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Not Understanding Employment Laws Can Hurt Your Bottom Line

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PRESENTATION HANDOUT

- 1) WHAT IS HUMAN RESOURCES AND WHY SHOULD IT MATTER TO YOU?
- 2) ILLINOIS EMPLOYMENT LAWS, Some Laws Likely to be Encountered by Small Businesses
- 3) FEDERAL EMPLOYMENT LAWS, Some Laws Likely to be Encountered by Small Businesses
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What is Human Resources and Why Should It Matter to You?

My definition of human resources (HR) is that it's the management of employees as a capital asset. A business acquires and manages employees in a manner similar to acquiring and managing any other capital asset. Now what exactly does this entail?

Employees are human and they are a business resource. However, in the same way that machinery or equipment is capital that is acquired, utilized, appreciates or depreciates in value, and which can be improved, sold or discarded, HR relates to the management of employees in a similar manner. Although this explanation may seem callous, when further scrutinized it is evident that HR pays as much attention to the "human" half of its name as it does to the "resources" aspect.

HR concerns the approach and ideology a business adopts for its company culture and the life cycle of its employees. Recruiting, selecting, compensating, motivating, maintaining and promoting employees are all part of HR. Consequently, to some extent, all businesses with more than one employee practice HR. Yet, an effective HR philosophy has to acknowledge that because employees affect every facet of business, employees have enormous impact on profit.

HR AFFECTS PROFIT

Therefore, in order to improve profit and decrease expenses, management must know how to treat employees in a fashion which enhances their value. Ultimately, effective HR helps to maximize profit by minimizing employment related expenses and maximizing employee performance.

In U.S. industry, modern HR theories date back to the Industrial Revolution. Moreover, since the Industrial Revolution, HR has evolved along with changes in production, distribution, finance and, perhaps most importantly, legal and civil rights. HR poses problems for a business when it fails to understand how these changes influence macro and micro HR practices.

Micro and Macro HR

Macro HR is the strategic function of HR in a particular work environment. It encompasses the understanding of what HR means to a business; that is, how HR fits into the organization's structure, mission and planning. Macro HR further incorporates policy and practice development. It's the "big picture" stuff of HR.

Micro HR is the actual execution of duties as delineated at the macro level. These duties include the administration of policies regarding the selection, hiring, compensation, placement, performance management, promotion, conflict resolution, discipline and discharge of employees.

How Macro and Micro HR Impact the Bottom Line

As stated above, a business will encounter difficulties when it fails to account for changes to macro and micro HR practices and changes to our labor and employment laws. Such difficulties include an unsafe workplace, attendance issues, conflict, misconduct and litigation. Simply stated, when a business encounters HR related problems, money is lost.

Businesses have money coming in through the "front door" via revenue, venture capital, grants, investors, etc. However,

much of this money can exit through the "back door" because of poor HR practices. For instance, time and money is lost when a business realizes that it hired the wrong employee and may now have to discharge that employee. Consequently, that business will have to spend money and time finding and training a new employee and may even have to defend its treatment and discharge of the former employee.

Recognizing and efficiently resolving these problems often costs a great deal of time, energy and money. However, time and energy spent upfront, proactively, on HR related matters could help to reduce, and in certain instances eliminate, the loss of money out the "back door." Thus, HR becomes an investment in capital. Time, energy and money are saved and increased productivity and profits result.

Knowing which HR practices to adopt and which HR disciplines to focus on is crucial in resolving macro and micro HR issues. Effective HR helps transform business from just a place to work into an environment which provides employees varied opportunities for meaningful contributions. Meaningful employee contributions lead to decreased operating costs, innovation and increased profits. Implicit in this explanation is the fact that results are measurable via means such as before and after analyses and time and expense audits.

Labor & Employment Law Defined

Labor & employment law generally refers to the body of law regulating the workplace and all employment (HR) related matters.

However, labor law and employment law are two distinct categories which are often confused with one another because they somewhat overlap.

Generally, labor law refers to the body of laws and rules regulating labor unions and associations and their relationship with management. Such laws include the National Labor Relations Act and other similar federal, state and local labor laws or ordinances. These laws and regulations permit employees to organize, elect representation and enter into legally binding contracts with management.

