

Building a Team in Texas

Practical Employment Law Guide *for Small Business Owners*

This guide is written for Texas business owners who are building their team or managing a small staff. It focuses on real-world decisions, common mistakes, and practical next steps, not legal jargon or case citations.



Brought to you by Surge Business Law PLLC,
serving small businesses in Texas.



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Questions We Get Asked a Lot

If you are building a team, you have probably asked at least one of these:

1. What do I need to do before hiring my first employee?
2. Do I need an employment contract?
3. How do I fire an employee?
4. What benefits do I need to provide?
5. Can my staff be contractors or do they need to be employees?
6. Do I need to pay overtime?
7. What do I do about employees who aren't doing their job?
8. How often should I give raises?
9. What does "at-will" employment mean?
10. Do I need to worry about discrimination?

This guide is designed to answer those questions in plain English and help you avoid the most common (and expensive) mistakes we see.

You'll also see notes about when business owners typically slow down and ask for help. Many of our clients handle issues like these through our Momentum Membership, which provides unlimited ongoing support, so you don't have to guess.

Why Every Smart Business Owner Needs Momentum

Most business owners make expensive mistakes because they don't have expert guidance when they need it.

Cash flow issues? Pricing too low? Struggling with profitability?
Confused about hiring or paying contractors?
Worried about protecting your brand, contracts, or partnerships?
Googling legal advice and hoping it's right?

The Momentum Membership gives you access to legal and business advisors who help you make better business decisions before it's too late.

Momentum is an affordable monthly membership for small business owners.
Learn more at <https://surge.law/momentum>



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1. Hiring, Firing, and “At-Will” Employment

What this looks like in real life

You hire someone who seems like a good fit. A few months later, they’re not meeting expectations. You’re wondering whether you can let them go or whether doing so could create legal problems.

The plain-English rule

Texas is an at-will employment state. This generally means that, unless you have a contract stating otherwise, either you or the employee can end the employment relationship at any time, for almost any reason.

Well, any *lawful* reason. “At-will” does not mean “risk-free.” Certain reasons for termination can create legal problems. For example, retaliation, discrimination, or violating your own written policies.

Where owners get into trouble

- Assuming “at-will” means no documentation is needed
- Firing in reaction to a complaint, injury, or leave request
- Making promises about job security
- Ignoring what their handbook or written policies say

What to do instead

- Treat hiring and firing as business decisions, not emotional reactions
- Document performance issues early and consistently
- Make sure your written policies match how you actually operate

When to slow down

If the employee recently complained, requested leave, was injured, or belongs to a protected class, it’s usually wise to pause and get advice before terminating.

Q: What do I need to do before hiring my first employee?

A: Here are a few things to avoid later problems: 1. Write out a job description, 2. Apply for a withholding and tax permit from Texas Workforce Commission, 3. Make a note of any promises of benefits such as sick leave, vacations, and raises.

2. Employment Contracts, Non-Competes, and NDAs

What this looks like in real life

Losing an employee is tough, and losing one to a competitor may feel like a betrayal. You want to protect your business information and client relationships, but you're not sure whether you need a contract or what kind.

The plain-English rule

Most employees do not need a formal employment contract. In fact, contracts can limit your flexibility. However, it's good to have the basics. Non-competes may work in Texas but may be unenforceable unless narrowly written. They are banned completely for some workers. NDAs, non-solicitation agreements, and confidentiality agreements are more commonly useful and enforceable.

Q: Do I need an employment contract?

A: No, but we strongly suggest a confidentiality agreement that protects your business's secrets, such as customer and vendor list, pricing, financial records, and internal processes.

Where owners get into trouble

- Using overly aggressive non-competes copied from the internet
- Accidentally creating binding contracts
- Failing to protect the company's confidential information

What to do instead

- Use simple, targeted agreements when needed
- Save non-compete agreements for specialized employees
- Focus on confidentiality, customer relationships, and trade secrets
- Avoid one-size-fits-all documents

When to slow down

If you are relying on a non-compete to protect your business, it's usually worth reviewing your approach.

