
IX. District as Employer

Conservation districts have come a long way from a time when directors themselves did most of the district's conservation work and functions with a very limited budget and the assistance of part-time or volunteer help. In reality, the on-the-ground conservation planning was done by district partners, particularly NRCS field staff. A number of influences have dramatically changed that situation to the conditions we have today:

- Increased consumer demand
- Decrease in federal funding for NRCS staff
- New regulations and requirements for water quality, natural resources, and species protection
- Higher public expectations for local governments to address natural resource concerns
- Increased pressure from advocacy and environmental groups for action

All of these factors have created the need for skilled, professional-level conservation district staff. With paid staff come levels of responsibility and liability which some directors were not previously accustomed to or familiar with. As districts employ new staff, there come a number of required personnel obligations and compliance requirements ranging from hiring practices to tax reporting. Therefore, the need to have well-defined district policies and procedures, trained staff, and directors knowledgeable in personnel matters is essential.

In addition to managing paid staff, directors are responsible for managing volunteers, associate directors, and themselves.

A. Legal Responsibilities of an Employer

When a district hires an employee, the district is subject to the legal responsibilities of being an "employer." The following are some of the legal responsibilities of being an "employer." Districts may also contract for various services with independent contractors. Independent contractors are not employees and are addressed differently according to Public Contract Law. Rules associated with independent contractors is covered at the end of this section.

1. Register as an Employer:

Oregon employers are required to register with the State of Oregon. This should be done prior to hiring an employee. Oregon Department of Revenue's *Combined Employer's Registration Form* 150-211-055 is used for this purpose. A copy of this form is to be included with the district's official file.

NOTE: All districts need to ensure that they have a copy of this form in their file.

2. State Withholding Tax:

All Oregon employers must withhold state taxes from an employee's wages when the employee is paid. For most Oregon employers, due dates for paying state withholding taxes are the same as the due dates for making federal withholding taxes, and Social Security and Medicare tax deposits. All Oregon employers must file withholding tax returns in addition to making the required payments. The Oregon Department of Revenue publication, *Oregon Withholding Tax Tables*, (150-206-430) provides information on the rate of tax withholding for employers. Once an employer is registered, it must file an Oregon Quarterly Combined Tax Report form, even if it does not have a payroll during that quarter. The Oregon Quarterly Combined Tax Report form combines the State Withholding Tax and the Unemployment Tax (#4 below) reporting requirements.

3. Federal Income Tax and Social Security Tax:

All employers must obtain a federal employee identification number (EIN) by completing and submitting Internal Revenue Service (IRS) Form SS-4, *Application for Employer Identification Number*. Employers are required to withhold federal income and social security taxes. Information may be obtained from the IRS for withholding rates and schedules.

4. Unemployment Tax:

Employers are required to pay unemployment tax and file an Oregon Quarterly Combined Tax report form even if they have no payroll during the reporting period.

The entire cost of unemployment insurance in Oregon is supported by employers. For the purpose of unemployment taxes and benefits, conservation districts are considered **political subdivision employers**, and, as such, have three tax reporting options available to them. For more information regarding these issues, districts should contact either the Oregon Department of Revenue or the Oregon Employment Division.

5. Worker's Compensation Insurance:

All Oregon employers are subject to the Oregon Workers' Compensation Law. Employers pay for the insurance premium and may split the "cents-per hour" cost with employees. An employer must obtain Workers' Compensation Insurance before hiring any employee. An employer may purchase this insurance from a commercial company or from the State Accident Insurance Fund (SAIF).

6. Year-end Tax Reporting Responsibilities

Employers are required to file year-end reports with state and federal authorities. Some of these forms include:

- Form-W2s for employees
- Form-W3s summaries for the federal
- Form-WRs for the state
- Form-1099 (for reporting payments to contactors or vendors)
- Form-1096 (summary of 1099s)

Districts should contact the IRS and the Oregon Department of Revenue for more information regarding requirements and to obtain copies of these forms.

7. Oregon Posting Requirements

Federal:

Federal Minimum Wage Poster

Who must post? All employers subject to the Fair Labor Standards Act.

Polygraph Protection Act Notice

Who must post? All employers engaged in commerce.

Family and Medical Leave Poster

Who must post? Employers with 50 or more workers during 20 weeks of the year.

Where to obtain the above posters:

U.S. Department of Labor
Wage and Hour Division
1515 SW 5th
Portland, OR 97201
Phone: (503) 326-3057

"The Law" Poster

Who must post? Employers with 15 or more employees during 20 weeks of the year (including employment agencies and labor organizations).

Where to order:

Equal Employment Opportunity Commission
Federal Office Building
909 First Avenue, Suite 400
Seattle, WA 98104-1061
Phone: (800) 669-3362

State Posting Requirements

State Minimum Wage Poster

Who must post? All employers in Oregon, except federal government employers.

Family Leave Poster

Who must post? Employers with 25 or more employees in Oregon.

Where to order these posters:

Technical Assistance for Employers
Bureau of Labor and Industries
800 N.E. Oregon St., #32
Portland, Oregon 97232

Job Safety and Health Poster

Who must post? Employers with one or more employees.