Generally, employment law concerns the body of laws and rules regulating civil rights and non-union related conduct in the workplace. Civil rights include a workplace free from discrimination and harassment for people (it need not be an employee) who fit into one of the legally protected classes (e.g., race, gender, disability, national origin, religion, military status, pregnancy, and in some instances sexual or gender orientation). Conduct laws refer to equal and fair pay, immigration and employment-at-will laws. Like labor laws, these are federal, state and local laws.

Labor & Employee Relations Defined

On the macro HR level, labor relations refers to the philosophy a business adopts for dealing with labor unions, union organizing and employee associations. On the micro level, this refers to practices and rules for dealing with individual employee issues relative to unions and associations.

Employee relations refers to the ideology (macro) a business adopts for dealing with harassment and discrimination and other employee issues, unrelated to labor unions or employee associations. This may include communication, discipline, recognition and payroll policies. On the micro level, it generally refers to how laws and rules are applied to employees.

ILLINOIS LABOR & EMPLOYMENT LAWS

Some Laws Likely to Be Encountered by Small Businesses

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Minimum Wage Law (Illinois)	4 or more employees, excluding family members; workers 18 & older.	\$6.50/hour	Payment of back wages, legal costs, attorneys' fees. Other penalties including punitive damages (up to 20% of back wages) may apply.
Group Insurance for Terminated Employees	Employers with group health insurance & HMO contracts in Illinois.	Upon employee separation, employer must provide COVERED employee who has been enrolled in the plan for at least 3 months, prior to separation, the option to continue hospital, surgical & major medical coverage for 9 months for self & dependants.	None specified
Spousal Health Insurance Rights Act	Employers with group health insurance in IL.	Spouse or former spouse must be given the option to continue all health insurance coverage.	None specified
Toxic Substances Disclosure to Employees Act	5 or more full-time employees or 20 or more employees in IL.	Employer must inform IL Dept. of Labor & employees of potential hazards, safety precautions & emergency procedures concerning exposure to toxic substances in the workplace which pose known suspected health hazards & which may cause death or serious physical harm to employees. Employer must label all toxic substances & train all employees who are routinely exposed to the materials. There are exemptions that are contingent upon industry, substance concentration & other factors.	\$1k/violation & not more than \$10k for each willful or repetitive violation. Punitive damages up to 10-times the total penalty or \$20k (whichever is larger). Back pay, attorney fees & costs. Reinstatement of employee. Institute training programs.
Unemployment Insurance Act	All employers	Must pay unemployment insurance contributions to IL, must file a quarterly Employer's Contribution & Wage Report, & report all new hires within 30 days.	Failing to file a report may result in a penalty equal to the lesser of (a) \$5 for each \$10k of the total wages paid by employer during the period (quarter), or (b) \$2,500 for each month failing to report. Employer who willfully fails to pay any required contribution shall be required to pay those contributions plus a penalty equal to 60% of the amount of the unpaid contributions.
Directory of New Hires (part of the Unemployment Insurance Act)	All employers	Must report identifying information on all new employees within 20 days of first workday to Illinois Directory of New Hires.	An employer that knowingly fails to comply is subject to a civil penalty of \$15 for each employee not reported within 21 days after being notified by the IDES. An employer who knowingly conspires with the new employee to avoid the law is guilty of a class B misdemeanor & eligible for a fine no greater than \$500 for each unreported employee.

