





### 6 Steps to Successful Hiring

- Application/ Onboarding Do's and Don'ts
- Required Hiring Forms

### Steps to a Lawful Termination

- Processing Termination Paperwork

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## “Hire Slow” What Do We Mean?

- Have a clear position description before posting a job.
- Take time to carefully consider candidates.
- Follow a consistent onboarding process.
- Make sure you are complying with California laws and applicant protections.
  - This does **NOT** mean you should “sit” on a decision to hire talent just for the sake of “hiring slow”.

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## “Fire Fast” What Do We Mean?

- If you make the decision to terminate someone, document that decision and **act swiftly**.
- If you don't, the “problem” employee may reveal in the interim that they are part of a protected class, file a complaint, etc. and you will be more **likely to appear retaliatory**.
  - This does **NOT** mean you should rush through *processing* the termination and/or required forms in order to “fire fast”.

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## Hire Slow: 6 Steps

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## 6 Steps to Successful Hiring

1. Determine what you need in a candidate.
2. Create a job description.
3. Post/advertise the position.
4. Conduct thorough interviews.
5. Extend a conditional offer of employment.
6. Follow consistent onboarding procedures.



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## Step 1: Determine What You Need

Do you need:

- A temporary or regular employee?
- Independent contractor?\*
- Part time or full time?
- Exempt or non-exempt?
- Entry level?
- Skills required?
- Degrees required?
- Physical abilities test?
- Employing minors – extra steps and compliance requirements!  
*(CEA has an **Employing Minors Tool Kit**)*

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# The "ABC" Test

General rule: "A person providing labor or services for [pay] shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied" (of the ABC Test)

- A. Is free from control and direction of the hirer,
- B. Performs work that is outside the usual course of the hiring entity's business, **AND**
- C. Is customarily engaged in a trade, occupation, or business of the same nature as the work performed.

**Consult counsel!**



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10

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# Right of Recall

- If you employ individuals in the hotel, private clubs, event centers, airport hospitality, airport service, or building services (janitorial, building maintenance, or security services), you must consider any of your laid off employees—as a priority for rehire—effective immediately.
- On Friday, April 16, 2021, Governor Newsom signed Senate Bill 93. Requires employers in the above industries to offer its laid off employees specified info about job positions that become available that they are qualified to fill and to offer positions to its laid-off employees.
- <https://www.employers.org/blog/2021/04/19/default/hiring-employees-new-right-to-recall-requirements/>



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# Non-Exempt Employee vs Exempt Employee



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## Exempt (from Wage and Hour Laws) v. Non-Exempt

### Exempt

- Must pass exemption test which has a **duties** test and a **salary** test
- Paid a flat salary for the skill they bring to the job
- Overtime laws, meal and rest breaks, timekeeping, etc. generally don't apply

### Non-Exempt

- Paid by the hour for work performed
- Breaks/lunches/OT
- Timekeeping required



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13

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## State Minimum Wage: Non-Exempt Employees

January 1st	Small Employer 25 or fewer	Large Employer 26 or more
→ 2021	\$13.00	\$14.00
2022	\$14.00	\$15.00
2023	\$15.00	\$15.00

**NOTE:** There are over 30 different local minimum wages throughout the state! Check your city and/or county ordinances and refer to our Fact Sheet.



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14

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## Minimum Salary: Exempt Employees

Small Employers: 25 or fewer employees  
Large Employers: 26 or more employees

### Exempt Salary

January 1, 2021	\$54,080/\$58,240
January 1, 2022	\$58,240/\$62,400
January 1, 2023	\$62,400/\$62,400

**Duty and Salary Test (2 x State min wage x 2080 hours) are both required!**

Note: Some commissioned employees, computer professionals, and physicians have different salary tests.



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15

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# Common Exempt Categories

- “White-Collar” exemptions are the most common
- **Executive** - whose primary duty is managing two or more full-time employees in a business or permanent unit
- **Administrative** - work directly relates to management policies or general business operations
- **Professional**- in a field of science or learning, and have a license or advanced degree
- Each of these categories are subject to a **specific duties test**. (“*Exempt Analysis Worksheets*” available on *CEA’s website under HR Forms!*)



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# Step 2: Create a Job Description

- List the following:
- Job responsibilities
  - Work expectations
  - Physical requirements
  - Essential functions
  - Whether the job is exempt or non exempt
  - To whom do they report?
  - Work days, hours, etc.
  - Other duties as assigned
  - **Job description builder on CEA University**



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17

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# Step 3: Post/Advertise the Position

- One size does not fit all
- Advertise Internally
  - In house referral program
  - Advancement from within
- Advertise Externally
  - Traditional Methods – Local Newspaper, Trade Association
  - Online (LinkedIn, Zip Recruiter, Indeed)
  - America’s Job Centers – Free
  - **Recruiting and Hiring Toolkit on our website**



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18

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# Employment Applications

- Applications vs. resumes
- Make sure your application is CA compliant
- Applicant Protections:
  - Ban-the-Box (criminal history information)
  - No salary history questions
  - Pre-employment screening (drug, fitness)



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# Ban-The-Box

Prohibits employers with 5 or more employees from asking about **criminal convictions** on job applications.

