

To:

# The HR Specialist

Date: July 2019  
Vol. 17, No. 7

The best interactive HR conference. Join us Sept. 4-6 in Vegas... see p. 8

From: Business Management Daily

Subject: Practical HR strategies to boost your career

## In The News ...

**Big changes coming to the W-4 next year.** The IRS last month published a draft of the new W-4, which includes major revisions taking effect on the 2020 form. It eliminates the use of withholding allowances (which were tied to the old personal exemption amount) and replaces complex worksheets with straightforward questions. Learn more details at [www.theHRSpecialist.com/2020w-4](http://www.theHRSpecialist.com/2020w-4).

**The next frontier in workplace safety—suicide.** The U.S. suicide rate among working-age people rose 33% since 2000, and that has more risk-management professionals approaching suicide as a workplace safety issue. OSHA has even gotten involved, publishing a new webpage that gives employers and managers resources to help identify warning signs and ways to help. Go to [www.osha.gov/preventingsuicides](http://www.osha.gov/preventingsuicides).

**Join your HR peers in Vegas: New sessions added!** If you're tired of those mega HR conferences and are seeking more interactive training, join us at The HR Specialist Summit (Sept. 4-6 at MGM Grand in Las Vegas). First-class education sessions will be taught by an expert faculty, plus peer-to-peer roundtables and networking. Earn 16 hours of SHRM/HRCI credits. For details, go to [www.HRS-Summit.com](http://www.HRS-Summit.com).

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## Bypass progressive discipline when needed

Progressive discipline plans are great for correcting the behavior of employees and getting them back on track.

But employers often don't realize a big mistake in those policies until it's too late: They fail to leave an "out" for cases in which retaining the worker doesn't make sense.

**Best bet:** Make sure your written discipline process includes a clause giving you the freedom to terminate workers for especially egregious mistakes or dangerous behavior. And if you do need to pull a quick-trigger firing, make sure it is consistent with your terminations of previous employees.

**Recent case:** Ken, a cable installer, got into a traffic accident while driving for work that caused severe



*Make sure your discipline policy gives you the freedom to quickly terminate workers for especially egregious mistakes or dangerous behavior.*

injuries to the other car's occupants. Police said Ken caused it by running a red light.

The cable company concluded that the severity of the accident (and his culpability) warranted skipping its normal progressive discipline. He was terminated.

Ken sued, alleging disability discrimination, saying the accident was caused by low blood sugar brought

*Continued on page 2*

## You're responsible for outsourced HR errors

Employers may assume that outsourcing an HR function to an expert provider will insulate them from liability in case of a legal mistake.

That's not always true.

It's vital to read the fine print in vendor agreements (before you sign) and perform quality control to ensure vendors follow the law.

**Recent case:** The ADA only allows employers to conduct post-offer medical screenings for reasons that are consistent with business necessity. The ADA also makes it unlawful to discriminate against disabled applicants.

JBS Carriers, a trucking company, typically offered jobs to applicants contingent on passing a medical exam. JBS outsourced pre-hire exams to ErgoMedical.

Cindy had 30 years of truck driving

experience when JBS offered her a job. She had a sore shoulder at her exam, something she attributed to carrying heavy luggage that day. ErgoMedical stopped the exam and sent JBS a negative recommendation. Her offer was withdrawn.

Cindy complained to the EEOC, which sued on her behalf.

The EEOC said JBS, not the outsourced medical vendor, was liable for the mistake. The case was headed to trial when JBS agreed to settle by paying \$250,000 to Cindy and four other potential hires. JBS also agreed to end its outsourced contract with ErgoMedical and only require post-offer urine tests and medical exams sufficient to obtain the medical certification required by federal law for licensed truck drivers. (*EEOC v. JBS Carriers*, DC CO)

## Progressive discipline

(Cont. from page 1)

on by diabetes. As proof of bias, he pointed out that the company bypassed its progressive discipline system.

The court disagreed. It said the company's disciplinary policy specifically addressed accidents, stating that "the severity could warrant an acceleration of the disciplinary process up to and including immediate termination." The case was dismissed. (*Henry v. Spectrum LLC*, ND TX)

**Final note:** While Ken claimed he was fired because of his disability, he lost because he couldn't identify any other worker who was treated more leniently for severe accidents who wasn't disabled.

**Online resource** For a sample five-part progressive discipline model, go to [www.theHRSpecialist.com/discipline](http://www.theHRSpecialist.com/discipline).

