

From: Business Management Daily

Subject: Practical HR strategies to boost your career

## In The News ...

**Update your bulletin board: EEOC issues revised poster.** The EEOC has issued a new version of the "EEO is the Law" poster that U.S. employers must display in their workplaces. The updated poster now explains employees' rights under the Genetic Information Nondiscrimination Act (GINA), which took effect at the end of 2009. Employers should tack up the new poster now to be in compliance. Find a link to the printable poster at [www.theHRSpecialist.com/EEOCposter](http://www.theHRSpecialist.com/EEOCposter).

**16 great questions to ask during performance reviews.** Too often, employees sit silently during their reviews while supervisors do all the talking. It shouldn't be that way. Productive reviews are always two-way discussions. Find 16 sample questions that supervisors can use to encourage employee participation at [www.theHRSpecialist.com/16questions](http://www.theHRSpecialist.com/16questions).

**Outlawing Twitter/Facebook is now the majority HR policy.** More than half (54%) of chief information officers say their companies don't allow employees to access social networking sites at work for any reason, according to a new Robert Half Technology survey of 1,400 CIOs. Another 19% permit it for business purposes only, 16% allow it for limited personal use and 10% allow it for any type of use. Meanwhile, a new CareerBuilder survey says 45% of employers now use social networking sites to screen candidates—double the number from a year ago.

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The overtime rules: Are you *truly* in compliance?

**Issue:** The DOL's rules revamping overtime eligibility are creating more lawsuits, not fewer.

**Risk:** The honeymoon is over; the DOL is aggressively pursuing violators.

**Action:** Take the following steps to make sure your organization is in compliance.

HR professionals have scrambled in recent years to pull their organizations in line with the U.S. Department of Labor's (DOL) rules that define which white-collar employees are eligible for overtime pay.

Those landmark Fair Labor Standards Act (FLSA) regulations tried to make it simpler for you to decide which employees are exempt (not eligible for overtime pay) and which are nonexempt (eligible for overtime). But rather than calming the turbulent legal waters, the new rules are actually churning up *more* disputes and lawsuits.

A recent *BusinessWeek* report said overtime litigation "has exploded nationwide," estimating that U.S. companies are now paying out more than \$1 billion annually to resolve those claims. Plus, in December 2009, the DOL added 250 new investigators to pursue wage-and-hour violators—

a 33% increase in enforcement muscle.

**Advice:** It's cheaper to review compliance *on your own* before the DOL or a plaintiff's attorney forces you to.

The biggest FLSA mistake employers make is classifying nonexempt employees as exempt. Here's a reminder of the rules:

✓ **Salary threshold raised to \$23,660.**

Employees earning less than \$23,660 annually (or \$455 a week) *automatically* qualify

*Continued on bottom of page 2*

**Free Checklist** How to make the 'exempt vs. nonexempt' decision

To help you determine which employees should be classified as exempt, download our easy-to-use *FLSA Checklist: Exempt vs. Nonexempt Status* at [www.theHRSpecialist.com/checklist](http://www.theHRSpecialist.com/checklist).

## Policing off-duty conduct: How far can you go?

You discover that the company's sales manager is dating the marketing director of your biggest competitor. Or that one of your cashiers has a bottle-of-scotch-a-day drinking habit after work. Can you fire these workers—or at least ask them to change their behavior—without getting hit with a discrimination or privacy lawsuit?

*Here's the litmus test:* If an employee's off-duty activity puts your company in legal or financial jeopardy, courts will be more willing to let you regulate it.

But disciplining staff for participating in lawful conduct outside of work is a slippery slope.

While federal law is silent on the issue, states aren't. So far, 30 states and the District of Columbia prohibit employers from discriminating against workers because

they smoke or participate in other "lawful activities."

**4 ways to stay out of trouble**

**1. Focus on the off-duty behavior's effects on job performance,** rather than the conduct itself. Be able to point to a legitimate business reason for discipline.

**2. Avoid blanket restrictions against socializing with competitors.** Such overly broad rules infringe on privacy. Instead, protect company secrets by having employees sign nondisclosure agreements.

**3. Check your state's rules** and seek legal advice before firing or disciplining an employee for off-duty activity.

**4. Apply an even hand.** Don't suspend one employee for off-work behavior and then ignore another similar circumstance.

