



Information Every Business Needs to Know

HR & Benefits Advisor

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Brought to you by: Law Offices of Travis Bowen , PC

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Employment Tax Record Keeping



Keep all records of employment taxes for at least four years after filing the 4th quarter for the year. These should be available for IRS review. Records should include:

- Your employer identification number.
- Amounts and dates of all wage, annuity, and pension payments.
- Amounts of tips reported.
- The fair market value of in-kind wages paid.

Performance Appraisal Basics

Employee performance appraisals or performance reviews are an employer's way of communicating job expectations to an employee and how well he or she is doing on the job to meet those expectations. Many times, performance reviews are used to support important HR related decisions concerning merit

pay increases, promotions and terminations. Merit pay is generally defined as a raise in pay based on criteria set by the employer. This usually involves the employer conducting a review meeting with the employee to discuss the employee's work performance during a certain time period.



Performance Appraisal Steps at a Glance:

Clarify the job and set performance guidelines. Employees need to understand the job and know which tasks are critical. They must also understand acceptable performance for the job in terms of quantity, timeliness and work quality. The standards should be consistent for all employees with the same job.

Plan ahead for the appraisal period. At the beginning of the appraisal period, employee and supervisor should work together to develop a plan to help guide the employee's work during the appraisal period. The employee should clearly understand which tasks are most important, the conduct and results required, and the performance standards against which he or she will be judged.

Overseeing employee performance. During the appraisal period, the employee and the supervisor should both be actively monitoring performance against the standards established. Providing feedback to the employee throughout the appraisal period can reinforce good performance and help to correct any issues which may arise. The supervisor should encourage discussions to address problems that surface during the appraisal period.

- Names, addresses, social security numbers, and occupations of employees and recipients.
- Any employee copies of Form W-2 that were returned to you as undeliverable.
- Dates of employment.
- Periods for which employees and recipients were paid while absent due to sickness or injury and the amount and weekly rate of payments you or third-party payers made to them.
- Copies of employees' and recipients' income tax withholding allowance certificates (Forms W-4, W-4P, W-4S, and W-4V).
- Dates and amounts of tax deposits you made.
- Copies of returns filed.
- Records of allocated tips.
- Records of fringe benefits provided, including substantiation.

Notices and Rulings to Promote Retirement Plan Savings

As part of the [Retirement & Savings Initiatives](#), the IRS and Treasury issued notices and revenue rulings to promote retirement plan savings. The notices provide sample amendments to add an [automatic enrollment feature](#) (also known as an automatic contribution arrangement) to [401\(k\)](#) and [SIMPLE IRA plans](#), guidance on using an automatic contribution arrangement (ACA) in SIMPLE IRA plans and two updated safe harbor explanations

Conduct the performance appraisal. At the end of the rating period, the supervisor should complete a performance appraisal form and conduct an appraisal interview with the employee. In the interview, the employees should be told how he or she is doing compared to the standards set at the beginning of the period. The information should include job-related responsibilities he or she is doing well and areas that can be improved, why the performance is rated as good or deficient in specific areas, and steps the employee can take to improve or maintain quality of performance.

Reward employee performance. A good performance appraisal is generally rewarded. Pay increases can often be determined based on performance appraisals. The reward system should be capable of differentiating between different levels of performance i.e., the best performing employees will receive a greater increase as compared to those who do not perform as well.

Who Should Conduct the Performance Appraisal?

A traditional, top-down performance appraisal is usually conducted by the worker's immediate supervisor. Input from the employee is important, as well.

How Often Should a Performance Appraisal Happen?

Some companies choose to assess employee performance once a year. Others find that the information is more meaningful, and the goals of the assessment monitored more effectively, with more frequent conversations. Informal, abbreviated reviews that happen regularly encourage open communication between staff and supervisors, allowing each to solve problems while they're small. Companies that opt for annual reviews may conduct them near the anniversary of the employee's start date. Others, especially smaller employers, may find it convenient to conduct appraisals for all employees within the same few weeks each year.

Before the performance review interview:

- Give the employee sufficient notice of the date of the performance interview.
- Ask the employee to self-assess using defined job-related criteria.

During the performance review interview:

- The supervisor should come prepared to give the employee specific examples of what he or she did well during the assessment period, and how these impacted the business.
- Ask the employee to relate examples of his or her own good performance.
- Encourage the employee to discuss any problems he or she is experiencing on the job.
- Follow up with assistance in areas that need improvement. Ask the employee what help is needed to improve performance in specific areas. Any suggestions made by the supervisor to assist the employee should focus on job performance rather than personality deficiencies. Limit the discussion to two or three issues at a time, to avoid overwhelming the employee and to increase the likelihood of success.