### Progressive discipline the legal way: 7 steps

1. **Document verbal warnings and counseling.** Place the notes in the employee's file and retain them.
2. **Don't impose discipline in a vacuum.** In notes and discussions, tie it to employees' prior warnings and performance reviews.
3. **Let employees know what is expected of them** and then provide them with the tools necessary to reach the goal.
4. **Let workers tell their side of the story.** Document what they say.
5. **Set deadlines.** Give employees a reasonable time period to correct the problem.
6. **Spell out the consequences of inaction.** Employees need to know the specific adverse action they would face.
7. **Skip steps only when warranted.** If you plan to fire an employee without running through the progressive-discipline gamut, make sure that such extreme action is clearly deserved. Consider running it by your outside attorney.

# Better never than late: How to deal with chronically tardy employees

Employees who are habitually tardy can cause just as many problems—if not more—than those who don't show up at all. At least with no-shows, you're more likely to pull the termination plug quickly. Chronic tardiness is a slow drip of noncompliance that may go unnoticed for a while.

While most employers track tardiness occurrences, they should do more. How? By issuing a consistent series of oral and written warnings and documenting each admonishment. Then follow up to see if the behavior improves. If it doesn't, that documentation will be worth its weight in gold if you need to fire the employee and he or she decides to sue.

Other tips:

- Try to talk with the employee after every late arrival, giving him or her a chance to explain.
- Distinguish between excused and unexcused tardiness in your records.
- Explain that unexcused tardiness

## 5 ways to ask legally tricky interview questions

Job interviews can be a legal minefield. However, you can ask the following questions without risking a discrimination charge.

1. **Tell me about yourself.** Open-ended questions elicit more information than specific ones. When answering this question, the elements that a candidate chooses to emphasize can be illuminating. Listen for statements that clue you in to the intangibles most important to success in the position.
2. **Can you work overtime? Weekends? Night shifts?** Don't draw conclusions about the willingness of candidates (especially women with children) to work odd hours. Directly question all candidates about their willingness and ability to work nonstandard hours.
3. **Do you feel comfortable lifting 50 pounds several times a day?** Don't assume that certain candidates can't do hard work. You can even test the applicant's ability to perform the task. Just don't make assumptions.
4. **Do you have any physical limitations that would keep you from performing the job's essential functions?** You're entitled to know, but caveats exist. First, you must clearly define a job's essential functions. Second, you must ask this question of all applicants.
5. **How has your education prepared you for this job?** For many positions, a diploma is not accepted as a bona fide occupational qualification. Instead of asking about some paper credential, ask about specific skills that the applicant needs for success.

### Who's late?

- On average, 6% of American hourly workers arrive late for their shifts each day.
- Gen Z employees (those born after 1995) are the most likely to be late for work. Baby boomers are the least likely to be late.
- Hourly shift workers in Illinois were the tardiest, with 8.7% of employees clocking in late for shifts. California was the most punctual, with more than 12% clocking in early.

Source: Deputy Software analysis of 28 million time records of shift workers





## Have a plan for harassment in the C-suite

HR knows how to handle sexual harassment complaints against rank-and-file workers. But what happens if the alleged harasser sits at the top of the org chart? In the era of #MeToo, you need to have a plan for exactly that contingency. Many of the recent highest-profile harassment cases have implicated C-suite executives.

**Best bet:** HR should automatically refer such complaints to the company’s attorney and/or its board of directors.

**Recent case:** The EEOC filed a lawsuit against a Miami security com-

pany, claiming the owner aggressively harassed one of his female employees. When she told the owner she wanted to “keep things professional,” he fired her. In announcing the lawsuit, the EEOC said one of its big enforcement priorities is litigating cases involving high-ranking managers who abuse their power to harass subordinates.

**Online resource** The EEOC offers an online tool for employers to help react to harassment claims and handle execs who harass. Access it at [www.tinyurl.com/EEOC-risk-factors](http://www.tinyurl.com/EEOC-risk-factors).

## Oversee ind. contractors with a ‘light hand’

When you hire independent contractors, they sometimes work side-by-side with employees. If so, ensure that managers oversee contract labor with a light hand, and don’t have contractors do work that’s not specified in the agreement.

Micromanaging contractors makes it more likely that they could be deemed employees, putting your organization on the hook for legal liability, benefits, taxes and more.