## When in doubt, print it out: Don't change policy via e-mail

**Issue:** How to notify employees of new employment policies or changes to existing policies.

**Risk:** A recent court ruling says that using solely e-mail notification can lead to legal trouble.

**Action:** Play it safe: Use paper memos to alert staff to policy changes. Solicit their written acknowledgment for critical policies.

Even though the U.S. Department of Labor has given its OK to electronic distribution of certain employee documents (such as benefits data), you'd still be wise to play it safe when it comes to notifying employees of policy changes: Stick to paper, not e-mail.

That's especially important when notifying employees of policy changes involving key legal rights and obligations. In such cases, you should also require employees to sign a paper acknowledgment form.

**Recent case:** Roderick Campbell sued his employer for disability discrimination. But the company claimed Campbell wasn't allowed to sue; he must arbitrate his dispute out of court. Why? The company had sent a lengthy e-mail months earlier to all employees outlining its new mandatory arbitration policy. That e-mail, the company argued, counted as a valid agreement.

Not so fast, the court said. Campbell claimed *he never saw* that e-mail, so a

district court let his case go to trial.

The court said that, in some cases, policy notifications sent via e-mail could be binding. But important policies in which employees surrender their rights should be held to a higher standard. (*Campbell v. General Dynamics Government Systems Corp.*, No. 03-11848-NG)

**Final point:** If you do send less-vital policy info via e-mail, create a system to verify that messages are received and read.

## Avoid the top 10 mistakes in employee handbooks

**Issue:** Poorly written handbooks open your company to countless lawsuits.

**Risk:** ADA, FLSA, FMLA, sexual harassment, racial and gender discrimination are just a few sources of trouble.

**Action:** Audit your employee handbook for these 10 common errors.

A poorly written, outdated or inconsistent handbook can hurt your company. *The biggest problem:* Companies often include handbook language that wipes out their right to fire employees at will. Here are the 10 most common handbook mistakes to avoid:

**1. Adopting a "form" handbook**, which includes promises you'll never keep.

**2. Including lots of detail** on procedures, which provides fodder for lawyers. Stick to company policies. Keep a separate procedures manual for managers.

**3. Mentioning an employee probationary period.** That can erase at-will status by implying that, once the period is over, the employee can stay indefinitely.

**4. Being too specific** in your discipline policy. That gives the impression that the list covers every possible infraction.

**5. Not being consistent** with other company documents.

**6. Overlooking an at-will disclaimer.** Have employees sign a disclaimer acknowledging that the company can terminate their

employment at any time and bypass discipline policies.

**7. Sabotaging disclaimers by what you say**, especially reassuring employees that their jobs are secure.

**8. Not adapting the handbook** to accommodate each state's laws.

**9. Failing to update** the manual frequently for changing laws.

**10. Setting unrealistic policies.** If you know your supervisors won't enforce it, don't put it in your handbook.

## Overtime rules

(Cont. from page 1)

for overtime pay.

The rules also create an exemption category for "highly compensated" employees. Basically, this new rule says that almost all employees earning more than \$100,000 a year are precluded from earning overtime.

✓ **Duties test revised.** Employees who meet the revised salary test must also meet the "duties test" to be considered exempt. *Here are the new category definitions:*

✓ **Executive exemption.** Employees must perform the primary duty of managing a business or department, must direct at least two employees and must have authority to hire and fire (or their hire/fire recommendations must carry "particular weight").

✓ **Administrative exemption.** Administrative employees are exempt from overtime pay if their main job is performing office or nonmanual work that's related to the employer's management or operations. Plus, their jobs must involve "the exercise of discretion and independent judgment."

✓ **Professional exemption.** To qualify for the "learned professional" exemption, an employee's primary duty must be performing nonmanual work requiring advanced knowledge, defined as work that is "predominantly intellectual in character" and requires discretion and judgment. To qualify for the "creative professional" exemption, employees must perform work requiring "invention, imagination, originality or talent in a recognized field of artistic or creative endeavor."

## Audit your compliance

**1. Evaluate each job.** Regularly evaluate each white-collar job to determine if it meets the new definition of "exempt employee." If an employee's status changes, reclassify that person as soon as possible.

**2. Check your state's law.** Several states, including California and Illinois, have established their own employee classification rules that may contradict federal law.

**3. Draft a "safe harbor" policy.** The new rules create a defense for employers that make improper deductions from an exempt employee's salary. To take advantage of this defense, adopt a policy that bans improper deductions. Find a model policy at [www.dol.gov/whd/regs/compliance/fairpay/modelPolicy\\_PF.htm](http://www.dol.gov/whd/regs/compliance/fairpay/modelPolicy_PF.htm).