IL Wage Payment & Collection Act	All employers	Employer must pay all wages at least semi-monthly & within 13 days of when earned. Must pay wages & unused vacation time upon end of employment, but not later than next payday. Exclusions for certain exempt employees & per contract/agreement.	Employer liable for penalty if the IL Dept. of Labor determines wages owed, & employer doesn't pay. Penalties are 1% per cal. day up to double the amount of the award; may be found guilty of a Class C misdemeanor.
Attorneys Fees in Wage Action Act	All employers	Must pay all wages owed to an employee once separated.	Employer liable for reasonable attorney's fees & costs.
Wage Deductions for Benefit of Creditors	All employers	Employer must notify employee of any withholding/deductions re garnishments. Employer must honor court orders re garnishments.	If employer refuses or neglects to honor a judicial order, the creditor may be able to collect the total amount of the debt, plus fees & costs from employer.
IL Wage Assignment Act	All private employers	Employer obligated to honor a valid wage assignment.	Employer's refusal may be grounds for court action to recover entire amount of the debt from the employer. Employer can't fire or suspend employee due to wage demands; may be a Class A misdemeanor.
Time-Off for Voting	All employers	Upon advance notice, employer must allow employees to leave work for 2 hour period between opening & closing of polls to vote.	None specified
One Day Rest in Seven Act	All private employers	Employer must provide non-executive & non-professional employees 24 consecutive hours off in every calendar week. Exceptions include part-time employee working less than 20 hours, emergencies, security guards. A 20 minute minimum break/meal period is required for each 7 ½ hours of consecutive work.	Each violation incurs potential fine of \$25 to \$100. Also may be found guilty of a petty offense.
Child Labor Law	All employers	Pertains to children under 16; only children 14 & 15 years old can work, but employer must obtain certification. Limits work to 3 hours on a school day or 18 hours in a school week. Other restrictions & exclusions apply.	Each violation is a Class A misdemeanor. Each day out of compliance is a separate violation. Violations are subject to a fine up to \$5k for each violation.
Jury Act (Right to Time Off for Jury Duty)	All employers	Employer must allow time off for jury duty. Can't retaliate for taking time off. FLSA exempt employees must be paid (offset for nominal jury duty pay permitted). Employee must provide employer a copy of the summons within 10 days of the date of issuance of the summons to the employee.	Employer may be charged with contempt of court & any damages for lost wages & benefits. Also, if employee fired, then reinstatement.
Employment Record Disclosure Act	All employers	Employer providing a job reference to a prospective employer will have civil immunity if it provides truthful information & includes only job performance information.	None specified

Personnel Record Review Act	Employers of 5 or more employees	Must let employees twice a year inspect their files & add own statements or rebuttals. Records are documents used for hiring or other personnel actions.	Each violation is a petty offense. Failure to comply may be contempt of court. Actual damages, costs & fees may be awarded. Willful & knowing violations are fineable at \$200/violation.
Right to Privacy in the Workplace Act	All employers, except some nonprofits.	Can't discriminate for lawful activities outside of work. No inquiry of employee or prior employers whether employee has previously filed a worker's compensation claim or occupational disease claim.	Actual damages, costs & fees awardable. If willful violation, then a \$200 fine.
Equal Wage Act	Employers of 6 or more engaged in any manufacturing.	Pay equal wages for equal work. Exceptions permissible due to differences in skills, abilities, training, education, tenure, etc.	Fine of \$25 to \$100 for each violation.
IL Human Rights Act	Employers of 15 or more working during 20 or more weeks in the calendar year. But, if disability or sexual harassment alleged, then Act applies to all employers.	Can't discriminate against employees on basis of race, color, national origin, sex, age, marital status, military status, religion, arrest record or handicap. No retaliation.	Damages include: Cease & desist order, actual damages, emotional distress, hiring, reinstatement, promotion, back pay & benefits; attorney's fees & costs; compliance reports; posting of notices; penalty payments to the state; loss of state contracts for up to 3 years.
Drug Free Workplace Act	Employers of 25 or more & with state of IL contracts or grants of \$5k or more.	Employer must publish a statement that notifies employees that drugs (generally, controlled substances) are prohibited in the workplace, that actions will be taken for policy violations, & that employees must notify employer within 5 days of any criminal drug conviction.	Suspension of payment, termination or debarment, ineligibility for any state contract/grant for at least 1 year, but not more than 5 years.
Medical Examination of Employees Act	All employers	Employer must pay for prescreening or post offer medical exam, if exam is a condition of hiring or employment.	Violations are a petty offense & carry a fine of up to \$100 for each offense.
Cook County Human Rights Ordinance	All employers	Can't discriminate in all personnel actions on basis of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military service, source of income or social status. There are narrowly construed exceptions.	Actual damages, back pay, attorney's fees & costs, fine of \$100 to \$500 per violation. Each day a violation continues is a separate offense. Remedial personnel action; e.g., hiring, reinstatement, promotion, etc.
Chicago Human Rights Ordinance	All employers	Same as above.	Fine of \$100 to \$500 per violation. Each day a violation continues is a separate offense.
Workers' Compensation Act	All employers who elect coverage. Failure to elect (i.e., no insurance) exposes employers to common law liability.	Employers must insure or self insure. Pay disability benefits & expenses for work related injuries. Refrain from retaliating against employees for pursuing rights under this Act.	Any willful neglect or violation is a petty criminal offense. Monetary penalties vary on basis of offense.
Whistle Blower Statutes (Federal & State)	All employers	Many federal & state laws prohibit discriminatory or punitive actions against employees who report illegal activities.	Criminal & civil penalties, including fines & imprisonment.