**Recent case:** Lisa worked for a cleaning service and was assigned to a college. College staff often asked

her to do tasks, even after hours, and called on her personal phone to ask.

Lisa later sued the service and the college for sexual harassment. The college asked to be dismissed. But the court said the college was a “joint employer” because it had control over her workday and beyond. (*Carroll v. Celebrity Cleaning*, MD PA)

**Online resource** Learn the U.S. Department of Labor’s six-factor test to distinguish between employees and independent contractors at [www.theHRSpecialist.com/6factor](http://www.theHRSpecialist.com/6factor).

## NLRB: Bathroom chat isn’t protected activity

Even in nonunion workplaces, the National Labor Relations Act protects the rights of employees to engage together in “concerted activities” that aim to benefit their jobs. For example, you can’t punish two workers for discussing ways to improve their pay.

But does that protection cover two workers overheard complaining about clients in a bathroom? Apparently not.

**Recent case:** A Quicken Loans employee used profane language to complain about a client to a

co-worker while both were in the company restroom. A supervisor overheard this from a stall and the employee was fired.

The fired worker filed an unfair labor practice charge. But the National Labor Relations Board rejected it, saying that concerted activity is only protected when it is work-related and made with an eye toward collective action to improve work conditions.

In this case, there was no evidence that the bathroom grousing was intended to improve the terms and conditions of employment.



## Legal Briefs

### When promoting, document the factors that you weigh

When Cammille lost out on a promotion, she sued for race bias. Her employer told the court it used résumés, interviews and written exercises to rank candidates. That left Cammille at the bottom. She argued, saying the company should have used her positive reviews. But the court said employers are free to set their own selection criteria, as long as it’s not biased. (*Sorrell v. Wilkie*, SD CA)

**The lesson:** Keep careful records of the factors you consider when making promotion and hiring decisions. That’s especially true if you don’t give much weight to objective factors, such as past reviews.

### Pink slip for union supporters? a \$775 no-brainer mistake

A Silicon Valley software firm agreed to pay \$775,000 to settle claims it fired 15 engineers—all of its nonmanagement staff—after they tried to secure union representation. (*Lanetix, Inc.*)

**The lesson:** While it’s legal to make your case to employees why they shouldn’t join a union, the National Labor Relations Act makes it unlawful to discriminate against union supporters. Firing is an obvious no-no. Find out which anti-union steps are legal at [www.theHRSpecialist.com/unions](http://www.theHRSpecialist.com/unions).

### Ignoring interactive process pops Party City’s balloons

When a team leader at a Party City store in Texas suffered pregnancy complications, her doctor imposed a lifting restriction. But rather than discuss possible workplace accommodations, the store fired her. The EEOC filed an ADA lawsuit on her behalf. (*EEOC v. Party City*, SD TX)

**The lesson:** If disabled workers ask for an accommodation, the ADA requires that you start an “interactive discussion” to identify possible solutions. The EEOC says you “must evaluate each employee’s situation without bias based solely on their disability.”





## New risk: EEOC suing over small claims

For years, the EEOC has mostly filed lawsuits against employers who show a wide pattern of discrimination. But the EEOC this year has filed a record number of smaller run-of-the-mill discrimination lawsuits on behalf of employees. Most are settled for between \$10k and \$20k before trial. For details and tips on handling an EEOC case, go to [www.theHRSpecialist.com/EEOCsmall](http://www.theHRSpecialist.com/EEOCsmall).

## Supreme Court: Employer must notify the court early of employee's EEOC complaint

A unanimous U.S. Supreme Court ruled last month that employers who are sued for employment discrimination under Title VII must tell the court early on whether the employee who is suing has also filed an EEOC complaint. If employers don't raise the issue then, they lose the right to do so. (Normally, employees must file an EEOC complaint before attempting to sue for discrimination or harassment.)

*Note:* Employers need to realize that this decision does not give employees the green light to skip going to the EEOC before they file a lawsuit. It only means

that employers have to raise their failure to do so early in the process if they want to get the case thrown out.

## How to improve the FMLA? DOL wants your ideas

Even after 25 years, compliance with the FMLA still confuses and trips up employers. Recognizing this, the U.S. Department of Labor says it will soon seek public comments on ways to improve FMLA regulations to protect employees "and to reduce administrative and compliance burdens on employers." Look for DOL's request for comments this year or early 2020.

