

HR considerations when entering the US

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If you are a Canadian company looking to expand into the U.S. and you will have U.S. employees, it will be beneficial for you to know some of the human resources differences between the two countries. It is important to establish policies and procedures that focus on employees and comply with federal & state labor laws. U.S. laws can vary from state to state. Although there are a number of similarities, here are a few of the more commonly asked questions asked by Canadian firms entering the U.S. market:

1) Can a U.S. employee be dismissed without minimum notice or “pay in lieu of notice” (severance)?

Answer - Yes. “At will employment” exists in most states in the U.S. This allows an employer to dismiss an employee, usually for good reason, without the obligation of paying severance or minimum notice as is required in the Ontario Employment Standards Act (ESA).

In some states, if an employer requires notice of termination, then the employer is required to give the same notice to the employee or pay out the time covered by the notice period.

2) What are the minimum vacation periods and mandatory holidays in the U.S.?

Answer - There aren't any. Decisions as to how many vacation days or the paid holidays that an employee earns are at the discretion of the employer and can be designed to meet the needs of the company as well as the employees. US employers will typically offer employees a standard number of holidays and vacation/personal time off as a recruiting and retention tool but again these are not government mandated. Typical holidays offered by local manufacturers/distributors are New Years, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas.

3) How is medical insurance obtained?

Answer - Employee benefits play an increasingly important role in the lives of employees and their families and can have a significant financial and administrative impact on a business. Employee benefits in the US are handled differently than Canadian public insurance (eg. OHIP) and health insurance plans and premiums can vary dramatically across the U.S. Typically; the company will negotiate with insurance plan providers to determine the best plans for that worksite. The employer then determines how much of the premium will be company-paid based on financial capabilities and what they need to be competitive in order to recruit the caliber of employees they need.

4) What are the allowable payroll frequencies in the U.S. (weekly, biweekly, etc)?

Answer - Similar to Canada, the choices can be weekly, bi-weekly, semi-monthly and monthly. It is important to know which one to use based on the state in which you have operations. For example, in New York State - laborers are mandated to be paid no less than weekly while administrative staff can be paid bi-weekly.

5) Can I mandate that my workers receive their pay via direct deposit?

Answer - No. You cannot mandate that employees receive their pay via direct deposit only. A company is required to provide a live paycheck if preferred by the employee.

6) What are the mandatory U.S. policies for medical and/or maternity leave?

Answer - In the U.S., it depends on the state you are in and the number of employees you have. On a federal level, employers with over 50 employees, maternity and medical leave are covered by a 12 week "UNPAID" time frame under the Family Medical Leave Act. Employers have the availability to allow employees to use accrued vacation/sick time as well as crafting their own policies as to what benefits will be made available during the employees leave. These policies should ensure equal treatment of employees so as to avoid being seen as discriminatory.

Some states and cities have new paid leave policies that are being rolled out and can vary in their design. These policies affect all size employers. A well-crafted paid time off policy can usually accommodate some of these requirements but not all of them.

7) What is the minimum wage rate in the U.S.?

Answer - Minimum wage varies by state in the U.S. While the federal minimum wage is \$7.25, some states set a higher minimum wage through state legislation. In New York State, the minimum wage will be \$10.40 effective 12/31/17 (higher rates for NYC and Long Island/Westchester).

There are also "minimum" salary thresholds for exempt employees (salaried) that need to be met or the employee is deemed non-exempt and are entitled to overtime pay.

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