FEDERAL LABOR & EMPLOYMENT LAWS

Some Laws Likely to Be Encountered by Small Businesses

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Title VII of the Civil Rights Act of 1964, Amended 1991	15 or more employees	Discrimination on basis of race, color, religion, sex & national origin. Covers all employment actions, including hiring, firing, promotion, pay, practices & all other terms & conditions of employment.	Equitable relief; i.e., reinstatement, promotion, etc.). Back pay, front pay, lost benefits, attorney's fees & costs, & compensatory & punitive damages.
Americans with Disabilities Act (ADA)	15 or more employees	Discrimination in terms or conditions of employment prohibited against qualified individuals with physical or mental disabilities. Reasonable accommodation must be provided for known disabilities. Pre-employment physical examinations are limited & disability related inquiries prohibited.	Equitable relief; i.e., reinstatement, promotion, etc.). Back pay, front pay, lost benefits, attorney's fees & costs, & compensatory & punitive damages.
Age Discrimination in Employment Act (ADEA)	20 or more employees	Discrimination against persons 40 years of age or older prohibited. Includes all terms & conditions of employment.	Back pay, front pay, attorney's fees & costs, equitable relief, liquidated damages.
Equal Pay Act	All employers	Must pay equally to men & women for same work. Differences may be based on seniority or bona fide merit system.	Back pay, attorney's fees & costs, liquidated damages.
Rehabilitation Act of 1973	Covers all businesses with federal contracts, subcontracting agreements or receiving any federal financial aid.	Can't discriminate on basis of a disability in terms or conditions of employment.	Compensatory damages, back pay, attorney's fees & costs, equitable relief; i.e., reinstatement, promotion, etc.
Fair Labor Standards Act (FLSA)	Covers most employers	Employers must pay all non-exempt employees at least federal minimum wage & overtime for any hours worked in excess of 40 hours in a workweek. Narrow exclusions.	Compensatory damages, liquidated damages, equitable relief, & attorney's fees & costs. Criminal prosecution is possible along with penalty up to \$10k for willful violations.
Civil Rights Act of 1866 (AKA Section 1981)	Covers most employers	Prohibits race discrimination.	Compensatory damages, punitive damages, back pay, front pay, attorney's fees & costs, & equitable relief.
Immigration Reform & Control Act of 1986	Record keeping provisions apply to all employers. Employers of 4 or more may not discriminate due to national origin/citizenship.	Can't hire any person not legally authorized to work in the U.S. Therefore, employers must verify employment eligibility. Can't discriminate in hiring or discharge based on national origin/citizenship.	Back pay, equitable remedies, fines up to \$10k per violation, criminal sanctions-up to 6 months in prison &/or \$3k fine for each unauthorized employee.
Occupational Safety & Health Act	All employers	Must keep workplace free from recognized hazards likely to cause death or serious harm. Maintain records of work related injuries & illnesses.	Penalties up to \$7k per violation, penalties up to \$7k per day for failure to control violations, penalties from \$5k to \$70k per willful violation, & criminal penalties with a fine up to \$250k & 1 year prison term.