## Congress moves closer to making it easier for small employers to offer 401(k)s

The House of Representatives last month passed legislation 417-3 that would make it easier for employers to set up 401(k) retirement plans for their employees. The tactic: allow unrelated small businesses to band together to sponsor 401(k) plans, reducing the cost and simplifying the administration. Currently, multi-employer 401(k) plans are only available to employers that are somehow connected by industry or trade association. A similar bill to the House version (the SECURE Act) is working through the Senate and is expected to pass. Learn more at [www.theHRSpecialist.com/SecureAct](http://www.theHRSpecialist.com/SecureAct).

## HR Q&A

### Who is allowed to complete the W-4 form?

**Q.** Is it legal for payroll to complete the W-4 for an employee as long as the employee signs the form?

— *Lisa, Texas*

**A.** Form W-4 is for the employee, not the employer, to complete. Although your staff can assist employees in completing the form, you need to complete the form only as the employee directed. You cannot complete a form for an employee who refuses. Beyond helping explain the form, resist the temptation to do more.

**Online resource** If you are concerned an employee won't complete the form because he or she is protesting income taxes, here is how the IRS says you should respond: [www.theHRSpecialist.com/taxprotest](http://www.theHRSpecialist.com/taxprotest).

### We gave an incorrect FMLA notice: What now?

**Q.** After an employee went out on qualified FMLA leave, we sent her the wrong form letter. It indicated she was eligible for workers' comp, but this wasn't workers' comp leave. How do I correct the error?

— *Kim, Virginia*

**A.** If your original letter didn't meet all the FMLA notice requirements, you should reissue a corrected notice as soon as possible.

*The good news:* The U.S. Supreme Court has said that

people who receive incorrect notice of their right to FMLA leave are not, thereby, automatically entitled to more leave. Still, you could find yourself in a situation in which an employee was harmed by trying to return to work sooner than necessary after FMLA leave.

If the only mistake was that it incorrectly stated she was eligible for workers' comp, correct the error promptly and acknowledge the notice was incorrect. It seems unlikely she will have suffered harm due to the error.

### When is 'waiting time' considered paid time?

**Q.** Do we have to pay a person for time spent waiting at a hospital (for a work-related injury) or filing a police report (not on work premises, but work-related theft)? — *Anonymous, Illinois*

**A.** The federal Fair Labor Standards Act requires employees to be paid for all time in which they are "suffered or permitted to work." In both cases you cited, the employees engaged in activities that were related to work, so they should be paid for the time.

**Online resource** For advice on which waiting time is compensable, go to [www.theHRSpecialist.com/waittime](http://www.theHRSpecialist.com/waittime).

*Do you have a question? If so, you can email it to The HR Specialist at [HRSEditor@BusinessManagementDaily.com](mailto:HRSEditor@BusinessManagementDaily.com).*

## Biggest hiring challenge: Getting applicants' attention

With the unemployment rate at a 50-year low and job seekers in the driver's seat, recruiting is no walk in the park these days.

Employers face a number of challenges throughout the hiring process, but the greatest these days is simply generating interest from qualified candidates, according to a new survey of more than 2,800 HR professionals and hiring managers by staffing firm Robert Half.

Asked what aspect of the hiring process they found most difficult, respondents said:



Making an offer to a candidate isn't the end of the recruiting road. Here are the top five reasons that recent candidates turned down job offers: pay and benefits were lower than expected (30%), person accepted a different job or counteroffer (30%), poor fit with the job description (12%), poor fit with the culture (8%) and too few employee perks (7%).

**Tip:** Speed is essential to overcome today's hiring challenges. Good candidates don't remain available for long. So consider paring down the number of people you interview, schedule interviews back to back and make sure the compensation package has been explained before you reach the final interview stage so you can extend the offer right away.

## 2019 grads: Good options but lofty salary goals

The vise-tight labor market is excellent news for members of the 2019 college graduating class, as their chances of getting hired have improved greatly over the years. But a new study says employers should prepare for a rude awaking (or a good laugh) once these newly minted grads make their salary requests.

"Job prospects are bright for the class of 2019," says Paul McDonald, senior executive director for Robert Half.

The staffing firm's annual survey found that 83% of senior managers say they're likely to hire those who've recently earned a college degree. The top benefits of hiring new grads: enthusiasm about starting a career (35%) and their fresh perspective and ideas (28%).