Where to order:

Department of Consumer & Business Services
Oregon OSHA Resource Center
350 Winter St., N.E., Room 430
Salem, OR 97310
Phone: (800) 922-2689 (Oregon only)

State Compliance Posting Requirements

Worker's Compensation Notice of Compliance

Who must post? All employers with one or more workers.

Contact:

Department of Consumer and Business Services
350 Winter Street N.E., Room 21
Salem, OR 97310
Phone: (503) 947-7815

Employment Insurance Notice (Form 11)

Who must post? Employers with at least a \$225 payroll in a calendar quarter and employers with one or more workers during 18 different weeks in a calendar year.

Contact:

Employment Department
Unemployment Insurance Tax Unit
875 Union Street N.E.
Salem, OR 97311
Forms Hotline: 503-947-1488, Option 3

For more details regarding posting requirements and to download copies of required forms, districts should visit <http://www.boli.state.or.us/civil/postings.html>

A publication titled, *Oregon Business Guide* outlines many of the responsibilities of an employer and can be obtained from:

Business Information Center
Public Service Building, Suite 151
255 Capitol Street, NE
Salem, 97310-1327
Phone: (503) 986-2222
<http://www.sos.state.or.us/corporation/bic/bicintro.htm>

It is essential that districts are familiar with personnel matters and that a thorough set of district personnel policies, including forms, are developed to reduce the district's risk for liability. Once policies have been developed, they

should be reviewed on a regular basis for compliance with current laws and regulations. These policies will protect both the employee and the employer. District policies should include appropriate hiring practices (including interview questions, application forms, etc.), grievance procedures, employee review, etc. For additional information regarding personnel policies, forms, and procedures, districts should contact:

Oregon Department of Agriculture
Natural Resources Division
635 Capitol Street, NE
Salem, OR 97301
Phone: (503) 986-4775

Oregon Employment Division
875 Union Street, NE
Salem, OR 97311
Phone: (800) 237-3710
<http://www.emp.state.or.us>

Special Districts Association of
Oregon
Special Districts Center
727 Center St., N.E.
Suite 208
Salem, Oregon 97301
Phone: (503) 371-8667
<http://www.sdao.com>

Oregon Association of Conservation
Districts
Attn: Executive Director
3867 Wolverine St, NE, Suite 16
Salem 97305-4267
Phone: (503) 566-9157
<http://www.oacd.org>

Bureau of Labor and Industries
<http://www.boli.state.or.us>

Portland: 800 NE Oregon St., #32
Suite 1070
Portland, OR 97232
Phone: (503) 731-4200

Bend: 2480 NE Twin Knolls Dr.
Bend, OR 97701
Phone: (541) 322-2435

Eugene: 1400 Executive Pkwy
Suite 200
Eugene, OR 97401
Phone: (541) 686-7623

Pendleton: 1327 SE 3rd St.
Room 110
P.O. Box 459
Pendleton, OR 97801
Phone: (541) 276-7884

Medford: 700 E. Main
Suite 105
Medford, OR 97501
(541) 776-6270

Salem: 3865 Wolverine Ave., NE
Building E
Suite 1
Salem, OR 97305-1268
Phone: (503) 378-3292

B. Equal Opportunity Employer

Conservation districts are subject to the following laws related to personnel matters:

- Federal Discrimination Laws
 - Title VII of the Civil Rights Acts of 1964: Prohibits discrimination on basis of race, color, sex, religion, or national origin.
 - Equal Pay Act of 1963: Prohibits different rates of pay based on sex.
 - Age Discrimination in Employment Act: Prohibits discrimination on the basis of age for people 40 and over.
 - Rehabilitation Act of 1973 (§503): Requires affirmative action in employment for disabled people.
 - Rehabilitation Act of 1973 (§504): Prohibits discrimination on the basis of a disability.
 - Vietnam Era Veterans Readjustment Act of 1974: Requires affirmative action in employment for Vietnam veterans and disabled veterans.
 - Executive Order 11246 as amended: Requires affirmative action in employment for women and minorities.
 - Civil Rights Act of 1968, Title VIII and Title IX: Prohibits discrimination in housing based on race, color, sex, national origin, religion, familial status, or handicap.
 - Immigration Reform and Control Act of 1986: Requires employers to complete an employment eligibility verification form on anyone hired after November 6, 1986.
 - Americans with Disability Act of 1990: Prohibits discrimination against qualified individuals with a disability in hiring, firing, compensation, advancement, training, and other terms, conditions, and privileges of employment.
- Oregon Discrimination Laws (Unlawful Employment Practices).
 - ORS 659.030: It is unlawful for a public employer to refuse to hire, or to fire, or to discriminate against an individual in compensation, terms, conditions or privileges of employment based on that individual's (1) race, (2) color, (3) religion, (4) sex, (5) national origin, (6) marital status, (7) age (where individual is 18 years or older), (8) expunged juvenile record, (9) association with anyone of a particular race, color, sex, national origin, marital status, age or religion, (10) family relationship, and (11) opposition to safety and health hazards.
 - Oregon law prohibits a public employer from discriminating against an individual because of his or her (1) mental or physical disability, and (2) application for workers' compensation benefits.
 - Oregon law also prohibits a public employer from (1) refusing to grant an employee's request for a parental leave of absence, (2) refusal to

allow a female employee affected by pregnancy, childbirth or related medical conditions or occurrences to transfer to a less strenuous or hazardous position or take a leave of absence.

