

Managing Employees

Mark C. Feldmann
Beving, Swanson & Forrest, P.C.
321 East Walnut St., Suite 200
Des Moines, IA
515-237-1182
mfeldmann@bevinglaw.com

Who is an employee?

Independent Contractors

Employees are not independent contractors.

Independent contractors are not employees.

No Single, Simple Test

How permanent is the activity?

Does the worker truly control the manner in which they perform the work?

What possibility is there for the worker to make a profit or sustain a loss?

Does the worker have a place of business and are the services offered to other enterprises?

Does the worker or the business supply the tools and equipment needed to perform the work?

Does the business or the worker provide the space in which the work is to be performed?

Independent Contractor Documentation

Written Contract?

Federal I.D. Number

Proof of insurance including Workers Compensation

Do You Need an Employment Manual?

Will you live by it?

Will you maintain it?

Will you update for changes in the law?

It may be better to have no manual than to have a manual you don't adhere to.

Form I-9 and Document Verification

Each new job applicant should be advised, orally and in writing, that only United States citizens and aliens lawfully authorized to work in the United States will be hired.

Wage Payment Law

Pay all wages due at least monthly.

Deduct only with advance written approval and for the benefit of the employee.

State enforced penalties for non-compliance.

Prohibited Wage Deductions

Cash shortages.

Losses due to bad checks from customers.

Losses due to damage to property unless intentional.

Lost or stolen property unless assigned with written receipt to employee.

Cost of personal protective equipment other than clothing or footwear.

Discrimination

- ✓ **Race.**
- ✓ **Color.**
- ✓ **Religion.**
- ✓ **Sex.**
- ✓ **National origin.**
- ✓ **Ancestry.**
- ✓ **Age.**
- ✓ **Disability.**

Unless based on the nature of the occupation.

Employers of less than four workers exempt.

Family members need not be counted as employees.

Unfair Practices

Don't discriminate when you:

Hire

Compensate

Promote

Discipline

Discharge

Sexual Harassment

Unwelcome sexual flirtations, advances or propositions, verbal abuse of a sexual nature, subtle pressure or requests for sexual activities, unnecessary touching of an individual, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, display in the workplace of sexually suggestive objects or pictures, sexually explicit or offensive jokes, and physical assault.

Warning to supervisors

A supervisory employee is subject to personal liability for unfair employment practices under the Iowa Civil Rights Act.

May not terminate because:

Attend certain court-ordered courses.

Summoned for jury duty

Brought actions under the age and hour laws

Wages have been garnished

Used certain types of family or medical leave

Workers exercising rights under OSHA.

Termination Wages

Employers and employees are not normally required to give advance notice of termination.

Wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays should be paid at the time of separation.

Drugs and Alcohol

Prohibit possession and use.

Enforce strictly.

Testing strictly according to law.

Defamation

“Qualified privilege” to communicate information that might otherwise be considered defamatory if:

Made in good faith,

The employer and the recipient have an interest to be upheld,

The statements are limited in their scope to this purpose,

They are made on a proper occasion,

They are published in a proper manner, and.

The publication is made to proper parties only.

OSHA/IOSHA

Iowa safety and health regulations have been federally approved and are identical to all federal OSHA regulations. They apply to all businesses in the state with one or more employees.

Family and Medical Leave Act

Employers with 50 or more employees.

The Family and Medical Leave Act (FMLA) entitles qualified employees up to 12 weeks of unpaid leave per year for the birth or adoption of a child, to care for a spouse or an immediate family member with a serious health condition, or to recover from a serious health condition that makes the employee unable to work.

Employee Inspection of Personnel Records

Reasonable time and place.

Includes evaluations and disciplinary records.

May charge a reasonable commercial copying fee.

Unemployment Compensation

An agricultural employer, if the employer paid wages of \$20,000 in any calendar quarter in the calendar year or preceding calendar year or if the employer employed at least 10 individuals in agricultural work for some part of a day on each of 20 days during the calendar year.

Eligible employee collects unless:

Voluntary quit.

Misconduct.

A deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. It is limited to conduct that is deliberate, intentional or culpable. "Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not considered misconduct within the meaning of the statute."