Getting Ready to Hire?

Check out our very affordable hiring and employment kit for small businesses at <https://surge.law/downloads>



3. Pay, Benefits, and Overtime

What this looks like in real life

You are trying to pay people fairly while keeping costs predictable. You're unsure what benefits are required and when overtime applies.

The plain-English rule

Texas generally follows federal wage and hour rules. Most hourly employees must be paid overtime for hours worked over 40 in a workweek, even if they're salaried. Benefits like vacation or sick leave are usually optional, but once promised, they must be handled consistently.

Where owners get into trouble

- Misclassifying employees as exempt from overtime
- Allowing off-the-clock work
- Inconsistent benefit policies

What to do instead

- Clearly define work hours and pay practices
- Keep good time records
- Have clear, consistently applied benefits policies

Q: What benefits do I need to provide?

A: Texas law does not impose requirement for sick leave or paid vacation. With 50+ employees family medical leave is required. However, if you offer additional benefits, they must be offered consistently, so have a company policy and stick to it.

How much does it cost to ask an attorney about employee exemptions?

Momentum members get unlimited Q&A by email for free. We answer questions about employee issues *all the time!*

With Momentum, you get:

- Answers: YES!
- Surprise attorney bills: NO!

The fear of getting charged for every question prevents people from getting expert help. We don't want you to wait to get help. Learn more at <https://surge.law/momentum>



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4. Drug and Alcohol Testing

What this looks like in real life

You want to maintain a safe workplace and are considering drug or alcohol testing, especially for safety-sensitive roles.

The plain-English rule

Texas allows drug and alcohol testing. If you have a written policy, testing must follow the policy. The policy must be available to all affected employees and applicants. As your team grows the rules change. It's good to have a written policy and sticking to it so that you avoid complaints of discrimination by selectively applying the policy.

Where owners get into trouble

- Not having a written policy or not following it
- Testing the wrong employees
- Reacting inconsistently to results

What to do instead

- Adopt a clear, compliant drug testing policy
- Apply it consistently
- Train supervisors before issues arise
- This is a complicated topic, Surge Law can help you do it right.

Q: What does “at-will” employment mean?

A: At-will employment means that employees in Texas do not have a guarantee from their employer of continued employment unless they have a contract stating otherwise. However, there is a lot of misinformation. You may not terminate an employee for an unlawful reason, such as discrimination or retaliation.

Business Owners Trust and Recommend Surge Business Law

Surge Business Law
PLLC
4.9 ★★★★★
Based on 42 reviews
Powered by Google
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Google Reviews

MP Minh Hoang Pham a year ago
★★★★★
Matthew is one of the best that I have met. He took care of my LLC set up very easy.

SJ Stephanie Johnson a year ago
★★★★★
As a lawyer myself, I never thought I'd say this, but even lawyers need a good lawyer.

DR Daniel Reyes 11 months ago
★★★★★
Great experience. Clear pricing and fast responses. We felt supported through every step.

5. Handling Performance Problems and PIPs

What this looks like in real life

An employee is underperforming, but you're not sure how to address it without making things worse.

The plain-English rule

Performance problems should be addressed early and documented in writing. A Performance Improvement Plan (PIP) helps clarify expectations but must be handled carefully. Wrongful termination is a major cause of lawsuits and unemployment claims.

Where owners get into trouble

- Ignoring performance problems until they're too big, then firing
- Creating documentation only after deciding to terminate
- Using PIPs as punishment instead of guidance

What to do instead

- Clearly explain expectations
- Document issues as they arise
- Give employees a chance to improve

Q: What do I do about employees who aren't doing their job?

A: Write out the issue you're seeing and keep a copy in your company records. Meet with the employee and explain the problem. Come up with a solution that has clear goals and deadlines. Again, document this. As the employee works through the plan, document the progress. Documentation does not need to be lengthy, but it should be done at the time an observation is made and not too long afterwards.