- It is unlawful for any person, whether employer or employee, to aid, abet, incite, compel, or coerce an employer to violate the provisions of Oregon civil rights law (ORS 659.030).
- It is unlawful for an employer to fire, expel, or otherwise discriminate against anyone because he or she has opposed practices forbidden by civil rights law, or has filed a complaint or testified about a possible violation of the law (ORS 649.030).

Districts should be aware that this list is for advisory and guidance purposes. When developing or revising personnel policies and procedures, districts should contact the following agencies for guidance:

- Oregon Department of Agriculture
Natural Resources Division
- Bureau of Labor and Industries
- Oregon Association of Conservation
Districts
- Special Districts Association of Oregon

Directors are responsible for making the workplace safe, legal, and harassment-free.

District directors are responsible to see that undesirable working conditions, such as sexual harassment, do not exist at the work place.

As an equal opportunity employer the district directors must give all interested persons who qualify an opportunity to apply for any regular (not temporary) positions offered by the district. To insure that this happens, the district should advertise any position opening(s) it has, provide the necessary information to the local Employment Office, recruit potential employees, conduct an interview process, and select the person(s) for the position(s) available. In doing so the district must insure it does not violate ORS 659.030, which states that "it is an unlawful employment practice for an employer, because of an individual's race, religion, color, sex, national origin, marital status or age, if the individual is 18 years of age or older, to refuse to hire or employ or to bar or discharge from employment such individual."

Districts should develop policies that address discrimination against consumers and against employees based on hiring practices, review, and promotional practices, etc.

The Americans with Disabilities Act prohibits discrimination against disabled persons in the areas of employment, public accommodation, and public services. Title I of the Americans with Disabilities Act deals with private employment and prohibits discrimination against "any qualified individual with a disability" in all aspects of employment. Title III of the Americans with Disabilities Act requires that public accommodations make facilities and services accessible to the disabled. For more information, contact the Bureau of Labor and Industries, (503) 731-4073.

C. Employee vs. Independent Contractor

Most conservation districts hire employees, but some also acquire the services of independent contractors through a personal services contract process. Sometimes there is confusion between the definition of employees and independent contractors. An **employee** is defined as anyone who performs services for another person or organization under the direction and control of the person or organization. An **independent contractor** is an individual or business that performs labor or services for remuneration, provided the standards of ORS 670.600(1) through 670.600(8) are met.

The following comparison chart will help conservation districts differentiate between who is a district employee and who is an independent contractor:

ITEM	EMPLOYEE	CONTRACTOR
Supervision	Provided by the district, or as delegated by the district.	Free from the direction and control of the district.
Work Schedule	Established by the district, such as 8 a.m. to 5 p.m., Monday through Friday.	Sets own work schedule that may or may not be subject to approval by the district.
Office Space	Provided by the district, Natural Resources Conservation Service (NRCS), or by other agreements by the district and/or NRCS.	Works out of own office or other space leased by the contractor.

ITEM	EMPLOYEE	CONTRACTOR
Tools & Equipment	Provided by the district, NRCS, or through arrangements with the district or NRCS.	Uses own equipment and tools or provides for the use of non-owned equipment other than that owned by the district or NRCS.
Vehicle	Provided by the district, NRCS, or through arrangements by the district or NRCS. Protected by district or NRCS-provided vehicle insurance.	Uses own or leased vehicle, using private operator's permit or license. Has own vehicle insurance.
Supplies	Provided by the district, NRCS, or through arrangements by the district or NRCS.	Provides own supplies. If purchased as a result of the contract with the district, still considered as being purchased by the contractor.
Telephone	Provided by the district or NRCS, for local and long distance calling for business purposes.	Provides own telephone service.
Business Cards	Uses district card or does not have a card, and refers clients to the district or NRCS address and telephone.	Has own business cards, showing bearer as a company, corporation, consultant, or advisor.
Clients	District and its customers and partners are the primary clients.	Normally performs labor or services for two or more different persons within a one-year period.
Hire/Fire	The district board has the authority to hire or fire.	The individual or business has the authority to hire or fire employees working on the project.

ITEM	EMPLOYEE	CONTRACTOR
Payment	Made to the employee by the district on an hourly, daily, weekly, or monthly basis.	Made to the contractor by the district at the completion of specific portions of the job or by retainer.
Guarantee	The district guarantees the work, not the employee.	The contractor assumes financial responsibility for all defective work or services not provided.
Representation	Represents self as employee of the district.	Holds self out to the public as an independently established business.
Taxes	Pays half of FICA taxes.	Pays FICA in its entirety.
Quarterly Reports	District files federal and state quarterly tax reports.	Responsible for filing own federal and state quarterly tax reports.

Another test of whether a person can qualify to be an Independent Contractor is to see if he or she meets the requirements in Section B of the CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR on page 73 of the 1999 edition of the CONTRACTING HANDBOOK for Soil and Water Conservation Districts.