## Alert managers: No 'magic words' needed to request FMLA

When employees ask for leave—especially for unforeseen circumstances—they don't need to assert their FMLA rights by stating, "I need FMLA leave." In fact, they don't even need to mention the FMLA.

While employees must provide a general explanation of their reasons for leave, it's your responsibility to identify leave requests that qualify as job-protected FMLA leave.

If the employee gives enough information to draw a preliminary conclusion that the leave may qualify for the FMLA, consider yourself on notice.

That's why it's important to teach supervisors how to listen for leave requests that would fall under the FMLA umbrella. As the following court ruling shows, even general leave requests, such as "I have a family emergency," could trigger FMLA protections.

**Recent case:** When an employee told his boss that he needed leave to deal with a "family emergency," the employer refused to grant him the time off. The employee

sued under the FMLA. The court sided with him, saying his designation of "family emergency" was enough to put the company on notice of his need for FMLA leave.

FMLA regulations require an employee to give you only a "short and plain statement" of his or her need for leave.

If you determine later that the employee (or family member) didn't have a serious health condition that would qualify for leave, you can withdraw your FMLA leave approval at that time. (*Christenson v. The Boeing Co.*, No. 150 LC 34924, D.Ore.)

### Free Report How to Wipe Out Fraud and Abuse Under FMLA

For an 11-step process to thwart employees inclined to "work" the system, download our free white paper, *How to Wipe Out Fraud and Abuse Under FMLA*, at [www.theHRSpecialist.com/whitepaper](http://www.theHRSpecialist.com/whitepaper).

## How to legally handle chronically late workers

Occasional problems with traffic or family issues sometimes cause employees to be late for work. But chronic tardiness is another thing altogether.

While most employers track tardiness, they should do more. How? By issuing a consistent series of oral and written warnings (see box) and documenting each admonishment. Then follow up to see whether the behavior improves.

Your documentation will be worth its weight in gold if you fire the employee and she sues for some kind of discrimination. If you can show you let the employee know about your concerns and the consequences, she would have a hard time winning her case.

**Recent case:** Allison Jeffrey was often late. Her bosses warned her repeatedly and kept good notes on each rebuke.

Then Jeffrey announced she was pregnant. Soon after—you guessed it—she was tardy again. She was given a pink slip for excessive tardiness.

Jeffrey then sued, alleging the real reason was her pregnancy.

But the company was loaded with evidence to show that it would have fired Jeffrey—and any other employee with a similar attendance record—whether she was pregnant or not. It had plenty of documentation to back up its contention that Jeffrey had been warned and counseled about her behavior long before she announced her pregnancy.

**Result:** The court dismissed the case. (*Jeffrey v. Met Logistics*, No. 07-CV-3301, ND IL)

### Online resource Solve Your Employee Absentee Problem

Subscribers can access our white paper, *How to Solve Your Employee Absentee Problem*, which includes a step-by-step system for handling attendance-challenged workers, at [www.theHRSpecialist.com/whitepaper](http://www.theHRSpecialist.com/whitepaper).

## Legal Briefs

### How to craft a policy on social media usage

Whether they're shooting off "tweets" or posting messages to online friends, employees using Twitter, Facebook and other social networking sites are creating liability and PR risks with their rants, raves and company gossip.

**Advice:** Draft a policy on your organization's expectations for employees' use of these sites. Address usage, disclosure of company info and consequence of disparaging comments about the company or co-workers. For more advice and policy suggestions, go to [www.theHRSpecialist.com/socialpolicy](http://www.theHRSpecialist.com/socialpolicy).

### Heed lesson of Ledbetter law: Audit pay policy for equality

For HR professionals, the message of the Lilly Ledbetter Fair Pay Act (signed in early 2009) is this: If you currently allow supervisors wide flexibility to set pay, reduce that discretion. Establish clear rules for setting salaries that rely on objective factors like education, experience and training. Avoid using vague terms like "salaries may be adjusted in exceptional circumstances."

**Reason:** Those "exceptional circumstances" may seem like illegal discrimination to employees who are paid less. And a jury is more likely to agree since passage of the Ledbetter law, which gives people new rights to file pay-bias lawsuits over paychecks that are decades old. (*Read about compliance with the law at [www.theHRSpecialist.com/Ledbetter](http://www.theHRSpecialist.com/Ledbetter)*.)