However, their salary expectations may be leaning toward the unrealistic side.



The average new grad in 2019 expects to earn a salary of \$57,964 one year out of college, according to a new survey of 7,000 students by investment firm Clever. In comparison, the national median salary is considerably lower: \$47,000 for holders of bachelor's degrees with up to five years of real-world work experience.

The average grad also overestimates how much they'll make by mid-career (10 years after college). They think they will be making \$95,000—an overshoot by about \$15,000.

The survey found that women expect lower salaries than men, even when they have the same major.

## Improve your preboarding: More new hires flaking out

Employers take note: The hiring process doesn't necessarily end when a candidate accepts your offer.

A survey of 2,800 working professionals found that a full 28% say they've backed out of a job offer that they had initially accepted.

Here are the responses when researchers asked:

### Why did you change your mind after accepting a job offer?

Better offer from other employer  
44%

Counteroffer from current job  
27%

Heard bad things about employer  
19%

If you are the rejected suitor, directly ask the candidate what led to their change of heart. You may be able to sweeten the pot: Promise an early review with the prospect of a raise? Offer more responsibility? Is a signing bonus an option? Are benefits negotiable?

Also, to keep your new hires committed during the time between offer and start date (pre-boarding), try to:

- Provide a mentor to explain more about the company.
- Create an online portal for new hires that highlights company history, benefits and culture. Some employers send a CEO welcome video or "day in the life" video.
- Highlight your well-being programs.
- Invite the person to a team lunch, tour of the company and any happy hours or company events.
- Get most of the typical first-day paperwork done ahead of time.
- Send a welcome gift box.

**Online resource** For more pre-boarding advice, go to [www.theHRSpecialist.com/preboarding](http://www.theHRSpecialist.com/preboarding).

To: \_\_\_\_\_  
 From: \_\_\_\_\_

Date: July 2019  
 Re: The legal risk of retaliation

## Retaliation After an employee complaint, keep calm & manage on

“Don’t get mad, get even.” It may be a good motto for action movies, but it’s a terrible management style. Still, an increasing number of supervisors continue to respond to employee complaints by punishing workers with discipline, pay cuts or even termination.

Last year, more than half of the 76,000 employee complaints of job discrimination filed with the federal government included a complaint of retaliation (see chart below). That’s an all-time high and more than double the percentage from just two decades ago.

**Why the increase?** When employees file complaints of race, age, sex or disability discrimination with the EEOC, their lawyers routinely tell the workers to look out for any type of punishment from management. That way, employees can tack a retaliation charge onto the main complaint.

Plus, the U.S. Supreme Court rewrote the definition of “retaliation” a few years ago, making it easier for employees to get their retaliation lawsuits into court.



### Before disciplining, ask yourself these questions:

To prevent employees from being able to file retaliation claims, ask yourself these two questions before taking action against employees who’ve recently complained about discrimination, safety risks or financial violations (either formally or informally).

1. **“Why am I taking this action now?”** Scrutinize your reason and timing. Is there any connection to the person’s complaint? If it smells even a bit like retaliation for the complaint, a jury could see it that way too.
2. **“Would I take this action with my best employee?”** If your answer is “no,” you could be open to a retaliation charge. If your answer is “yes,” make sure that you document the basis for your decision before proceeding.

### What counts as ‘retaliation’?

Most managers know it’s against the law to discriminate against employees and applicants because of their race, gender, age, religion or disability. But those laws also make it illegal for supervisors to retaliate in any way against employees who voice complaints about job discrimination (or safety issues).

The government agency that enforces job anti-discrimination laws, the U.S. Equal Employment Opportunity Commission (EEOC), says: *“An employer may not fire, demote, harass or otherwise ‘retaliate’ against an individual for filing a charge of discrimination, participating in a discrimination proceeding or otherwise opposing discrimination.”*

### Case in point

A recent court ruling shows how a poor management reaction to a legal complaint can trigger even worse trouble.

A hardware store employee sued, claiming she didn’t earn a promotion because of

her race. But right after she filed her lawsuit, she saw her full-time job cut down to a part-time job.

The employee went back to court and added a retaliation claim onto her original lawsuit. The court sided with her. (Even if she lost on the race-discrimination charge, she could still win the retaliation complaint.)

### Hands off complainers

It’s more important than ever for managers to realize that it’s illegal to try to “get back” at employees who complain about discrimination, safety or financial violations.

