

# Are You in an HR Hot Seat?

These five questions will help  
you understand where you sit.



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Massachusetts companies often delegate human resources to the office manager, finance department or receptionist. Some employers are just too small to hire a full-time HR manager. Others simply view HR as overhead.

But in an age of complex regulation and unrelenting competition, running your business without an experienced HR manager is the equivalent of playing corporate Russian roulette. The companies that hire AIM professionals to serve as their HR managers tell us frequently that the world now moves too fast for them to run their businesses and simultaneously monitor changing employment laws and implement best management practices.

## How do you know if you need an HR manager?

Try answering the following common HR questions that confront Massachusetts business.

If you can answer all of the questions without hesitation, congratulations. You know the basics. Get ready for the hard stuff.

If these questions leave you scratching your head, it may be time to rethink your HR strategy. Remember that any missteps may have significant financial and legal implications for your company.

And don't panic – we've included the answers.



## The Questions

1. Which of the following statements describes requirements for an employment application in Massachusetts?
  - a. All inquiries regarding an applicant's criminal history should be removed from the employment application.
  - b. Companies are prohibited from inquiring about a person's health (past/present) on an employment application. This includes questions concerning past absences, disabilities, workers compensation claims and non-work related illnesses or injuries.
  - c. Massachusetts requires that all employment applications include specific language prohibiting the use of lie detector tests before or during employment.
  - d. Due to Massachusetts Data Security Regulations, companies are required to remove social security number questions from an employment application.
  - e. Job applications in Massachusetts must include a specific statement summarizing employer obligations pertaining to the acquisition and use of genetic information of applicants, employees, and family members.
  - f. Employment applications must include language in the employment history section that invites applicants to list any verifiable volunteer work.
2. Is a company allowed to employ "independent contractors" to perform work...
  - a. that is seasonal in nature?
  - b. to supplement existing staffing levels?
  - c. in cases when a person prefers to be classified as an independent contractor rather than an employee?
  - d. is temporary in nature?
3. True or false: An employee may be classified as Exempt as long as he or she is paid on a salary basis?
4. May an employer refuse to pay overtime to a non-exempt employee who works unauthorized overtime?
5. Are employers required to keep completed I-9 forms in the employee personnel file?

## The Answers

1. Employment Applications
  - a. True. It is illegal for an employer to ask about a job applicant's criminal history on a job application. On August 6, 2010, Massachusetts Governor Deval Patrick signed legislation overhauling the commonwealth's Criminal Offender Record Information (CORI) law. The law prohibits employers from asking questions on an initial written application form about criminal charges, arrests and incarceration.
  - b. True. Any question that tries to ascertain the current or past health of an applicant is illegal under the guidelines of the Massachusetts Commission Against Discrimination.
  - c. True.
  - d. False. AIM recommends not asking for Social Security or driver's license numbers on job applications because when these numbers are combined with the applicant's last name plus either first name or fist initial, the information is considered personal information under the Massachusetts Data Security Laws and any breach of security must be reported to the affected individual(s) and potentially the state government. Employment applications are frequently copied and shared with those involved in the interview process.
  - e. True, Massachusetts does require that all employment applications include specific language prohibiting the use of lie detector tests before or during employment.
  - f. True, employment applications must include language in the employment history section that invites applicants to list any verifiable volunteer work.
2. The Massachusetts law on independent contractors requires employers to classify all people working for them as employees unless it can be demonstrated that the worker meets three strict eligibility criteria. The Internal Revenue Service, the U.S. Department of Labor and the Massachusetts Department of Revenue use different tests for determining independent contractor status. The Massachusetts law is

more restrictive and thus supersedes federal law. In order to be classified as an independent contractor:

- a. The person must be free from control and direction in connection with performance of such service;
  - b. The service must be performed outside the usual course of business. A person performing the same types of work as an employee may not be classified as an independent contractor; and
  - c. The worker must be customarily engaged in an independently established trade, occupation, profession or business of the same type.
3. Misclassification of employees as being exempt from overtime is one of the most frequent mistakes made by employers, especially for positions such as customer service, administrative assistant and inside sales representative. Employers should exercise caution when determining exempt/non-exempt status. Employees who earn less than \$455 per week are automatically considered non-exempt. Exempt employees must not only be paid on a salary basis, but must meet the salary and duty test for administrative, professional, executive, computer related or outside sales.
4. No. An employer may not refuse to pay overtime for hours worked. The employee may be subject to disciplinary action, but must receive payment for hours worked.
5. No. Employers should keep all I-9 documentation in separate files, apart from personnel records because they may be subject to an United States Citizenship and Immigration Services (USCIS) audit. Additionally, the retention period for I-9 forms may differ from those of employee records.

AIM's On-Site HR services allows Massachusetts companies to bring in an experienced human resource professional on a temporary, part-time or full-time basis. AIM HR practitioners are currently on the job in more than a dozen businesses, providing reliable services for companies too small to have a their own HR function; helping other companies bridge an employee leave or HR vacancy; or working with still others to set up an HR department.

Contact Karen Choi [KChoi@aimnet.org](mailto:KChoi@aimnet.org) for more information.