### It's OK to set tighter rules on newly hired employees

A new employee was told he couldn't be tardy during his first 30 days. He was fired after arriving late twice. The employee, who is black, sued for race bias, saying long-term white employees weren't held to such a high standard. The court didn't buy the comparison, saying he had to compare himself to newly hired white employees to prove bias. (*Lake v. Yellow Transportation*, DC MN)

**The lesson:** You can learn a lot about employees in their first few weeks. So go ahead and set stricter rules during the initial "training" period.

# What's the best interview question you've asked?

Interview questions range from the simple (“Tell me about yourself.”) to the silly (“If you were an animal, what kind would you be?”). Here are some suggestions of effective questions from readers of *The HR Specialist Forum* ([www.theHRSpecialist.com/forum](http://www.theHRSpecialist.com/forum)).

## Fans and critics

“What would your biggest fan say about you? Likewise, who is your biggest critic and what would he/she say about you?”  
— Steven

## What makes you proud?

“It’s a cliché question, but I like to ask, ‘What professional accomplishment are you most proud of?’ Then you can follow up with more detailed questions about how they accomplished that. I look for folks who don’t set themselves up as the star (even if they are) and who give credit to the efforts of everyone on the team. I also look for evidence that they can accomplish goals—and care about doing so—through influence and not just hierarchical power.”  
— Anonymous

## All smiles

“The best one I’ve ever heard is, ‘Do you smile often?’ The answer—and whether the person smiles while doing so—will tell you a lot about a person. Most friendly, easygoing people (the kind you want to work with) will unconsciously smile when answering.”  
— Celt

## A ‘values check’

“I work for a nonprofit that works with low-income residents. One standard interview question is, ‘Why do you think people are poor?’ Even if this person is just going to be crunching numbers as an accountant, we still want to make sure they are in tune with the agency’s mission and values. The answers to an unexpected question can be very telling.”  
— Kris

## Modernize, criticize

“I find these two questions to be helpful: ‘What, if any, processes did you improve?’ This can be very helpful if you seek continuous process improvement in your company. We are a small firm and are always happy to hear how we can do things better.

Also, ‘Who was your least favorite (or most favorite) boss ... and why?’ This can really bring out some interesting information.”

— Liz

## Useful criticism

“The one that I get the best feedback from is: ‘What is the most useful criticism you have ever received?’ It helps me see the growth in people if they answer honestly.”

— Nicole

## Your biggest bomb

“‘What is the biggest work disaster you’ve been a part of? What role did you play? What did you learn? Looking back on it, what would you do differently?’ If I can’t get a straight answer, I learn a lot. If I can get an honest answer, I learn even more.”

— E.

## 20 ‘silver bullet’ questions

For a list of 20 behavior-based interview questions that help zero in on a candidate’s skill, knowledge and temperament, go to [www.theHRSpecialist.com/silver](http://www.theHRSpecialist.com/silver).

# Show how HR helps forward the big boss’s goals

**Issue:** Learn the top brass’s priorities, and then match them up with your HR projects.

**Benefit:** By showing how your work helps the big bosses meet their goals, you become a strategic partner and boost your overall value.

**Action:** Meet regularly with the boss, and measure what’s important to him or her.

Do you ever dive into a major HR project without ever really knowing whether the boss favors it—or even cares about it? It’s wise to match your HR projects to the boss’s priorities, but many big bosses don’t define their goals or communicate them well. Or perhaps they couldn’t care less about aligning goals with HR.

Adding to the problem, you may lack the know-how to build strategic relationships with top executives. You’re not alone. Only 26% of HR professionals feel very proficient about making a strategic contribution, according to a recent Society for Human Resource Management survey.

**Advice:** To increase your influence, find out the top dog’s business goals and the problems that worry him or her the most. “HR needs to convince executives that they have solutions to those problems and aren’t just a source of administrative overhead,” says Brian Becker, chairman of the HR department at the University of Buffalo

School of Management.

Take the following four steps to align yourself with top management’s goals:

**1. Ask to meet regularly with the boss** to review his or her business goals and how HR can contribute to them. The meetings should take place not less than once or twice a year, suggests Mark Huselid, associate professor of HR strategy at Rutgers University. You also need access to key executive strategy meetings. In those meetings, “Don’t talk about HR stuff,” says Huselid. “Talk about what type of workforce capabilities produce what kind of results for the organization and back it up with numbers.”