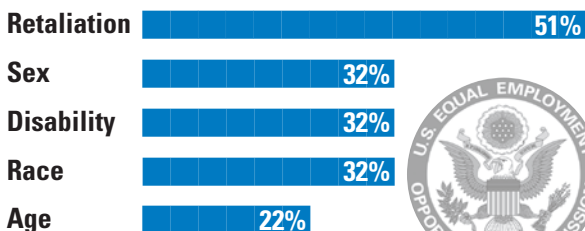
Make sure you treat all employees equally in day-to-day management and discipline.

This doesn’t mean that employees who voice complaints are untouchable. You can still discipline such employees for legitimate performance and behavior issues. Just make sure you’ve taken the same actions with all employees. And always keep solid documentation on the reasons for your decisions.

**Online resource** For more advice on this topic, download a 15-page special report, *Avoid the Retaliation Trap: Strategies to Steer Clear of Legal Danger*, available at [www.theHRSpecialist.com/RetaliationTrap](http://www.theHRSpecialist.com/RetaliationTrap).

### Top job discrimination complaints

Percentage of employee discrimination complaints to the EEOC that contained each type of charge:



Source: EEOC 2018. Total is above 100% because employees often claim multiple forms of discrimination.





## How to document employee infractions: 4 'musts' to include

In his recent *Business Management Daily* webinar, Documenting Employee Performance, author and HR executive Paul Falcone explained how much (and what kind) of details should be included when documenting employee performance and behavior problems:

When you're writing narratives, employ the traditional "who, what, where, when, why" paradigm. The logic being that you're not only writing for this particular employee. You have to assume your documentation will be held under some form of legal scrutiny. You're actually writing this for a jury a year from now.

### 1. Paint pictures with words.

Use your senses when describing events. For example, "You left your work area untidy again" means nothing to a jury nine months from now. But they can picture it if you write, "An eight-inch stack of incoming work orders was piled on your desk and AC parts were lying on your typing table."

Turn subjective evaluations into concrete facts. Don't state, "You appeared at the customer's home

under the influence of alcohol."

How would you know unless you had a breathalyzer? What you can state is, "The customer reported that he heard you slurring your words, saw that your eyes were glassy, smelled alcohol on your breath and that your gait was unsteady."



**You're not only writing for the employee, you have to assume the documentation will be held under legal scrutiny. So you're actually writing it for a jury a year from now.**

— Paul Falcone, author and HR exec

### 2. Document the negative impact

that resulted from the employee's actions. That's the legitimate business reason that's justifying the discipline.

Too many times, managers come to me and say, "My gosh. I was in the office until 10 last night doing all this stuff that the employee was supposed to have done."

That all needs to go into the documentation: "I found inconsistencies throughout your calculations and had to correct them myself before they could be processed. As a

result, I had to work until 10 p.m. last night. We'll have to hire a temp beginning tomorrow and need to push back the goal date a week."

### 3. Keep physical evidence.

I've seen cases in which the employee turns in a work product with so many errors that the manager just throws it in the garbage out of frustration. Big mistake. That's the most important piece of evidence they had.

When you write employees up, try to attach that faulty work product as an example. That's what justifies the discipline.

### 4. Include the employee's response

to the written warning or discipline, whenever possible. That allows you to document that you listened to the individual's side of the story before taking disciplinary action. You incorporated their feedback in the document, yet you're still holding them to the same standard.

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Volume 17, Number 7

Printed in the United States.

*The HR Specialist* (ISSN 1545-360X) is published monthly by Business Management Daily, 7600A Leesburg Pike, West Building, Suite 300, Falls Church, VA 22043-2004, (800) 543-2055, [www.theHRSpecialist.com](http://www.theHRSpecialist.com). Annual subscription price: \$299.

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## Stay cool when dealing with tricky summer pay issue

Before getting lost in daydreams about the lazy days of summer, work with your colleagues in payroll to head off the headaches that accompany holidays and vacation time off. Here are a few issues to watch out for:

### Don't pay for employees' sultan

You likely don't have to pay employees who use their phones or laptops to occasionally check their work email while on vacation. The effort is minimal, so it can be considered unpaid *de minimis* time.

However, nonexempts who respond to emails, voice mails or texts, or who do other work, must be paid for their time. Exempts must be paid for the full week.