(§402(f) notices) for eligible rollover distributions (ERDs). The revenue rulings clarify the rules on increasing ACA [default contribution percentages](#) and on contributing unused vacation and sick pay to a retirement plan, both annually and upon termination of employment.

The following is a quick summary of the revenue ruling and notices.

[Revenue Ruling 2009-30](#) Demonstrates ways a 401(k) plan sponsor can include automatic contribution increases in its plan.

[Notice 2009-65](#) Provides sample automatic enrollment plan language that a 401(k) plan sponsor can adopt with automatic IRS approval.

[Notice 2009-66](#) Includes guidance to help small employers add automatic enrollment to their SIMPLE IRA plans.

[Notice 2009-67](#) provides sample automatic contribution language that a SIMPLE IRA plan sponsor can adopt with automatic IRS approval.

[Notice 2009-68](#), Contains two updated safe harbor models that an employer plan may give to ERD recipients to satisfy §402(f) notice requirements.

[EEOC Approves Proposed ADA Regulations for Public Comment](#)

On September 16, 2009, The U.S. Equal Employment Opportunity Commission (EEOC), approved a Notice of Proposed Rulemaking (NPRM), revising its regulations to provide that an

- Discuss plans for the next review period. Set objectives and outline steps to improve on any problem areas or to further develop the employee for greater responsibilities within the company.

After the performance review interview:

- Follow-up with the employee throughout the next appraisal period for less-formal discussions.
- Address any problems that arise.
- Track the employee's progress against the goals that have been set.
- Identify any impediments keeping the employee from reaching those goals.

Finally, it is vitally important that a company have a performance appraisal system that is accurate and fair. This is especially important as a negative review can affect an employee's employment status i.e., pay increases, promotions or discharges. Each review must be based on job-related criteria rather than any issues that can be construed as discriminatory.

Done correctly, employee performance appraisals can be effective tools to keep your employees on track. Take the time up front to carefully plan each review; it will pay off in the end.

Your Company's Benefits — A Vital Key to Retaining and Recruiting Employees

According to the [MetLife study](#) of benefit trends focusing on small business, one of the key strategic areas that drives employee retention and loyalty is your employee benefits program. In challenging economic times, these benefits – and the security and protection they help provide – may become even more valuable. Recent difficult economic times have made employees more aware of their own personal risk exposure, causing 53% of employees to report that they value their workplace benefits more than ever before. Nearly half of employees (43%) say that because of recent economic events they are taking a greater interest in understanding the employee benefits they receive through the workplace.



According to the study, benefits are rated highly as reasons for employee loyalty. In terms of importance, 71% of employees surveyed consider health benefits important, followed by retirement benefits at 68% and non-medical insurance benefits such as life and disability insurance at 66%.

individual seeking protection under the Americans with Disabilities Act (ADA) establish that he or she has a disability consistent with the original, expansive intent of Congress when it enacted the ADA in 1990. The NPRM carries a 60-day period for public comment.

The NPRM makes several significant changes to the definition of the term "disability" necessitated by enactment of the ADA Amendments Act of 2008 (ADAAA). [Please click here](#) for a question-and-answer guide about the proposal.

The following are some key questions and answers regarding the ADAAA.

Does the ADAAA apply to discriminatory acts that occurred prior to January 1, 2009?

No. The ADAAA does not apply retroactively. So, for example, the ADAAA would not apply to a situation in which an employer allegedly failed to hire, terminated, or denied a reasonable accommodation to someone with a disability in December 2008, even if the person did not file a charge with the EEOC until after January 1, 2009. The original ADA definition of disability would be applied to such a charge. However, the ADAAA would apply to denials of reasonable accommodations where a request was made, or an earlier request was renewed, on or after January 1, 2009.

What is the purpose of the ADAAA?

The ADAAA states that its purpose is "to reinstate a broad scope of protection" by

Voluntary Benefits Appreciated

According to the study, 88% of small business employees are interested in their employers providing a greater choice of benefits that they can choose to pay for on their own. Many voluntary benefits, including life, dental and disability options, can be offered to broaden your range of benefits. As employees are more sensitive to their own personal risk exposure, and are increasingly looking to the workplace for help, voluntary benefits can be an effective way to create goodwill and help provide additional benefits.