D. Hiring Practices

The most important decision a district can make is selecting and hiring employees.

There are many different issues relating to personnel issues. This Guidebook outlines important points relating to hiring practices. The Soil and Water Conservation District Personnel Handbook, available from the Natural Resources Division, details these points.

1. Hiring and Firing Employees

- a. Hiring public employees can be a complicated process, and the following issues must be considered:

- Discrimination issues
 - Interviews and testing
 - Delegation to administrators
 - Compliance with open meetings law and district policies
 - "Employment-at-will" status
- b. "Employment-at-will" means that employees may terminate and be terminated with or without cause. Oregon employees are presumed to be "at-will" employees unless that status has been changed by contract provisions, personnel policies, statutes, or oral promises which convert the employee's job into a "property right".
- If "at-will" status is altered, the employee may be terminated only for good cause and must be afforded "due process".
 - Where due process is required, employees are entitled to notice of charges, a pre-termination hearing, and a post-termination hearing.
 - Districts should assume that the "at-will" employment status is preserved.
- c. Employment contracts: Written employment contracts, particularly for top administrators or managers, can be very useful in prescribing duties and benefits, as well as in simplifying the termination process.
- d. Wrongful discharge: Wrongful discharge is a common claim made by fired employees. Such claims are made whenever an employee believes he or she was fired for a reason which is discriminatory or otherwise in violation of law. Some of the laws restricting employee terminations are:
- Federal Laws
 - National Labor Relations Act
 - Civil Rights Act of 1964 Title VII
 - Pregnancy Discrimination Act
 - Age Discrimination in Employment Act
 - Vocational Rehabilitation Act of 1963
 - Veterans Reemployment Rights
 - Vietnam Era Veterans Readjustment Assistance Act of 1974
 - Title VI of the Civil Rights Act of 1964
 - Executive Order 11246
 - Civil Rights Act of 1871
 - Civil Right Act of 1866
 - Fair Labor Standards Act
 - Occupational Safety and Health Act

- Employee Retirement Income Security Act
 - Immigration Reform and Control Act
 - Consumer Credit Protection Act
 - Bankruptcy Act
 - Employee Polygraph Protection Act of 1988
 - Protection of Juror's Employment Act
- State Laws
 - Labor Relations
 - Oregon Civil Rights Law
 - Lie Detector Tests
 - Black Listing
 - Family Relationships
 - Workers' Compensation
 - Handicap
 - Safety and Health
 - Jury Service
 - Parental Leave
 - Garnishments
 - Wage Claims
 - Sex based wage claim
 - Miscellaneous
- e. Contract issues: An employee who has an employment contract, either written or implied, may claim wrongful discharge if the firing did not comply with the terms of the contract. Such claims may be based on:
- Oral statements
 - Handbooks and policy manuals
 - Other contract theories (court-implied)
- f. Public policy issues: There are also several other reasons for termination which courts will find unlawful because they are inconsistent with good public policy:
- Fulfilling a societal obligation
 - Jury Duty
 - Reporting safety violations
 - Pursuing a private right
 - Worker's compensation claim
 - Resisting sexual harassment

- g. Other claims available to a fired employee: In addition to wrongful discharge, terminated employees often make the following claims as well:
 - Intentional infliction of emotional distress
 - Defamation
 - Interference with contract

- h. Avoiding wrongful discharge claims: The following techniques should be followed by all districts to avoid or reduce liability:
 - Establish "employment at-will" status
 - Terminate only for good cause
 - Avoid oral or written assurances
 - Train managers (whether board members or employees)
 - Apply policies consistently
 - Disclaimers
 - Avoid public policy claims
 - Discipline and discharge procedures
 - Documentation: keep good records
 - Retention of documents
 - Personnel records, evaluations, disciplinary records
 - Payroll records
 - Immigration records
 - Pension and welfare plan information
 - Job injuries causing time loss
 - Memoranda

 - What goes in the personnel file
 - Right to inspect: Terminated employees have the right to inspect and obtain copies
 - Safety valves
 - Suspensions
 - Automatic review
 - Appeal procedures
 - Releases
 - Exit interviews

- i. Remedies for the wrongfully terminated employee.
 - Back pay
 - Front pay
 - Reinstatement
 - Punitive damages
 - Attorney fees

E. Recruitment and Job Descriptions

Before hiring, the district should identify its needs for an employee (i.e., what work needs to be done that is not being done). To do this, districts must:

1. Analyze the tasks that need to be accomplished
2. Write a position description, listing in concise statements what the employee would do.
3. Determine pay range for the position
4. Determine source(s) of funding for the position

The most important part of hiring an employee is to know what the district expects and to communicate those job expectations with a well-formulated position description. The position description is a guide the district and its employees can use throughout the term of employment to measure results and communicate expectations. Position descriptions should be reviewed on a regular basis and updated when duties and responsibilities change.

The following are suggested steps for managing district recruitment and hiring process.