But what if your CEO lacks the time or inclination for one-on-one meetings? And what if you aren’t invited to executive strategy meetings? Find an influential division president, general manager or mid-level manager who *will* meet with you. Find out that person’s pressing strategic problems, and help solve them. Eventually, ask that

person to help you reach the CEO and access key meetings.

**2. Measure what’s important to your CEO**, and make suggestions to improve results. *Examples:* If key-employee retention is a top issue, measure the real cost of turnover, and put forth suggestions on how to keep top performers. If benefit costs and salaries are a big concern, benchmark competitors’ benefits and pay, then present realistic options for your organization to be competitive.

**3. Form a working relationship with the chief financial officer.** You want to learn which numbers the CEO views as key measurements of the organization’s performance, and what those numbers mean. That will help you choose the correct metrics and present valuable numbers at strategy sessions.

**4. Seek assignments that involve working with different departments** to learn about the complete organization. Such experiences help you bring crucial credibility and knowledge to meetings with the CEO.

**Issue:** Mistakes in processing employment eligibility verification forms can still land you in trouble.

**Risk:** I-9 enforcement is increasing, and penalties can cost you up to \$10,000 per employee.

**Action:** Take stock of your I-9 compliance—and make sure you're using the new I-9 version.

**D**on't get sloppy with your I-9 employment eligibility verification forms.

In the past year, the U.S. Citizenship and Immigration Services (USCIS) has initiated "a horde of paperwork audits looking at I-9s," said Cynthia Juarez Lange, a partner at the Fragomen, Del Ray immigration law firm.

USCIS also increasingly brings cases against employers under the criminal code, rather than civil penalties. It made more than 900 criminal arrests in FY08, up from just 72 arrests five years ago.

**Penalties:** Poor documentation can cost you \$1,000 per worker, and knowingly hiring an illegal immigrant can result in a \$10,000-per-worker fine.

To sidestep potential legal trouble and discrimination complaints, follow these 10 I-9 do's and don'ts:

**1. Do** require all new hires to complete and sign Section 1 on their first day of work.

**2. Don't** ask an applicant to complete an I-9 prior to making a job offer. Unhired applicants can use I-9 information to allege that you discriminated against them.

**3. Do** review employee documents to make sure they're on the new version of the I-9's list of acceptable documents and that they appear genuine. (*See the new I-9 at [www.uscis.gov/I-9](http://www.uscis.gov/I-9).*)

**4. Don't** ask new hires for any particular documents or for more documents than the I-9 requires. The employee chooses the documents, not you.

**5. Do** establish a consistent procedure for completing I-9s, and educate your hiring managers on that procedure.

**6. Don't** consider the expiration date of I-9 documentation when making hiring or firing decisions.

**7. Do** make and retain copies of all I-9 documentation provided. (Only a few states make this mandatory, but it's a good idea.)

**8. Don't** forget to keep a tickler file to follow up on expiring documents that limit the employee's authorization to work. You don't have to reverify identity documents, such as a driver's license.

**9. Do** keep I-9s and copies of documents for three years after the employee's hire date or one year after his or her termination, whichever comes later.

**10. Don't** put the I-9 in an employee's personnel file. To protect against discrimination claims, keep it and supporting documentation in a separate file.

## HR Q&A

### Look at big picture to determine 'primary duty'

**Q. The duties test that's used to decide overtime eligibility talks about determining the employee's "primary duty." (See page 1) How do we determine that?—M.D., Pennsylvania**

**A.** You're looking for the person's most important duty: the reason you hired him or her. Is this person hired as a supervisor or so there can be another set of hands on the assembly line? You want to look at the relative importance of the employee's exempt duties versus nonexempt duties, the amount of time spent performing nonexempt work and how much supervision is exercised over the employee. A good rule of thumb is to look at whether they spend more than 50% of their time on exempt duties.

### How to fight burnout

**Q. I work in a small company and have assumed responsibility for HR duties over the past two years. I love HR and would like to develop as an HR professional. The problem is that I report to a boss who sees my HR duties as a headache that he doesn't want to deal with. What can I do to develop advancement opportunities and make my job more rewarding?—J.M., Virginia**

**A.** You can develop your skills in a number of ways. Local HR organizations offer great networking and best-practice learning opportunities. The Society for Human Resource Management ([www.shrm.org](http://www.shrm.org)) can give you a list of local chapters and meeting times. Many outplacement firms that want to build relationships with the HR community offer quarterly networking opportunities that would be perfect for someone in your position. Learning what larger companies are doing can help you to take your company's

HR function—and your career—to the next level. As for your boss, quantifying the benefits of smooth HR operations will help him understand the value you can bring to the bottom line. Many colleges and universities offer extension courses on that topic. And, of course, future issues of *The HR Specialist* will provide detailed advice on identifying what *types* of continuing education to pursue and how to become part of your company's strategic planning process.