Emphasize Wellness with Helpful Resources

The MetLife study reports that employee interest in health and wellness is high. For example, 73% of employees who participate in wellness programs said the top reason to participate is "I want good health." At a time when small businesses say they are spending about 60% of their total benefits dollars on medical insurance, there are many wellness programs that can be implemented at little to no cost to the employer including:

- Check community resources, like local health clubs and gyms, as well as weight loss centers. These sometimes offer group discounts, so you can pass them along to your employees.
- Provide access to health information websites such as <http://www.healthfinder.gov> that provides health related news as well as information on topics such as nutrition and fitness.

Effectively Communicating Your Benefits Program

According to the MetLife study, only about a third of employees at small businesses report that their company's benefit communications effectively educate them on their benefits options. Developing ongoing communications with employees can convey an employer's commitment to employees and increase involvement in the benefits program.

One way to communicate effectively for small businesses, which may not have the staff to develop formal communications materials on their own, is a simple letter from the business owner or an "open door policy" with the person in charge of HR. Communications can go a long way towards enhancing your employees' satisfaction with your benefits program and increasing retention.

Seven Steps to Making a Hardship Distribution

In these challenging economic times, participants may seek [hardship distributions](#) from their retirement plan. Before making hardship distributions, review the steps below to make sure you follow both the legal requirements and your plan's requirements.



expanding the definition of the term “disability.” Congress found that persons with many types of impairments – including epilepsy, diabetes, multiple sclerosis, intellectual disabilities (formerly called mental retardation), major depression, and bipolar disorder – had been unable to bring ADA claims because they were found not to meet the ADA’s definition of “disability.” Yet, Congress thought that individuals with these and other impairments should be covered and revised the ADA accordingly. Congress explicitly rejected certain Supreme Court interpretations of the term “disability” and a portion of the EEOC regulation that it found had inappropriately narrowed the definition of disability. As a result of the ADAAA, it will be much easier for individuals seeking the law’s protection to demonstrate that they meet the definition of “disability,” and far more ADA cases will focus on whether discrimination actually occurred.

The law states that some retirement plans (for example, [401\(k\)](#) and [403\(b\)](#) plans) may allow participants to withdraw certain amounts from the plan because of a financial hardship. IRS regulations provide [guidelines](#) for plans to follow to ensure they satisfy the law’s requirements. A plan can make a hardship distribution only:

- if permitted by the plan;
- because of an immediate and heavy financial need of the employee and, in certain cases, of the employee’s spouse, dependent or beneficiary; and
- in an amount necessary to meet the financial need.

Step 1 - Review the terms of your plan, including:

- whether the plan allows hardship distributions;
- the procedures the employee must follow to request a hardship distribution;
- the plan’s definition of a hardship; and
- any limits on the amount and type of funds that can be distributed as a hardship from an employee’s accounts.

Step 2 - Ensure that the employee complies with the plan’s procedural requirements. For example, make sure the employee has provided a statement or verification of his or her hardship in the form required by the plan.

Step 3 - Verify that the employee’s specific reason for hardship qualifies for a distribution using the plan’s definition of what constitutes a hardship. For instance, the plan may limit a hardship distribution to pay burial or funeral expenses and not for any other reason.

Step 4 - If the plan, or any of your other plans in which the employee is a participant, offers loans, document that the employee has exhausted them prior to receiving a hardship distribution. Likewise, verify that the employee has taken any other available distributions, other than hardship distributions, from these plans.

Under some plans, a hardship distribution is not considered necessary if the employee has other resources available, such as spousal and minor children’s assets (excluding property held for the employee’s child under an irrevocable trust or under the Uniform Gifts to Minors Act).

Step 5 - Check that the amount of the hardship distribution does not exceed the amount necessary to satisfy the employee’s financial need. However, the amount required to satisfy the financial need may include amounts necessary to pay any [taxes or penalties](#) that are due because of the hardship distribution.

Step 6 - Make sure that the amount of the hardship distribution does not exceed any limits under the plan and is made only from the amounts eligible for a hardship distribution.

Step 7 - Most plans also specify that the employee is suspended from contributing to the plan and all other plans that the employer

maintains for at least six months after receiving a hardship distribution. Inform the employee and enforce this provision! Failing to enforce the plan's suspension provision is a common plan error but may be corrected through the [Employee Plans Compliance Resolution System](#) (EPCRS).

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