1. Recruitment and Hiring Process

Step One: Determine the District's needs and the purpose of the position

1. Determine the district's personnel needs.
 - a. What work needs to be done that isn't currently being done?
 - b. What are the desired outcomes or deliverables to be produced?
 - c. Is the work to be done an on-going need or a limited-duration need?
 - d. How will the work relate to what is identified in the annual work plan or in the long-range business plan?
2. Does this work require hiring an individual, using volunteers, or the services of independent contractor?
 - a. Is hiring an employee the best option to complete this work?
 - b. Will this be a full-time or part-time position?
3. What sources of funds are available to fund the position?
 - a. Are they secured?
 - b. For how long?
4. What knowledge, skills, and abilities are required for a person to do the job?
 - a. Does this job require certain certification or credentials?
 - b. What minimum education and experience levels are required?

- c. Are there desired skills, qualifications, and experience above the minimums that will be used in ranking applicants?
 - d. Possession or be able to possess valid Oregon driver's license and/or appropriate endorsements?
5. How will this position be classified?
 - a. Exempt or non-exempt?
 - b. Salaried or hourly?
 6. What compensation and benefits will be available with the position?
 - a. Salary range.
 - b. Insurance coverage.
 - c. Retirement Plan.
 - d. Available leave.
 - e. Holidays.
 7. What is the supervisory structure?
 - a. Supervised by whom?
 - b. Who do they supervise?
 8. What are the working conditions for this position?
 - a. Indoor work.
 - b. Outdoor work.
 - c. Physical requirements necessary to do the duties of the position (i.e., must be able to lift 50 lbs., must be able to hike over long distances, be able to climb ladders, etc.).
 - d. Travel requirements (overnight travel, etc.).
 9. Testing requirements?
 - a. Proficiency tests.
 - b. Knowledge and skill tests.
 10. When is the anticipated start date?
 11. What equipment, accommodations, and office space are needed?
 - a. Computer.
 - b. Telephone.
 - c. Vehicle use (i.e., district, NRCS, personal use?)
 - d. Determine if a cooperative agreement with NRCS or other partners allow for accommodating new staff with space and equipment. If not, discuss revising agreements with partners.
 12. What are the reporting requirements?

- a. Monthly reports at board meetings.
 - b. Reports required by grants.
13. Are there other requirements?
- a. Ability to work as part of a team.
 - b. Good communication skills.
 - c. Interpersonal relationship skills.
 - d. Ability to work independently.
14. What training and assistance is the district willing to provide relevant to the position?
- a. Orientation.
 - b. Specific training to fill gaps in skill and ability.
 - c. Has the district budgeted for training expenses?
15. Will there be any trial service period?
- a. Length of trial service?
 - b. Do benefits begin after trial service ends?
 - c. What are any other specific conditions of that trial service?
16. Any other important facts to the position.

Step Two: Develop Position Description.

Typical elements in a Position Description are:

- Primary purpose of the job
- Essential functions
- Secondary functions
- Job scope
- Minimum qualifications and requirements (experience, credentials)
- Working conditions
- Supervision
- Work schedule
- Employee status (professional, exempt, etc.)

Step Three: Develop Position Announcement.

Step Four: Obtain or develop an application form and questions to be included in application.

- Will resumes be required or allowed with the application?
- How will applications be accepted (i.e., by fax, email, hand-delivered, regular mail, etc.) ?
- Determine who will collect and process the applications.
- How long will recruitment be open?

Step Five: Outline a recruitment plan, which includes the following:

- Establish an interview panel or interview committee.
- Advertise position. It is recommended that advertisements and job announcements be posted with:
 - State employment office
 - Local/regional newspapers
 - Local community college or universities
 - Available websites (OACD, SDAO, districts, etc.)
 - Notice on email lists
- Develop a set of interview questions to be asked of all candidates.
- Develop test questions or activities, if applicable.
- Set up a system for receiving and logging applications.
- Establish application period and deadline for receipt.
- Determine where interviews will be held.
- Develop "scoring sheet" for all interview questions to be completed by interviewers.

Never recruit and offer a position to someone if the district doesn't have the money to pay the salary and associated costs!

Step Six: Review applications and conduct interviews.

- Review applications for minimum requirements and suitability for the position.
- Select candidates for interviews.
- Conduct interviews.
- Check references.
- Interview team makes a recommendation to the board for a selection of a candidate.

NOTE: Be cautious of an apparent or real "conflict of interest" that might exist between interview panel members and candidates because of family or business relationships.

Step Seven: Select top candidate.

- Board or its designee is granted authority to make an offer.
- Use the "Recruitment Information" to develop a written job offer. Negotiate, if necessary.
- It is highly recommended that the written job offer outline the specific terms and conditions of employment, and that the candidate signs the written job offer to acknowledge agreement with the terms.
- Upon receipt of a signed acceptance of offer, notify the other applicants that the position has been filled and thank them for their interest.

2. Post-Hiring

The following are suggested steps for managing district post-hiring process and procedures.

Step One: Meet with employee on first day to fill out forms.

- Department of Justice New Hire Reporting Form.
- W-4.
- I-9.
- Complete data and emergency contact cards.
- Other forms as required or needed.

Step Two: Provide orientation.

