The Department of Labor website has a Poster Advisor to help you understand which posters need to be posted. Here's a link: <http://www.dol.gov/elaws/posters.htm>

Other Federal laws and Regulations Related to Human Resources

Affordable Care Act (ACA): The Patient Protection and Affordable Care Act contain requirements that apply to employers depending on the size and composition of their workforce. The Internal Revenue

Service (IRS) guides employers through these responsibilities and benefits via <http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-for-Employers>

American's With Disabilities Act: prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities. The ADA also establishes requirements for telecommunications relay services. The Department of Labor's (DOL) Office of Disability Employment Policy (ODEP) provides publications and technical assistance on the basic requirements of the ADA but does not enforce the law. <http://www.ada.gov/>

Anti-Discrimination laws: These laws protect classes of individuals against discrimination. They include protections based on age, disability, equal compensation, genetic information, national origin, pregnancy, race/color, religion, sex, sexual harassment and retaliation. Please note that some state laws have added to these "protected classes," so you must understand state anti-discrimination laws and regulations pertaining to you. An explanation of discrimination by type and laws and regulations can be found at <http://www.eeoc.gov/laws/types/index.cfm>

Immigration Reform and Control Act of 1986: Employers can only hire individuals who can legally work in the United States. The employer must verify eligibility by completing the Employment Eligibility Verification Form (I-9) for anyone they hire. Individuals who can legally work in the United States are citizens and nationals of the U.S. and foreigners with work authorization. The Office of Federal Contract Compliance Programs (OFCCP) has responsibility for inspecting the I-9 form. The U.S. Immigrations and Customs Enforcement is responsible for employment-related immigration regulations and procedures. To access a copy of the I-9 form <http://www.uscis.gov/sites/default/files/files/form/i-9.pdf>

Sexual harassment: a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. Further information on sexual harassment in the workplace visit http://www.eeoc.gov/laws/types/sexual_harassment.cfm

Whistleblower Protections: The Occupational Safety and Health Act (OSH Act) and a number of other laws protect workers against retaliation for complaining to their employers, unions, the Occupational Safety and Health Administration (OSHA), or other government agencies about unsafe or unhealthful conditions in the workplace, environmental problems, certain public safety hazards, and certain violations of federal provisions concerning securities fraud, as well as for engaging in other related protected activities. <http://www.whistleblowers.gov/>

Specifics for Federally Funded Programs

In addition to complying with general federal regulations noted above, the following human resource-related laws apply in particular to programs receiving federal funds, such as Head Start and Early Head Start. Your Head Start or Early Head Start program must certify compliance for many of these as

part of its funding application. This is not an exhaustive list of all the laws and regulations that apply to federally funded programs.

Hatch Act: Limits the political activities of employees whose principal employment activities are funded in whole or part with federal funds.

<http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/operations/fiscal/forms/lobby.pdf>

Drug-Free Workplace Act of 1988: requires *some* Federal contractors and *all* Federal grantees to agree that they will provide drug-free workplaces as a precondition of receiving a contract or grant from a Federal agency.

<http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/operations/fiscal/forms/drugfree.pdf>

The Pro Children Act of 1994: requires that smoking not be permitted in indoor facilities used routinely for health, day care, education, or library services to persons under age 18, if the services are funded by Federal programs, either directly or through State or local governments.

<http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/operations/fiscal/forms/environmental.pdf>

Other Federal Agencies that Oversee Federal Labor Laws and Regulations

Equal Employment Opportunity Commission (EEOC): Enforces statutes that insure non-discrimination in the workplace. A list of the laws enforced by the EEOC:

<http://www.eeoc.gov/laws/statutes/index.cfm>

Occupational Safety & Health Administration (OSHA): is a division of the Department of Labor. Its mission is “to assure safe and healthful workplaces by setting and enforcing standards, and by providing training, outreach, education and assistance.”

A list of laws and regulations overseen by OSHA:

<https://www.osha.gov/law-regs.html>

State Laws and Regulations

Unemployment Insurance Program: The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under State law), and meet other eligibility requirements of State law.

Worker’s Compensation: is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment in exchange for mandatory relinquishment of the employee's right to sue his or her employer for negligence. All states manage some form of worker’s compensation insurance for employees who have been injured on the job, as does the federal government for its employees. For more information, see state DOL sites at the link below or for federal regulations, visit the federal DOL site noted above.