### Just say 'no' to rescinded resignations

**Q. One of our employees submitted a resignation letter but then changed her mind. She isn't a good employee, but we let her rescind the letter because we thought we'd be on shaky legal ground. Could we have held her to it?—M.L., Ohio**

**A.** That depends on how you've treated similar situations. For example, if another employee quit and was allowed to return to work, treating this employee differently would be very risky. But if you have no past practice with this issue, it's OK to hold this employee to her resignation. Of course, you'll be on safer legal ground if you've documented the employee's poor performance.

### Mandatory direct deposit?

**Q. Can a business require employees to use direct deposit of paychecks?—N.C., Kansas**

**A.** You shouldn't require it. In fact, many states have laws prohibiting mandatory direct deposit. Instead, offer it as an option. Most labor laws say that paying wages through direct deposit is perfectly acceptable as long as employees have the option of being paid by check.

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

Date: June 2010  
Re: Interview and termination tips

## When hiring

# 25 off-limits interview questions

Job interviews present a minefield of legal problems. One wrong question could spark a discrimination lawsuit. That's why you should never "wing it" during interviews. Instead, create a list of interview questions and make sure every question asks for job-related information that will help in the selection process.

Federal and state laws prohibit discrimination on the basis of an applicant's race, color, national origin, religion, sex, age or disability. Some state laws also prohibit discrimination based on factors such as marital status or sexual orientation. If you ask a job applicant a question specifically relating to one of those characteristics, you've broken the law and are subject to being sued, as is the company.

Every question you ask should somehow relate to this central theme: "How are you qualified to perform the job you are applying for?" Managers usually land in trouble when they ask for information that's irrelevant to a candidate's ability to do the job.

To avoid the appearance of discrimination during interviews, do not ask the following 25 questions:

1. Are you married? Divorced?
2. If you're single, are you living with anyone?
3. How old are you?
4. Do you have children? If so, how many and how old are they?
5. Do you own or rent your home?
6. What church do you attend?
7. Do you have any debts?
8. Do you belong to any social or political groups?
9. How much and what kinds of insurance do you have?

*The following questions could result in an Americans with Disabilities Act (ADA) lawsuit:*

10. Do you suffer from an illness or disability?
11. Have you ever had or been treated for any of these conditions or diseases? (followed by a checklist)
12. Have you been hospitalized? What for?
13. Have you ever been treated by a psychiatrist or psychologist?
14. Have you had a major illness recently?
15. How many days of work did you miss

last year because of illness?

16. Do you have any disabilities or impairments that might affect your performance in this job?
17. Are you taking any prescription drugs?
18. Have you ever been treated for drug addiction or alcoholism?

*Many companies ask female applicants questions they don't ask males. Not smart. Here are some questions to avoid with female applicants:*

19. Do you plan to get married?
20. Do you intend to start a family?
21. What are your day care plans?
22. Are you comfortable supervising men?
23. What would you do if your husband were transferred?
24. Do you think you could perform the job as well as a man?
25. Are you likely to take time off under the Family and Medical Leave Act (FMLA)?

**Final point:** If a job candidate reveals information that you're not allowed to ask, don't pursue the topic further. The "she brought it up" excuse won't fly in court, so change the subject right away.

## When terminating

# How to avoid the 5 classic firing mistakes

Firings may cause employees to cry, become defensive or even turn violent. Others may even distort what happens during your firing meeting to justify a lawsuit against you.

To protect yourself legally, have someone else with you during the firing so no one can question what you say. Write a memo after the meeting summarizing what happened and have the witness sign it.

Here are five other ways to defuse fired employees' justifications for a lawsuit down the line:

**1. Keep your cool.** Avoid heightening an already emotional situation. Don't spring the news suddenly or berate the employee in front of others.

**2. Avoid surprises.** Employees should never be completely surprised by a termination. Give them regular feedback on performance and suggest ways for them to improve. At the very least, poor performance reviews prove to a court that you had valid reasons for firing someone.