It is recommended that districts develop orientation checklists to ensure that nothing is overlooked

- Issue Keys.
- Issue I.D. cards.
- Provide business cards.
- Introduction to staff.
- Tour facilities.
- Provide a copy and allow time for review of personnel policies.
- Review specific items of personnel policies essential to daily work, i.e., work week, breaks, time keeping, personal use of district equipment, etc.
- Review job description, work plan requirements, and expectations.
- Provide copies of documents essential to understanding the district and the employee's job (i.e., annual report, annual work plan, long-range business plan, grant expectations, etc.)
- Procedures and schedules for employee evaluations.
- Create log-ins and issue passwords for computer use.
- Review safety procedures and security measures.

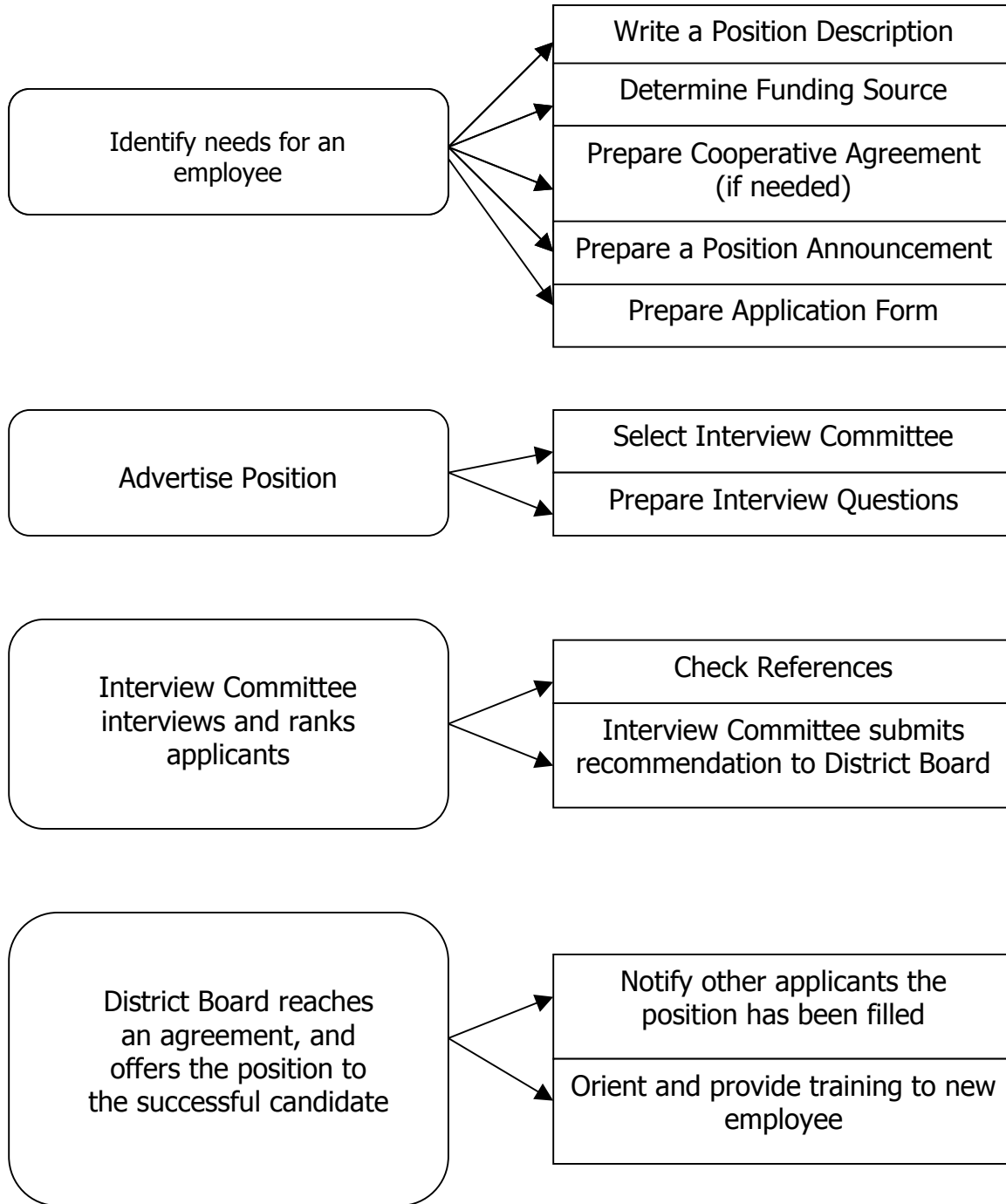
Step Three: Review

Review the position description, work plan, and expectations to develop an Employee Work Plan and identify additional training that may be needed to increase the employee's skills to a desirable level.

If a new employee chooses to change jobs, and leaves the employment of the district within six months after the original recruitment took place, the conservation district may offer the position to the next most qualified person, from among the group it interviewed earlier, without advertising and going through the recruitment process again.

A conservation district may also hire someone, for a short duration, as a **temporary** employee. It is not required that the district advertise and recruit to fill a temporary position. Utilization of a temporary position allows a district to get someone on staff quickly to do a job that is of short duration. Short duration means a period of six months or less.