The Department of Labor’s Wage and Hour Division (WHD): The following provides an updated list of state labor offices <http://www.dol.gov/whd/state/state.htm>

Tip Sheet: The Employee Handbook¹

An employee handbook or personnel handbook defines and clarifies the relationship between employer and employee. It provides employers and employees with an understanding and reference guide of policies, procedures, and expectations of the work place. It includes guidelines for compensation, time off, benefits, employee grievances, and disciplinary action. A personnel handbook consistent with current employment laws and including an explanation of employment-at-will can protect an organization from legal ramifications.

Employee handbooks need to be specific to your business and organization. Purpose, mission, tax status, state, number of employees, and other factors will impact what is included and the wording for your handbook. There are many handbook templates and samples online. We caution you to use these only as guides when developing your program's handbook.

Things to Keep in Mind

*Specific to
Early Head Start and Head
Start Programs*

*It is important to make sure that
all your policies and procedures are
in compliance with Head Start
Performance Standards and the
Head Start Act 2007*

- **Adherences and Consistency**- It is crucial that all leaders in the program, particularly those with supervisory responsibilities, be consistent in following the policies and procedures in the handbook. Not adhering to, or deviating from, the policies can result in legal repercussions. Ensure that all supervisors have a clear understanding of the policies and procedures. (McNamara, Carter)

- **Tone** – The handbook introduces your organization to an employee. The tone should be reflective of the positive, strength-based culture of your organization. Policies and procedures should emphasize expectations and positively outline what is allowed and refrain from focusing on what is not allowed. (Inc.com, p.1)

- **Review and update annually** – Laws, the organization's structure, and culture can change. It is important that the handbook

be reviewed and updated periodically to reflect these changes. Again, make sure these changes are communicated to and understood by employees as they will supersede past policies. This should be stated in writing.

- **Federal and state labor laws** – Include policies for those federal and state labor laws that are relevant and have a direct impact on the employer and employee relationship as well as ensuring a non-hostile work place. These include the Civil Rights Act (Title VII), the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA) and the Affordable Care Act (ACA). This is only a partial list. For a more thorough listing visit <http://www.dol.gov/opa/aboutdol/lawsprog.htm>.

Do not forget about state labor laws as they may have additional guidelines to be followed. For example, if same-sex marriage is legal in your state, there may be implications in regards to leave and benefits. The following provides an updated list of state labor offices <http://www.dol.gov/whd/state/state.htm>

- **Acknowledgement Form** – Have all employees sign an acknowledgement form stating that they have received a copy of the handbook. Have them also sign an acknowledgement when they have received any

¹ Information in this tip sheet is by no means to be construed as legal advice.

changes and updates to the handbook. A signed acknowledgement is simply an indication that the employee has received the handbook. It does not preclude compliance with policies. If an employee refuses to sign, ask the employee to put it in writing on the form or notate it and sign on the form yourself and have another witness also sign the form. (SHRM, page 1)

- **Employment-at-will²**- It is important to *note in writing that the handbook is not a contract between the employer and employee*. The majority of states have employee-at-will laws, which should be explained in the handbook. It should be made clear that the handbook is not a contract and does not supplant employee-at-will laws. Employment relationships are presumed to be “at-will” in all U.S. states except Montana. (<http://www.ncsl.org/research/labor-and-employment/at-will-employment-overview.aspx>)
- **Review by a lawyer** with an expertise on employment and labor law – It is imperative to have an employment lawyer review your handbook before sharing it with employees. It is important to make sure that nothing is written that may be interpreted as breaking any labor laws.
- If you have a **union** shop, it is important to make sure that the contract, or collective bargaining agreement, and the handbook align.

Sample Personnel Handbook Outline

This outline identifies possible sections and items to include in your organization’s handbook. You can also find templates and samples online. These templates and outlines are to **guide** you as you develop or update your handbook. Personnel handbooks need to be specific to the business and your organization.

- I. Foreword
 - a. Welcome
 - b. Introduction to organization including history, mission, vision, and culture
 - c. Disclaimers
 - i. Not a contract
 - ii. Handbook supersedes all other written policies
 - iii. Explanation of employment-at-will
- II. General Employment Policies and Procedures
 - a. Hiring and orientation
 - b. Employee classifications
 - c. Exempt/Non-Exempt Status
 - d. Clarification of employment-at-will
 - e. Standards of conduct
 - f. Separation or termination of employment
- III. Employee Benefits (any that apply)
 - a. Insurance (life, health, dental, etc.)
 - b. Disability plans

² **Specific to Early Head Start and Head Start Programs:** Employment-at-will, staff cannot be terminated without Policy Council approval. (HS Performance Standard 1304.5 (d) (1) x-xi)