WHAT IF IT WAS AS SIMPLE AS THAT!



Momentum Gives Business Owners Practical Support and Advice

A quick email to your legal team can prevent a tiny problem from turning into a dumpster fire. When you're a Momentum member, you get:

- Unlimited email access to business attorneys – Ask questions day or night and get clear, practical answers.
- Monthly business strategy check-ins – Get proactive guidance on legal, operational, and growth challenges.
- Registered agent service included – Stay compliant without extra fees.
- Help with annual or biennial report filings – Reduce stress and avoid penalties.
- Exclusive discounts on legal services – Save 20 % or more on contracts, trademarks, LLC formation, and more.
- Brand and trademark monitoring – Protect your business name from copycats.
- Priority access to new training and content – Stay ahead of legal and business trends.

How It Works

- Monthly membership, you can cancel anytime
- Unlimited legal Q&A by email
- Tools and services to support compliance and growth
- Discounts on larger legal projects
- For many owners, Momentum becomes a trusted part of running their business, not just an expense, but a strategic advantage.
- All of this is value, yet Momentum is priced affordably, with no long-term contract and no hidden fees. Get it at <https://surge.law/momentum>



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6. 1099 Contractors vs. W-2 Employees

What this looks like in real life

You want flexibility and lower costs, so you consider treating workers as contractors.

The plain-English rule

Worker classification depends on how the work is performed, not what you call it. Misclassifying workers leads to serious penalties from both state and federal agencies.

Where owners get into trouble

- Treating contractors like employees
- Using 1099s to avoid overtime or taxes
- Copying classification decisions from other businesses

What to do instead

- Analyze the role before hiring
- Use contractors only for truly independent work

Q: Can my staff be contractors or do they need to be employees?

A: If you have the right to control their work, for example when they do it and how they do it, they likely need to be classified as an employee. If you provide a list of requirements to a contractor who then sets the price and decides how to do it, especially if they work for multiple companies, then they are likely a contractor.

Free Webinar on W2 vs 1099 Worker Classification

You can watch our free webinar where we talk through the three different systems to help you decide if your workers are employees or can be contractors. Watch this webinar and others at <https://surge.law/downloads>



7. Workers' Compensation and Injuries

What this looks like in real life

An employee gets hurt on the job, and you're not sure what to say or do next. Getting audited and fined because you don't have the right insurance coverage.

The plain-English rule

Texas is the only state that allows your business to opt out of the workers' compensation system. If you choose to operate without it, you are considered a "Non-Subscriber." We strongly encourage you to carry proper workers' compensation insurance. It gives guaranteed benefits to injured workers also protects you from being sued. Before you decide against coverage, meet with our team to make sure you've filed the proper annual notices and are protected in other ways.

Q: How often should I give raises?

A: There is no law governing this, but paying your employees a competitive wage is a good way to make them feel rewarded and loyal. Employee turnover can be very expensive to businesses.

Where owners get into trouble

- Reacting defensively to injury claims
- Mixing performance issues with injury responses
- Not verifying contractor's insurance coverage

What to do instead

- Follow your workers' comp process carefully – your insurance agent can give you guidance on their requirements
- Separate injury handling from discipline decisions
- Keep a copy of your contractors' proof of insurance

8. Unemployment Benefits

What this looks like in real life

A former employee files for unemployment, and you're worried it will reflect badly on your business or cost you money.

The plain-English rule

Unemployment benefit decisions are based largely on documentation and the reason for separation. Without documentation to support firing decisions you will almost always lose unemployment disputes. It doesn't matter how good the reason for termination.

Where owners get into trouble

- Ignoring unemployment notices
- Responding emotionally instead of factually
- Not writing up employees performance issues at the time they happen

What to do instead

- Respond on time
- Stick to documented facts
- Implement a formal write up or PIP plan and stick to it

Q: How do I fire an employee?