EMPLOYMENT PROCESS



F. Supervision of Employees

The conservation district board is an **Employer of Record** if the district has one or more employees. As the Employer of Record the district board is responsible for administrative oversight of its employee(s). A district with more than one employee may assign one of the employees the responsibility of daily administrative oversight of the other employees, but ultimately the district board is responsible. Although most districts share an office with Natural Resources Conservation Service field staff, they cannot legally delegate their Employer of Record responsibilities to a Natural Resources Conservation Service staff member. However, the district may enter into an agreement with NRCS to oversee the performance of the position's **technical** work.

G. Employee Classification and Compensation

The use of compensatory time (time off in lieu of monetary overtime compensation), more commonly referred to as "comp time", is only available to government employers. Employers in the private sector or non-profit agencies that are not part of a federal, state, or local government agency are not permitted to use compensatory time in place of the payment of overtime. It is important for district boards to understand and follow the rules regarding employee compensation.

There are specific requirements under state and federal law to compensate non-exempt employees for hours worked over a 40-hour work week at one and one-half (1.5) times their regular rate for extra hours worked. Districts should refer to the Wage and Hour Laws publication available from BOLI for these requirements.

A couple of key issues a district needs to understand and research before creating district policies include:

- Employee classification: Is the employee
 - Full-time (works a minimum of 40 hours a week on a continuing basis)
 - Part-time (works less than 40 hours a week on a regular basis)
 - Temporary (holding a job of limited duration arising out of special projects, abnormal work load, emergencies, or limited funding)

NOTE: Because of the complexity of determining the exempt or non-exempt status of positions, district boards should work with BOLI to ensure that each job position is in the right classification for the actual work performed.

- Exempt: OAR 839-001-0130(1) states that the exempt status of an employee is determined by the *type of work the individual performs and the location of the work performed in one day*. Exempt employees may include:
 - Executives, managers or supervisors - ORS 653.020(3) and OAR 839-020-0005
 - Administrative employees – ORS 653.020(3) and OAR 839-020-0005
 - Professional Employees
- Non-exempt: Is the position eligible for overtime and/or compensatory time?

According to BOLI, paying on a "salary basis" does not automatically make an employee exempt. Paying a salary does not relieve the overtime obligation. In addition, salaried, non-exempt employees may be "docked" for actual amounts of time not worked.

OAR 839-020-0040

Hours Worked -- Generally

- (2) Work requested or required is considered work time. Work not requested, but suffered or permitted is considered work time.
- (3) Work performed for the employer but away from the employer's premises or job site is considered work time. If the employer knows or has reason to believe that work is being performed, the time spent must be counted as hours worked.
- (4) It is the duty of the employer to exercise control and see that the work is not performed if it does not want the work to be performed. The mere promulgation of a policy against such work is not enough.

CAUTION: OAR 839-020-0030(2)(a) states: (2)

Definitions:

(a) "Work week" means any seven (7) consecutive twenty-four (24) hour period as determined by the employer. *The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of this rule.*

In brief, it is the boards decision and responsibility to define the number of hours both exempt and non-exempt employees may work. Districts may limit the workweek of a full time employee to forty (40) hours, thus avoiding financial liability for overtime pay. Time limitations must be defined clearly in the employee's position description, work plan, and the district's policy and procedures.

If the district authorizes overtime hours for an employee, the district may choose to offer compensatory time or overtime wages at a rate of one and one-half (1.5) times the employee's regular rate of pay. The issue of compensatory time and overtime pay should be clearly defined in the district's policy and procedures **prior to** the time the district authorizes overtime.

The reason for establishing policies is to make sure that both the district board and employees understand what is being provided for by the district and what employees are legally entitled to under the state wage and hour law.

1. Can the district request an employee to work extra hours?

It is not illegal to request that an employee work overtime, as long as the employee is appropriately compensated. District policies should be established that outline overtime hours and appropriate compensation.

2. If the district board needs the employee to attend a late meeting on a Tuesday night from 6:00 – 10:00, must the district pay the employee for four hours of overtime?

No. The district may require the employee to limit their hours to 40 hours for the week, and require the employee to adjust the work schedule to a maximum of 40 hours a week. For instance, if the employee attends a night meeting on Tuesday, they may be required to end their work week at 1:00 p.m. on Friday. The district, however, cannot change the beginning of the workweek.

3. Does a district have to pay overtime if an employee works over eight hours a day?

No. ORS 279.340 requires a forty-hour workweek for non-exempt employees before overtime must be compensated.

4. If the district offers compensatory time when extra hours are worked, can the district limit the amount of accrued compensatory time?

Yes. Federal law places a maximum number of accrued comp time to be 240 hours (or a total of 160 actual hours worked). Each agency may establish its own policy setting a lower limit on the number of hours an employee may accrue. Districts should be aware that any extra hours worked over the cap of the accrued comp time must be paid to the employee.

5. *If the district offers compensatory time when extra hours are worked, can the district limit how long accrued compensatory time can be carried?*

Yes. Employees must be permitted to use comp time within a “reasonable period”. The district’s policies may reflect that comp time can be carried for a specific amount of time (i.e., six months), before the employee loses the option of using comp time, and the accrued time is cashed out to the employee.