- c. Retirement plans
 - d. Worker's compensation
 - e. Tuition assistance
 - f. Employee Assistance Program (EAP)
- IV. Time off
- a. Personal, sick days and vacation days
 - b. Family Medical Leave (FMLA)
 - c. Bereavement
 - d. Voting
 - e. Other such as military leave of absence
- V. Compensation and Performance Management
- a. Hours and schedules
 - b. Payment process and reporting of hours
 - c. Meals and breaks
 - d. Overtime
 - e. Performance Evaluations
 - f. Reimbursements for materials purchased, travel, etc.
- VI. Expectations
- a. Standards of conduct
 - b. Attendance and punctuality
 - c. Attire and grooming
 - d. Confidentiality
 - e. Conflict of Interest
 - f. Technology, including communication and internet use
 - g. Social media use
- VII. Workplace Safety
- a. Drug-free workplace
 - b. Smoke-free
 - c. Violence
 - d. Safety

***Specific to Early Head Start
and Head Start Programs***

Per HS Performance Standard 1301.31, written personnel policies, established and implemented for staff, must contain at minimum:

- *Descriptions of each staff position, including roles, responsibilities, qualifications, salary range, and employee benefits*
- *A description of procedures for recruitment, selection and termination*
- *Expectations of standards of conduct*
- *Descriptions of methods for providing staff and volunteers with training, development, and advancement*
- *Procedures for conducting staff performance appraisals*
- *Assurances that the program is an equal opportunity employer and does not discriminate on the basis of gender, race, ethnicity, religion or disability*
- *Procedures for employee-management relations, including those for managing employee grievances and adverse actions.*

Resources

Council of Nonprofits, Managing Employees: Personnel Practices for Nonprofits

<http://www.councilofnonprofits.org/personnel-practices-for-nonprofits>

Creative Financial Staffing (2014) *An Employee Handbook the 6 “C”s*

http://www.cfstaffing.com/for_employers/resources/an_employee_handbook_the_6_cs/

Creative Financial Staffing (2014) *The Employee Handbook: the Good, the Bad, and the Absolutely Critical*

http://www.cfstaffing.com/for_employers/resources/the_employee_handbook_the_good_the_bad_and_the_absolutely_critical/

EDC, INC. *Employee Handbook: Meaningful Work, Exceptional Colleagues*

http://intranet.edc.org/EDC%20Intranet%20Documents/Policies/Emp_Hbook.pdf

Inc. Staff (6/28/10) What to Include In an Employee Handbook [http://www.inc.com/guides/2010/06/what-to-](http://www.inc.com/guides/2010/06/what-to-include-in-employee-handbook.html)

[include-in-employee-handbook.html](http://www.inc.com/guides/2010/06/what-to-include-in-employee-handbook.html)

Mazurek, Sheri *The Employee Handbook is There An Update Needed?*

<http://managementhelp.org/personnelpolicies/handbook.htm>

McNamara, Carter *Purpose of Employee Handbooks* <http://managementhelp.org/personnelpolicies/handbook.htm>

National Conference of State Legislatures *The At-Will Presumption and Exceptions to the Rule*

<http://www.ncsl.org/research/labor-and-employment/at-will-employment-overview.aspx>

Society for Human Resource Management (5/8/2014) *Employee Handbooks: Should employees be required to sign an acknowledgment form for the employee handbook? What if an employee refuses?* - See more at:

<http://www.shrm.org/TemplatesTools/hrqa/Pages/signeehandbook.aspx#sthash.h4kKeGZG.dpuf>

Society for Human Resource Management (June 2009) *How to Guide: How to Develop an employee Handbook*

<http://www.shrm.org/templatestools/howtoguides/documents/employee%20handbook.docx>

Community Resource Exchange (October 2013) *Sample Personnel Manual*

http://www.crenyc.org/resources_tools

United States Department of Labor *State Labor Offices* http://www.dol.gov/whd/contacts/state_of.htm

United States Department of Labor *Summary of the Major Laws of the Department of Labor*

<http://www.dol.gov/opa/aboutdol/lawsprog.htm>

U.S. Small Business Administration *Employee Handbooks* <http://www.sba.gov/content/employee-handbooks>

Working with a Union³

“labor union (noun): an organization of workers formed for the purpose of advancing its members interests in respect to wages, benefits, and working conditions” <http://www.merriam-webster.com/dictionary/labor%20union>

Working with employees who are, or soon to become, part of a labor union adds another layer to your human resources role. You may be accustomed to working and negotiating directly with individual employees. In a union shop a third party is added to the mix as well. There is a legal relationship between management and the employees as a collective that places some limitations on your dealings with individuals. One example is that a union employee has a right to have a union representative present upon request. The union representative, employed by the union, supports and advocates for the collective team. Finally, there are several federal and state laws that establish and regulate what each of the parties can and cannot do.