- Can NOT ask about criminal conviction history information on job applications or in interviews *until after* a conditional employment offer is made.
- Can deny employment if the conviction history has a "direct and adverse relationship with the specific duties of the job" (Ex: driver position and DUI)
- Be aware of local ordinance requirements (SF, LA)
- Refer to **FACT SHEET** on our website



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# Criminal History Assessment

- Before you deny employment based on criminal history, employer must consider:
  - Nature and gravity of the criminal offense
  - Time that has passed since offense
  - Completion of sentence
  - Nature of job applied for
- You cannot ever consider:
  - Arrests not resulting in a conviction
  - Referrals to pre-trial/post trial diversion programs
  - Convictions that are sealed, dismissed, expunged or removed by statute.



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## If you wish to deny employment after the assessment:

1. You **must** provide a **written notification** of this preliminary decision and include:
  - a) the conviction that is the basis for your decision
  - b) a copy of the conviction history report (if any)
  - c) an explanation of the applicant's right to respond to the notice within 5 days and their option to challenge the accuracy of the conviction history
2. If you **still deny** employment – **final letter**
  - a) "Adverse Action Notice" required in writing
  - b) Let the applicant know they can file with DFEH

Sample Forms: [Criminal History | DFEH \(ca.gov\)](#)



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### No Salary Information



*White women earn 82 cents on the dollar compared to men.*  
—  
Federal Bureau of Labor Statistics

- Prohibits **ALL employers** from asking about or relying on an applicant's salary history as a factor in hiring.
- Employers required to provide, upon request, a position's pay scale information
- Employers should remove questions about salary from job applications and interviews.
- Does NOT apply to voluntary disclosures.
- Does NOT apply to current employees up for promotion.



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## Step 4: Conduct Thorough Interviews



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## Interviewing 101

Tips for you:

- Be prepared
- Ask for explanation about gaps
- Ask about reasons for leaving
- Test your applicant's knowledge
- Take notes – but not on application
- Answer applicant's questions
- Closing



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## Interview Awareness

Did the candidate arrive early?

Did they bring copy of their resume?

Were their answers short or rambling?

How did the candidate describe their former employer(s)?

Were they enthusiastic?

Be aware of the "professional interviewer" – conduct at least 2 interviews

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## Making the Job Offer

- Negotiations
- Be prepared to explain the entire offer, including benefits
- Know the market – consider a compensation survey
- Let them know next steps

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31

## Reference/Background Checks

- At a minimum - Reference Checks
- 3<sup>rd</sup> Party Background Checks
- Driver's License Checks, if required for job
- Consider the position:
  - Employees who may handle cash
  - Employees who may go into people's homes
  - Employees who will be working unsupervised

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33

## Pre-Employment Tests

- **In General:** Must pay for the cost of all pre-employment tests.
- **Pre-Employment Drug Test:** Permitted only *after* conditional offer of employment.
- **Physical/Mental Examinations:** Permitted only *after* conditional offer of employment is extended. Exam must be job related and consistent with a business necessity.

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## Step 6: Follow Consistent Onboarding Procedures

- Required Hiring Forms & Notices
- Review Policies & Sign Acknowledgments (i.e., anti-harassment, receipt of CPP/IIPP/employee handbook)
- Direct Deposit Authorization
- Trainings (i.e., including required by law – HPT)
- This is all *compensable time!*
- If EE's hourly rate exceeds MW, you may pay the MW for training time.

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34

## Required Hiring Forms

- I-9 Form (Complete sec. 2 within 3 bus days)
- W-4 Form (Federal tax withholdings)
- DE-4 Form (CA tax withholdings)
- Acknowledgement of Receipt of IIPP
- Discrimination and Harassment Prevention Policy and Acknowledgment
- Lactation Accommodation Notice
- Pregnancy Disability Leave Notice
- Victims of Crime and Abuse Notice
- Form DFEH 185 Harassment and Complaint Procedure
- Form DE 2515 EDD Disability Insurance Pamphlet
- Form DE 2511 Paid Family Leave Brochure

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## Required Hiring Forms Cont.