Employee Retirement Income Security Act (ERISA)	Employers that offer pension or welfare benefit plans for employees.	Must fund an insurance system to protect certain kinds of retirement benefits, with premium payments to the U.S.' Pension Benefit Guaranty Corp. & file their plans with the U.S. Dept. of Labor & follow funding rules requiring all funds held in trust for employees.	Penalty of up to \$1,110/day for noncompliance. Penalty from 5%-100% of the amount concerned for certain violations, mandatory penalties of up to 20% for violations of fiduciary duties.
Employee Polygraph Protection Act	All employers except government, businesses handling controlled substances or security.	Can't use lie detectors for pre-employment screening, or during employment. Can't take adverse personnel action for refusing polygraph.	Hiring, reinstatement, promotion, lost pay, benefits & civil penalties up to \$10k.
Fair Credit Reporting Act	All employers	Limited use of consumer/credit reports for employment decisions. Must make written disclosure to the employee & obtain written authorization from employee. Before adverse action is taken, employer must provide candidate/employee with the report & summary of rights.	Actual/compensatory damages, attorney's fees & costs, punitive damages, \$2.5k fine per violation, criminal penalties, for willful & knowing violations, including imprisonment up to 2 years.
Consumer Credit Protection Act	All employers	Can't discharge an employee due to garnishments/wage deductions for debt.	Reinstatement, back pay, restitution for garnishments/deductions, civil penalties including fines up to \$1k &/or imprisonment up to 1 year.
National Labor Relations Act	All employers	Can't threaten or discriminate against employees engaged in union or concerted activities, involving a labor organization.	Injunctive/equitable relief. Criminal fines up to \$5k &/or imprisonment up to 1 year.
Uniformed Services Employment & Reemployment Rights Act (USERRA)	All employers	Can't discriminate against applicants or employees on basis of military obligations or connection. Allows for continuation of benefits during military duty.	Reinstatement, promotion, etc., back pay, benefits, attorney's fees & costs, penalties for willful violations.
Consolidated Omnibus Benefits Reconciliation Act (COBRA)	Employer who provides group health plans & has 20 or more employees.	Must offer, within 30 days, qualified beneficiaries an opportunity to purchase continued coverage under the plan.	\$100-\$200/day fine per employee.
Health Insurance Portability & Accountability Act (HIPAA)	Employer who provides a group health plan & has 2 or more employees.	Group health plan must have coverage for pre-existing conditions of new employees, certifications of coverage to former employees, enrollment periods to employees, & protection for mothers & newborns. Restrictions on dissemination of plan participant medical info. & records.	\$100/day per individual/employee. Criminal fines up to \$250k & imprisonment (limited circumstances).
Drug Free Workplace Act	At least 25 employees & federal contracts of \$25k or more	Must have a drug free policy & program.	Suspension of payments, contract termination, debarment up to 5 years.
Whistle Blower Statutes (Federal & State)	All employers	Many federal & state laws prohibit discriminatory or punitive actions against employees who report illegal activities.	Criminal & civil penalties, including fines & imprisonment.

FREE RESOURCES FOR RESEARCHING LABOR & EMPLOYMENT LAWS

There's a great deal of free high quality information available on the Internet. Many companies, universities and other organizations post their HR related policies and related information on the Web.

When using search engines such as Google or Yahoo it may be helpful to know what search terms to use. When using the following terms, use quotation marks as they help to reduce the number of frivolous hits. Also, combine terms to reduce excessive and irrelevant hits. The following terms are not all-inclusive and are only suggestive.

Search terms:

"workplace behavior," workplace harassment," "occupational safety," "discipline policies," "discipline procedures," "human resources policies," "human resources procedures", "human resources practices," "free download," "free downloads," "sample policy," "sample policies," free, "labor law," "labor relations," "employment law," "employee relations," "employment relations," and "labor and employee relations."

All links checked and working as of April 16, 2006.

- Chuck Krugel's Website <http://charlesakrugel.blogspot.com>
- The Human Resource Store www.hrstore.com
- The Society for Human Resources Management www.shrm.org
General HR legal and policy information
- Business & Legal Reports www.blr.com
Updates concerning labor and employment law and HR
- Commerce Clearing House <http://hr.cch.com/>
Updates concerning labor and employment law and HR
- Northern Illinois Society for Human Resources Management www.nishrm.org
General HR legal and policy information
- 19th Judicial Circuit Court of Illinois www.19thcircuitcourt.state.il.us
Excellent starting point for researching the law. Well organized and easy to use.
- Illinois Society for Human Resources Management www.illinoisshrm.org
General HR legal and policy information
- Human Resources Management Association of Chicago www.hrmac.org
General HR legal and policy information
- Illinois Department of Labor www.state.il.us/Agency/idol/
- Privacy Rights Clearinghouse (background checking) www.privacyrights.org/workplace.htm