These added layers may bring a little more complexity to the job as you begin to learn the parameters of having a union. It is important to note that your relationship with the union does not have to be an “us versus them” environment. Developing a strong partnership with the union and unionized employees can result in stronger collaboration, decision-making, and investment in the program and its mission. Such a relationship is built on developing credibility by always being truthful with one another.

Tips on Working with the Union

Get to know **the history** of the union shop in your program. Is it a recent entity or has it been around for years? If it is recent, what were some of the major reasons why employees chose the union? What has the past management and union relationship been like? What has worked? What hasn't?

Understanding and honoring the history can help guide you in establishing a good working relationship with the union. It can also help keep you from repeating past mistakes.

Get to know the **union representative and the union stewards**. Get a better understanding of how they see their role and how they would like to work with you and management. Respect, value, and leverage what they bring to the table.

A good relationship with the union representative and the union stewards is essential when a program is confronting problems, such as cutbacks on funding or a downturn in the economy. They can work with you, management, the Policy Council, and the governing body in finding solutions while also keeping morale up. Don't forget to recognize their contributions during the good times as well.

Read **the contract** – referred to as a **collective bargaining agreement** – thoroughly and see how it aligns with personnel policies and procedures.

The contract delineates the relationship between management and employees. For example, the agreement contains the range and increases of wages for employees and the when, how, and if you can deviate from someone's job description and hours. Often matters may arise which the contract does not cover clearly or in detail. These need to be discussed with the union before taking action.

³ This is a tip sheet on working with unions. It is in no way intended as legal advice.

For many employees, being members of a union means being empowered and having a voice. Remember that all employees want this same experience in their jobs. Be on the lookout that **your non-union employees** do not start feeling disenfranchised or taken advantage of.

You may find yourself relying more often on your non-union employees to be flexible with their hours and responsibilities. Do not become over dependent on them. Your non-union employees may start to feel taken advantage of and demoralized. Make sure that your budget and collective bargaining agreement address certain circumstances, such as coverage during the summer when most staff will be taking vacation.

Know **the law**. Labor laws regarding unions start going into effect the minute employees begin to consider and discuss the possibility of forming or joining a union. Become acquainted with both federal and state laws.

The National Labor Relations Act is overseen by the National Labor Relations Board (NLRB), an independent Federal agency. The NLRB website contains information and resources on rights and obligations of employers and unions from organizing to good faith bargaining to addressing grievances.

It is highly recommended that you also seek advice from an **employment lawyer** when you have questions, are proposing changes, in contract negotiations, or terminating an employee. An employment lawyer that knows your organization and people is ideal.

If you are a nonprofit, you may want to reach out to your local city or state bar association about the possibility of finding a pro bono employment lawyer.

Keep in mind that **expanding your services and adding new positions** should be discussed with the union. This is particularly true if hours/schedules, responsibilities, titles, and job locations may need to change. The contract will describe which employees fall under the union. A new position that is not clearly management will need to be jointly assessed on whether or not it falls within the union. If you are seeking additional funding possibilities, let the union representative and union stewards know why from the get go.

Change is always easier when there is effective communication and everyone is included in the process from beginning to end.

Commonly Used Terms:

Arbitration – A way of settling disputes by calling in an impartial third party whose decision is final and binding on both parties.

Bargaining Unit – A group of employees, represented by a union, in a collective bargaining process with their employer.

Collective Bargaining – The right to collectively negotiate with your employer for benefits or treatment is protected under the National Labor Relations Act.

Collective Bargaining Agreement – A written and legally binding contract between management and union represented employees.

Grievance Process – A grievance is a perceived violation of the contract or state and federal labor laws. A grievance can be brought by an individual or multiple employees to the union steward's attention, who then

reports it to management. The grievance process provides several steps for meeting and trying to resolve the grievance. If not resolved, a grievance can be submitted to arbitration.

Mediation – Use of a neutral third party to help union and management come to an agreement on a settlement of their dispute.

Unfair Labor Practice – Usually referred to as a ULP, is triggered by alleged illegal activity of an employer against a union or employee.

Union Steward – One or more employees elected by their peers to represent them in negotiations and presenting grievances to management.

Resources

Business Dictionary.Com. 2007-2011. <http://www.businessdictionary.com>.

Manktelow, James. "Managing in a Unionized Workplace: Getting Things Done in a Constructive Way." *MindTools*, <http://www.mindtools.com/pages/article/managing-unionized.htm>

National Labor Relations Board. 30 May, 2014. <http://www.nlrb.gov/>

"Definitions for Common Labor Terms." Teamsters, 2013. <http://teamster.org/content/definitions-common-labor-terms>