- Facts about Workers' Compensation Brochure
- Personal Physician/Chiropractor Pre-Designation Form
- Wage Theft Prevention Act Form (Labor Code sec. 2810.5) (*non-exempt employees*)
- Form DE 34: EDD Report of New Employee(s) (*online*)
- Labor Code sec. 2751: Written Commission Agreements (*if applicable*)

**See Employer Orientation Checklist on CEA Website!**

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## Starting Off on the Right Foot

- First impressions are critical.
- Make the new hire feel welcome.
- Consider how they will meet the other staff members (i.e., introduced at a meeting, “rounds” at the office).
- Create an engaging onboarding experience.
- Assign a mentor or “buddy” for questions.




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37



## Firing Fast: Best Practices

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38

## At-Will Employment

- Default: “The employment relationship is at-will and can be terminated by either the employee or employer with or without cause or advance notice.”
- You cannot terminate someone in violation of public policy. (i.e., because they filed a complaint, are a whistleblower, based on protected status, etc.)
- Even though the relationship may be “at will” it is a **best practice** to document a short reason or explanation for the termination, demonstrating that it is legitimate.

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## Why is "Fire Fast" Important?

- Lately, David has been insubordinate and is instigating arguments with coworkers.
- David's supervisor, Jane, decided it is time to terminate David.
- Jane spoke with HR about the decision on Monday, and the Company decided it would terminate David in a few weeks.
- On Wednesday, David told HR that he needs to take leave due to a medical condition/disability.



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40

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## Safe to Terminate?

- Up until now, the Company never disciplined David in writing, and his most recent performance review was positive.
- The company may appear retaliatory if they terminate him immediately after he requested the leave.
- This is why "fire fast" and documenting the termination decision quickly is important.
- What to do about this situation?



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41

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## 3 Steps to a Lawful Termination

1. Make sure the reason for termination does not violate the law.
2. Determine the type of separation.
3. Conduct the final meeting with proper paperwork in hand.



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42

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## Step One: Make Sure the Termination is Lawful

- So what are some common, lawful reasons for termination?
  - Violation of employer policies
  - Poor work performance
  - Reduction in force/layoff
  - Other: dishonesty/disloyalty/conflicts of interest etc.
- There is no legally required "3 strikes and you're out" rule!
- Do not use the terms "probationary period" or "progressive discipline." If you do, make sure it is clear that it does not alter the "at-will" nature of employment.
  - Unless you are subject to collective bargaining agreement, MOU, government/public employees etc. where other rules apply.



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43

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## The Importance of Documentation

*If an event is worth remembering, it's worth writing down.*  
*Attorney comment: If it's not written down, it never happened.*

Documentation for a **Poor Performer**:  
 1) Awareness    2) Knowledge    3) Failure

- Documentation for **Violating a Company Policy**:
- Told in advance about the rule
  - Warned about violating the rule
  - Knew the consequences for violating the rule
  - Given an opportunity to improve before being fired



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44

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## Assembling and Assessing

Assemble the Facts  
 Assess the Risk



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## Step Two: Determine the Type of Separation

- Resignation
- Refusal to accept available work
- Job Abandonment – check your policy!
- Termination/Discharge/Layoff
- Who is the moving party?



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46

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## Step 3: Conduct the Final Meeting



1. Don't do it in public, embarrass or humiliate
2. Don't send mixed messages
  - *I'm sure you'll find a new job soon*
3. Don't tell the employee how to feel
  - *You'll feel better tomorrow*
4. Don't act guilty or seek sympathy
  - *I'm sorry, this is harder on me than you*
  - *If it were up to me, I wouldn't have fired you*



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47

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## Right Way to Fire



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48

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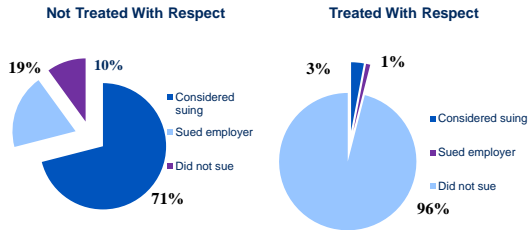
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## Importance of Firing Someone Correctly



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## Required Termination Paperwork

- “Notice to Employee as to Change in Relationship”
- EDD “For Your Benefit” pamphlet (Form DE 2320)
- HIPP – Notice to Health Insurance Premium Payment
- COBRA forms – if applicable
- Final paycheck with all wages, bonuses etc. earned to date, and accrued vacation/PTO.

See Termination Checklist on CEA Website!



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## Pay at Termination

- Final Pay should be a “live” (aka manual) check
- Paid at employee’s primary work location
- Involuntary termination **OR** voluntary resignation with *more than 72 hours’ notice (calendar days)*, all earned wages and accrued vacation **due on last day of employment**
- Voluntary resignation without notice, all earned wages and accrued vacation **due within 72 hours after notice is given**
  - Not obligated to mail paycheck unless employee requests in writing payment by mail and provides mailing address
  - Date of mailing is considered date of payment
- Special rule for commissions and expense reports



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51

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