*Tip:* To avoid unwanted payroll surprises, have employees turn in their company-issued phones and laptops for the week. And consider blocking them from accessing company email while away.

### Vacation doesn't count for OT

Remember: Vacation pay is idle-time pay, which isn't included in the regular rate of pay used to figure nonexempts' overtime rates.

*Example:* Julie earns \$15 an hour and works eight hours a day. Monday

through Thursday she works 45 hours. She takes a paid vacation day



*Vacation pay and holiday pay should never be factored into the regular rate when calculating a nonexempt employees' overtime pay.*

on Friday, for a total of 53 hours.

**Here's the wrong way to calculate her pay for the week:** She earns \$600 in straight-time pay, \$120 in vacation pay and \$292.50 in overtime ( $\$15 \times 1.5 = \$22.50$  overtime rate  $\times 13$ ). Total pay: \$1,012.50.

**Here's the right way to calculate her pay:** She still earns \$600 in straight-time pay and \$120 in vacation pay, but only \$112.50 in overtime ( $\$15 \times 1.5 = \$22.50 \times 5$ ). The eight hours of vacation aren't counted. Total pay: \$832.50.

Julie's employer saves \$180 simply by making sure her vacation day didn't count toward her overtime pay.

### Holiday pay: Your choice

An annual issue is whether you must pay nonexempts for holidays on which they don't work. There

is no federal or state law that mandates holiday pay, so you could save money by limiting holiday pay.

You could, for example, pay nonexempts for eight holiday hours when they don't work the holiday, even though they normally work 10-hour days.

Just like vacation pay above, holiday pay should never be factored into the regular rate when calculating overtime.

### Save when paying exempts, too

If you close for a full workweek, you don't have to pay exempts if you choose not to. They can take accrued paid vacation leave, if they have it.

Partial-week closings are trickier. If you have a bona fide time-off plan, you may require exempts to use accrued leave during a partial-week shutdown. This strategy fails for exempts whose leave banks would go into a negative balance; they must receive their full pay.



*Alice Gilman, Esq., is the editor of Payroll Legal Alert and the Research Institute of America's Payroll Guide. At the HR Specialist Summit, Alice will present a breakout session on solving pay issues, plus a special three-hour Payroll Compliance Workshop on Sept. 4.*



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- Kim Stanley,  
Penske Automotive

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Is there anything more dangerous than crossing the IRS?

# *Payroll Compliance Handbook*

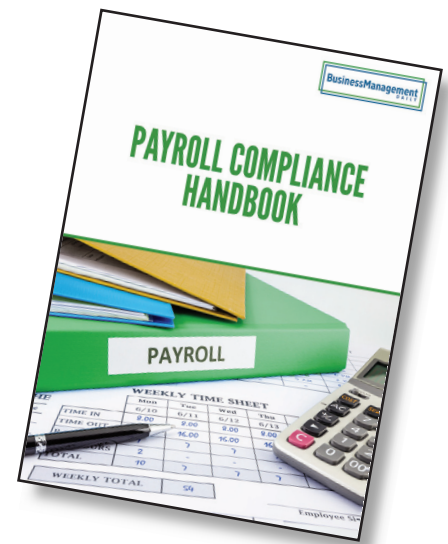
Once upon a time, payroll used to be easy: the employee's gross pay minus federal, state and local taxes. Then along came health premium and 401(k) deductions. Still simple, but...

Today, payroll managers deal with direct deposit, health spending accounts, vehicle allowances, phone expenses, earned income credits, garnishments and more. Payroll is now a confusing and time-consuming task prone to error.

Don't let a simple mistake unleash the full and frightening power of the IRS and wipe out your business... and you personally.

With our newly updated *Payroll Compliance Handbook*, you'll quickly and easily find answers to all of your nagging payroll questions. This handy reference is written in plain English - no legal gobbledygook here - so you can quickly understand what you need to do to stay in compliance, improve efficiencies and avoid costly payroll errors.

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- Business expense reimbursement
- Saving on unemployment taxes
- Payroll record-keeping
- Handling the IRS without stress
- Everything you need to know about W-4 forms
- And dozens more critical topics!

*Over, please*

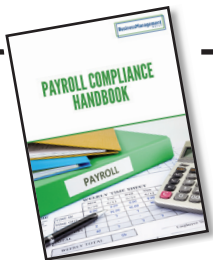
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- **What's the law in your state?** Check out the appendixes for the requirements in your state.

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