A: For minor issues, document the problem and meet with the employee to create a plan to fix the issues. Set clear goals and deadlines. If those goals are not met, or if it's a major infraction, clearly document the reasons for termination as part of the process. Do this without delay.

9. Withholdings and Taxes

What this looks like in real life

You're paying employees but unsure whether payroll is being handled correctly. If you do it wrong, you get threats from the IRS and, eventually, potentially hefty fines.

The plain-English rule

Employers must withhold and pay payroll taxes and comply with reporting obligations. Most small businesses file and pay quarterly.

Where owners get into trouble

- Relying on informal systems
- Misunderstanding payroll responsibilities
- Think it is the employee's responsibility

What to do instead

- Use a reliable payroll system, either a knowledgeable CPA or bookkeeper, or a service such as Gusto or Paychex
- Coordinate with your accountant
- Make sure your contact information is up to date with Texas Workforce Commission and the IRS so that you receive notices. If you receive a notice, read it and handle it without delay.

Q: Do I need to pay overtime?

A: Yes, unless your employee is exempt. Exempt employees must receive a salary of at least a certain amount (that changes each year) and performs high-level duties, such as executive, administrative, or professional roles.

10. Accommodations and Discrimination

What this looks like in real life

An employee asks for an accommodation or raises a concern about their treatment at work. This may include a request for a leave of absence for health reasons.

The plain-English rule

Texas and federal law prohibit discrimination and require reasonable accommodations in certain situations. Texas's Labor Rights Act affects companies with 15 or more employees. For sexual harassment liability, liability starts with just a single employee.

Where owners get into trouble

- Reacting defensively
- Treating similar situations differently
- Not taking requests for accommodations or health leave seriously

What to do instead

- Take requests seriously
- Follow up on harassment claims
- Document your response
- Ask questions before acting
- Stick with your written policy

Q: Do I need to worry about discrimination?

A: Yes, treating employees unfairly can hurt both your finances and your reputation. Discrimination is more than race and gender. For example, there are protections for people based on disabilities, religious beliefs, veteran status, and pregnancy or breast feeding. Texas's laws affect employers with 15 or more employees and there are a variety of federal laws.

Protected Classes of People

It is generally unlawful to discriminate in employment based on:

- Age
- Race, including hair texture and protective hair styles (Texas CROWN Act)
- Color
- Creed (religious belief)
- Religion
- National origin
- Sex
- Pregnancy
- Disability
- Sexual orientation
- Gender identity
- Genetic information
- Military service or veteran status (past or future)

Why Businesses Choose Surge Business Law

Most business owners don't come to us because they want to become experts in employment law. They come to us because they want to run their business with confidence and avoid problems before they start.

Here's what our clients tell us matters most:

We focus on real-world decisions, not just legal theory

Employment law issues don't arise in a vacuum. They come up when someone isn't doing their job, when a team member gets hurt, or when you're trying to make a tough call quickly. We help business owners think through those decisions in practical terms.

We help you slow down *before* small problems become big ones

Many legal problems are preventable with a short conversation at the right time. Our approach is designed to give you guidance early, so you're not guessing—or reacting after the fact.

We understand small businesses

We work with business owners who are hiring their first employee, growing a small team, or managing day-to-day people issues without an HR department. Our advice is grounded in how small businesses actually operate.

We provide clear, plain-English guidance

Our clients value straightforward explanations and clear next steps. We focus on what matters, what to watch for, and when to ask for help—without unnecessary legal jargon.

We offer ongoing support, not just one-off answers

Many businesses choose our Momentum Membership, which provides ongoing access to guidance and support. This allows owners to ask questions as situations arise and make decisions with confidence, instead of waiting until there's already a problem.

Final Thought

Employment law is less about memorizing rules and more about building good systems and knowing when to slow down. Many business owners choose ongoing support so they don't have to make these decisions alone.

Contact Us:

Web: <https://surge.law/contact> E-mail: team@surge.law Phone: 515-994-0404



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