**3. Watch what you say.** On the day you fire someone, he or she will remember whatever you say in the worst possible light. While you should always avoid making discriminatory statements, be especially cautious during a termination meeting.

**4. Don't be too kind.** You may feel compassion for the person you must fire, but don't express your feelings in the wrong way. If the employee's performance is

substandard, don't offer compliments on any aspect of his or her performance. Doing so might make you feel better, but it will only give the employee cause to question and challenge your reasons for the termination. And your off-handed compliments could turn up as evidence against you in a wrongful-termination suit.

**5. Keep quiet.** Don't discuss your reasons for the termination with other employees. It's enough to say, "Jamie will not be working with us anymore." Some managers have spoken too freely about the reasons for a departed employee's termination, only to find themselves in court defending themselves against a defamation-of-character suit.

# Doing battle with the clock? 4 ways to win the game

You're swimming in e-mails, phone calls, "quick question" interruptions ... and it's only 10 a.m. How do you find time to be "strategic"—or even get to that one project you planned to complete today? Here are a few tips on becoming more efficient:

### 1. Beat clutter with the "D" system.

Every document and e-mail you receive should be discarded, deleted, done, dated (as in, when you'll do it), drawered (filed) or deterred (forwarded to someone else). The goal? Handle each piece of paper or e-mail once.

**2. Manage interruptions.** You can't stop people from dropping by or calling. But you can determine how you'll react to their requests. Decide within the first minute whether to deal with the issue on the spot or whether you need to schedule

time for a longer conversation.

**3. Make a daily plan.** Block out time for what you want to accomplish in a day. Schedule high-focus tasks for the time of day when you're most alert. Ideally, you want to tackle your top priority within 20 minutes at the start of the day.

Set aside five to 15 minutes for planning first thing in the morning and at day's end.

**4. Prioritize tasks: It's as easy as ABC, 1-2-3.** At the start of the week, list five things you have to accomplish during that week. Compare No. 1 and No. 2, asking, "If I could get only one done this week, which would it be?" Put a tick mark by the chosen one. Then compare No. 1 against the No. 3 item. Next compare No. 1 against No. 4 and No. 5.

Now, begin the process again, starting

with the No. 2 item. Compare it with No. 1, and put a tick mark by the chosen item. Go down the list, comparing No. 2 against the other items. Do the same with No. 3, then No. 4 and No. 5.

The item with the most marks is your A, the next highest number of marks is your B, and so on.

### Career checkup: 25-question self-quiz

Everybody feels their on-the-job motivation dip at times. But the blues can turn into full-blown job burnout if they're combined with overwork and underappreciation. To see if you're edging toward the crispy end of the burnout scale, take our 25-question self-assessment at [www.theHRSpecialist.com/burnout](http://www.theHRSpecialist.com/burnout).

# Reduce your workers' comp premiums: 6 tips

You can significantly reduce the cost of your workers' compensation premiums by following a program of accident prevention, better claims management and prevention of fraud and abuse. Specifically, you should:

**1. Establish an accident-prevention program.** Many states offer free workshops and consultations with safety and health specialists who will design specific accident-prevention programs for you on

site. For details and a list of state consultation offices, visit [www.osha.gov/desp](http://www.osha.gov/desp).

**2. Investigate all accidents.** You can't design an accident-prevention program unless you know what causes the accidents. Keep records of all accidents, not just the ones resulting in claims.

**3. Report accidents promptly.** The sooner you file an accident report, the sooner your employee will be evaluated, treated and cleared to return to work.

Delays often cause employees to contact lawyers.

**4. Stay in touch with injured employees and their doctors.** Follow the

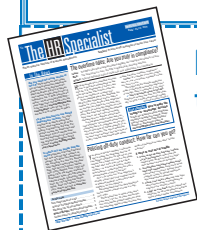
progress of each employee's recovery. That will help you design an appropriate return-to-work plan. Follow the claim's progress to spot errors or fraud.

**5. Use return-to-work/light-duty programs.** If an employee is injured too severely to return to regular work, have a transitional or light-duty alternative available.

**6. Know your insurance system.** Find out if you are in the lowest classification for your type of business. The classification should be based on your principal line of business, not on a particularly hazardous job. Shop for the best rate.