6. *If the district offers compensatory time when extra hours are worked, when can an employee use comp time?*

The employee’s direct supervisor or employer authorizes use of comp time. To avoid confusion, the use of comp time should be well defined in district policy. In the absence of district policy, it is standard practice for the use of comp time to be authorized by the employee’s supervisor.

7. *What happens if an employee leaves the district with accrued comp time unused?*

An employee may “cash out” any accrued comp time at any time. In addition, at termination, an employer must pay any accrued comp time to the employee. Both of these options are to be paid at the regular rate earned by the employee *at the time the employee receives payment*, not at the rate at which the comp time was accrued (if the amounts differ).

H. Personnel Policy Guidelines

Every district that has an employee, or is thinking about hiring an employee, should develop personnel policy guidelines by which the board and the employee(s) can operate and measure performance. There are many different formats for personnel policy guidelines. The following page lists some of the topics that might be included in such a document.

Personnel policies and procedures

- Purpose of the policies
- Personnel administration

Appointments, qualifications and separations

- Job announcements
- Applications
- Eligibility
- Interview and Selection
- Orientation
- Employee Status
- Driving record
- Layoffs
- Voluntary resignations
- Personnel record

Payroll, scheduling and overtime

- Work week and working hours
- Wage Compensation
- Overtime
- Rest periods
- Meal periods
- Payday
- Payroll deductions
- Time records
- Pay upon separation

Employee travel authorization and reimbursement

- Mileage, per diem, meals and other travel rates
- Documentation requirements
- Approval procedures
- Travel settlement

Time off policy for employees

- Holidays
- Primary occupational leave: unpaid
- Other leave

Safety and accidents

- Safety policy statement
- Unsafe conditions
- Accident reporting
- Employee injury report
- Workers' Compensation

Insurance

- Return-to-work policy
- Violence in the work place

What the district expects from employees

- Teamwork and excellence
- Personal conduct
- Code of ethics for district employees
- Political activities of district employees
- Cost consciousness
- Attendance and punctuality
- Personal appearance
- Appearance in work areas
- Personal telephone calls
- Smoking in the work place
- Drug and alcohol use

Non-discrimination and harassment

- Equal Employment Opportunity
- Harassment prevention
- Civil rights

Performance Evaluation

- Employee performance reviews
- The evaluation process
- Evaluation form

Problem-solving process

- District policy
- Steps to solution

Discipline

- General guidelines
- Discharge procedure

This is a rather extensive list of items that might be included in a district personnel policy document, but, if the district develops its policies "up front", and everyone understands what they are, the district and the employee(s) will have a greater awareness of the board-employee relationship, and everyone will be better able to work as a team.

I. Employee Benefits

Employee benefits include forms of compensation such as vacation pay, holiday pay, bonuses or sick leave. According to the BOLI Wage & Hour Laws, there is no legal requirement to offer these benefits, but once promised they cannot be arbitrarily withheld.

District boards that decide to offer benefits should develop policies on how sick leave, vacation time, and other benefits are accrued and the procedure for how the employee requests leave time. This information should be provided to employees and new hires as part of their orientation.

J. Trial Service

“Trial service period” is part of the selection process used to confirm the initial employment decision and to release those whose performance is not satisfactory. During this evaluation period, the employee and the district will have an opportunity to determine whether further employment with the district is appropriate. Trial service customarily lasts from 30 – 180 days, depending on the job position.

During trial service, the employment relationship can be terminated by the employee or the district at any time for any reason. Districts should establish policies outlining what, if any benefits an employee is eligible after the trial service (i.e., a raise, accrual and/or use of vacation time, insurance, and other benefits not available to non-regular employees).

K. Employee Performance Appraisal

As the Employer of Record, it is very important for the conservation district board to provide input to its district employee on how well he or she is meeting the work expectations of the board. Although considerable communication and feedback may occur on a regular basis, it is helpful to a district employee to have an overall evaluation of his/her performance by the entire board, and for a clarification of expectations. The district board should provide an opportunity for a performance appraisal once or twice a year to:

- share with the employee the board's perception of performance, and
- receive input from the employee on how well the board is providing direction for the employee.

If there are weaknesses in the communication process, in either direction, the performance evaluation interview is a good time to identify them. Employee performance evaluations should be in writing as well as done orally.

The board can reasonably expect the following from staff:

- Courteous responses to the public and to district cooperators and partners
- Prompt and courteous response/return of telephone calls
- Attention to details of meetings
- Complete, concise, and accurate information
- Honesty in individual and organizational relationships
- Judicious use of time
- Meeting agreed-upon deadlines, with notification if deadlines cannot be met
- Prompt response to requests for information
- A safe and harassment-free work place

The staff can reasonably expect the following from the board:

- Fulfillment of commitments within the agreed-upon deadlines
- Organization knowledge and ability
- Candid performance appraisal and assistance in performance
- Job description
- Clearly defined expectations of staff responsibilities
- Clearly defined chain of command, (from whom work assignments are to be taken)
- Support in controversial situations
- Easy access by telephone or visitation
- Loyalty, confidentiality, and sensitivity
- Incentives and rewards to promote and recognize accomplishments
- Opportunities for training

Adapted from Conrad and Glenn, pp. 116-119, and Ty Clark