

The Top Ten (Employment Mistakes Small Business Owners Make)

By Michael Kelsheimer

Sixty percent of ACA of Texas member collection agencies have 15 or fewer employees. While these businesses represent the backbone of the collection industry, they don't have the money for a professional HR manager. Left to their own devices, the owners of these companies make HR decisions based on advice from a friend or whatever they can find on the internet. Rather than search the net all night only to find the answer for California and Ohio instead of Texas, take a quick look at these top ten pointers:

10. Fire and Forget. Employers ask all the time what restrictions there are on firing people. They know Texas is an "at-will" state, meaning you can fire anybody at any time, but they don't really believe it. So here it is: You can fire an employee for good reason, bad reason, or no reason. If you have bad memories of your mom's ugly avocado-colored kitchen and Suzy shows up wearing a shirt that color, fire her. The law is on your side. As long as you don't discriminate (assuming that law applies to you – see below) she can't sue you.

9. Salary Employees Don't get Overtime, Right? I don't know what it is about paying salary that makes employers think they don't have to pay overtime, but a lot do. It's not true. If it were, nobody would *ever* have an hourly employee. Unless the employee fits into a short list of narrow exceptions, you have to pay overtime. Because the editor didn't give me another 5000 words to explain the exceptions, you'll have to check with your lawyer to see if they apply. Don't think this is a ruse by lawyers to generate more fees, you might save money!

8. Women Should Stay at Home and Raise Kids! Of course I don't believe that, but it got your attention. Everybody knows that you can't discriminate based on race, sex, national origin, or age. What employers probably don't know is that most discrimination laws don't kick in against businesses unless they have 15 or more employees. I'm not suggesting you should discriminate because there are some less common laws that you might violate, but you can be less afraid of getting sued unless you're over the threshold. If you are, then you should add disability, veteran status, pregnancy, and ethnicity to the list of protected characteristics.

7. Document Foul-Ups. I've just told you that you can fire for any reason and that the discrimination laws don't apply to the

majority of you, so why am I now suggesting that you document all your employees' foul-ups? Unemployment Insurance. If you fire an employee for no reason, they can get unemployment benefits which cost you money. Because most employers have a reason for letting someone go, they can try to defeat the unemployment claim by giving their well-documented reasons to the Texas Workforce Commission.

6. Covenants Not to Compete ARE Enforceable. You've probably heard for years that you can't prohibit an employee from leaving and going to a competitor. That used to be true, but the Texas Supreme Court turned everything around a few years back. A covenant not to compete can be a very powerful tool to prevent your vital employees from taking your secrets to a competitor! They are a little tricky to draft, so you'll want to ask your lawyer (I know, I know, more fees).



5. Set Boundaries and Have Consequences. Managing employees is like having children. Unless there are rules, and those rules are *enforced*, your employees will end up walking all over you. You are not required to have an employee handbook, but it helps define what is expected. That way, when employees break the written rules, you have a basis to call them on it. This helps protect against unemployment claims, discrimination claims, and generally promotes a calmer universe.

4. Just Make Up the Time Next Week. Bobby had to leave a couple hours early today to watch his son's soccer game. It's no big deal – you've got a big project starting next week so he can work a couple extra hours then. WRONG! This is commonly known as "comp time", but it is illegal. Sorry, but only the government is allowed to use this very common sense approach to handling time out of the office. If Bobby is short this week, you can pay his full rate, but next week when that project starts you must still pay him overtime.

3. If I Make EVERYBODY an Independent Contractor There Are No Payroll Taxes. In a down economy, employers have to save money. What better way than to cut out the payroll taxes. Unfortunately, this approach is too good to be true. The IRS, Department of Labor, and Texas Workforce Commission are banding together and sharing information to catch businesses that "mischaracterize" true employees as

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SUMMARY OF BOARD OF DIRECTORS MEETING

April 18, 2011

The Board of Directors of the American Collectors Association of Texas met for their Spring Board Meeting at the Sheraton Austin Hotel in Austin, Texas on Monday, April 18, 2011. Prior to the start of the meeting, Kerry Cammack presented a Board orientation covering their duties and responsibilities. The following is a brief summary of the Board's actions:

1. The minutes of the previous Board meetings in San Antonio (September 22 and 25, 2010) were read and approved as presented. The board also approved the minutes for a board conference call on December 29, 2010.
2. The Board heard and approved (as needed) reports from the Membership Committee, the Professional Education Committee, the Ethics and Grievance Committee, CollectPAC and ACPAC, the Educational Foundation, the National Directors and the Legislative Committee along with our Legislative Consultant.
3. The Finance Committee financial reports were presented by the Treasurer and all financial statements were reviewed and approved. The Treasurer reported that the Association had an operating loss in FY2010 due to an unbudgeted, board authorized, contribution to the ACA International TCPA fund.
 4. The Board heard the following reports from the Executive Director:
 - a. The 2011 Annual Conference will be held in San Antonio at the Menger Hotel on September 29-October 1, 2011.
 - b. The 2011 ACA National Convention will be in Dallas in July at the Anatole Hotel. ACA of Texas is the Host Unit.
 - c. Mr. Morgan reported that there were 36 total registrations for the Legislative Summit.
5. Ms. Lyons submitted proposed changes to the Association's By-Laws and Standard Operating Procedures. The proposed wording changes were approved by the Board and will be presented to the membership for ratification at the Annual Unit Business Meeting to be held on Friday, September 30th in conjunction with the Annual Conference.
6. Mr. Morgan presented information on a new ACA of Texas web site that is under development.
7. ACA will conduct a Unit Leadership Conference in Minneapolis, October 12-14, 2011.
8. There was a brief discussion regarding a possible item to be considered at the meeting of the national board in July.

The above is only a summary of the Board's actions. For a complete copy of the minutes, please contact the Executive Director at tmorgan@texascollectors.com or by phone at 512-458-8666.

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independent contractors. There may be some people you can hire as contractors, but they are few and far between. Be very careful about heading down this road.

2. Commission is Tricky. Many collection businesses have sales people who operate on commission. It's the best incentive device. You can use it, but the employee must make at least 1.5 times minimum wage (\$10.88) for each hour worked in a given week. If Joe works 70 hours in a week, but earns only \$500.00 in commissions that week, you have to pay overtime. This is applicable each and every week. Happy tabulating!

1. When You Let People Go, Don't Give a Reason and Be Nice. Studies show that one of the biggest considerations in suing a former employer is how the employee felt about the termination. Let people go when no one else is around, if

possible, and let them gather their items without an audience. If you can't avoid an audience, offer to send the items. Also, don't debate the termination. Give no reason. They only want to know "why?" to explain it away. If you give no reason, your lawyer will have a clean slate to work with if the employee claims unemployment or sues for discrimination.



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