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# To conquer turnover, first calculate its true impact

**Issue:** Retaining key employees is more important than ever.

**Risk:** Turnover hurts the company's bottom line.

**Action:** Use your calculations to support employee-retention efforts.

Even in this day of penny-pinching, few CEOs understand how much money their companies lose by failing to retain key employees. *Examples:* Replacing an HR manager in the automotive industry can cost \$133,803. A machine-works company that loses a skilled, salaried machinist can lose \$102,796 from its bottom line. And the loss of a store manager costs a fast-food chain \$21,931.

Now, here's your chance to calculate the cost of losing one of your company's stars. Thanks to consulting firm Kepner-Tregoe Inc. and the Saratoga Institute, here's a formula you can use:

Select a job function with a lot of

turnover. Calculate the full cost of that function by entering the average wage for that position on Line 1 and then multiplying it by 130% to include benefits costs.

Next, multiply the total wage by 25%. This cost per employee may then be multiplied by the number of ex-employees on Line 6 to arrive at the total cost of turnover in this position.

## Here are the steps:

1. Annual wage		\$	
2. Gross-up for benefits	x		1.30
3. Total wage		\$	
4. Turnover cost	x		0.25
5. Cost per employee		\$	
6. Ex-employees	x		
7. Total turnover cost		\$	

## Here's an example:

1. Store manager salary		\$	67,480
2. Gross-up for benefits	x		1.30
3. Total wage		\$	87,724
4. Turnover cost	x		0.25
5. Cost per manager		\$	21,931
6. Ex-managers	x		10
7. Total turnover cost		\$	219,310

## FYI

### Are you using the wrong version of the I-9?

Many employers aren't aware that the federal government published an updated version of the *Employment Eligibility Verification* (I-9) form last year. Using the old edition could trigger fines. Find details and a link to the new I-9 form at [www.theHRSpecialist.com/I-9update](http://www.theHRSpecialist.com/I-9update).

### Don't waste money on government forms, posters

Various government agencies are warning employers about misleading ads suggesting that you must buy certain government forms and posters from private companies. In truth, most documents that you need to use and post in your workplace can be found free on government web sites. *Example:* The U.S. Department of Labor's poster page, [www.dol.gov/osbp/sbrefa/poster](http://www.dol.gov/osbp/sbrefa/poster), lets you download most labor-related posters. **Tip:** Web sites ending in ".gov" are the only official government sites. Some private ".com" sites sell government documents using official-looking sites.

### When is it legal to fire disabled workers?

If you employ people with physical or mental disabilities, a new EEOC guidance document makes it clear you can apply the same performance and behavior standards to them as you do to the rest of your employees. You must, however, make "reasonable" accommodations so disabled employees can meet your standards. Access the Q&A document, *The ADA: Applying Performance and Conduct Standards to Employees with Disabilities*, at [www.eeoc.gov/facts/performance-conduct.html](http://www.eeoc.gov/facts/performance-conduct.html).

### 'Off-duty' e-mails trigger big overtime liability

One quick path to an overtime lawsuit is to let your hourly employees send work-related e-mails at all hours of the day and night—even when they're technically off the clock. It happens with

alarming frequency. In fact, 94% of office workers admitted to sending work e-mail on weekends and another 80% don't leave their cell phones off while on vacation, says an Osterman Research report. **Advice:** Set a clear policy on e-mail usage for hourly staff.

### How assertive are you? Take the quiz

Giving employees feedback. Negotiating with vendors. Sticking up for your people (or your budget). Such communications require a certain amount of assertiveness. Some HR pros are naturally assertive; others may need to learn it. How assertive are you? Find out by taking an 18-question quiz at [www.theHRSpecialist.com/assertive](http://www.theHRSpecialist.com/assertive).

### Your new workers' comp investigator: Facebook

More employers are using Facebook and other social media sites to spot employees who file fraudulent workers' comp claims. In most cases, workers who are supposedly too injured to work will describe (or show) their strenuous activities. *Examples:* A California warehouse worker with work-related back injuries posted his bowling tournament scores. And an employee who was in too much pain to get out of bed posted video of himself competing in a rodeo.

### 'Sexting' causes growing harassment risk

Employers and HR are being forced to respond to an increasing number of sexual harassment claims revolving around explicit photos sent via text message, a practice known as "sexting." *Latest case:* A Hooters waitress in Florida sued, saying her manager sexually harassed her by texting her inappropriate photos of himself. **Lesson:** Expand anti-harassment and e-mail policies to include cell phones, cameras, IMs and texts. Remind workers: If a message isn't appropriate to send to Grandma, it isn't appropriate to send to a co-worker.