

BUSINESS FINANCIAL GROUP PRESENTS: POWER IN PARTNERS: THE BENEFITS OF OUTSOURCING



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Who We Are



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Who We Are

- ❖ Business Financial Group (BFG) is a Human Resources Consulting firm with a consultative approach to providing employee-related solutions for businesses, their owners, and their employees.



Why Business Owners Go into Business:

- ◆ Be your own boss
- ◆ Passion for a product or service
- ◆ Freedom & flexibility
- ◆ Pursuit of something personal, creative & successful
- ◆ Make more money

Probably Not Why Business Owners Go into Business:

- ❖ Bookkeeping & accounting
- ❖ Computer & software maintenance and cyber security risks
- ❖ I-9 Forms, labor laws & discrimination regulations
- ❖ Capacity needs & schedules

KEY OBJECTIVES

- ◆ Identify key HR risk areas
- ◆ Evaluate exposures or gaps in staffing
- ◆ Gain skills & knowledge to address these issues
- ◆ How to delegate and/or outsource
- ◆ Identify outsourcing partners and mutual expectations for long-term success

- ◆ The Family and Medical Leave Act (FMLA)
- ◆ Fair Labor Standards Act (FLSA)
- ◆ The Age Discrimination in Employment Act
- ◆ The Occupational Safety and Health Act (OSHA)
- ◆ Affordable Care Act (ACA)
- ◆ Employee Retirement Income Security Act (ERISA)
- ◆ Health Insurance Portability and Accountability Act (HIPAA)
- ◆ Comprehensive Omnibus Budget Reconciliation Act (COBRA)
- ◆ Equal Employment Opportunity Laws

- ❖ Texas Workforce Commission (TWC)
- ❖ US Department of Labor (DOL)
 - Wage and Hour Division
 - Occupational Safety and Health Administration (OSHA)
 - Equal Opportunity Employment Commission (EEOC)
 - Employee Benefits Security Administration (EBSA)
- ❖ US Immigration and Customs Enforcement (ICE)

❖ Form I-9 Errors

- **Substantive errors** cannot be corrected
- **Technical errors** can be corrected and, following their correction, usually do not result in a fine.

❖ How does an Audit get Scheduled?

- It could be completely **random**
- It could be **targeted** based on your industry
- It could be a **drive-by**

Technical errors are minor issues that ICE will allow you to correct. When technical or procedural violations are found, an employer is given ten business days to make corrections. Technical errors that are corrected will usually not result in a fine.

Examples of Technical Errors:

Section 1 – Employee:

- ❖ Failure to ensure an individual provides “other last names used” (if applicable), address and birth date in Section 1;
- ❖ Failure to ensure that an individual provides his/her A-number in Section 1, but it is listed in Section 2 or on a legible copy of a document retained with Form I-9 and presented the ICE inspections;
- ❖ Failure to complete the “Preparer and/or Translator Certification” when someone assists the employee in completing Section 1;

Section 2 – Employer:

- ❖ Failure to provide the document title, identification number(s) or expiration date(s) of a proper List A, B and/or C document(s) in Section 2, but only if a legible copy of the document(s) is retained with the I-9 and presented at the ICE inspection;
- ❖ Failure to provide the date of hire in the Certification;
- ❖ Failure to provide the representative’s title, company name and/or address in the Certification;

Section 3 – Reverifications and Rehires

- ❖ Failure to fully describe a proper document, as long as a legible copy of the document is retained with the form and presented at the time of the inspection;
- ❖ Failure to provide the date of the employee’s rehiring.

SUBSTANTIVE FINDINGS (ERRORS)

Substantive errors are those that cannot be corrected because, as a result of the error or omission, the verification of the new hire's employment eligibility failed at the time the form was completed.

Examples of Substantive Errors:

Section 1 – Employee:

- ❖ Failing to produce Form I-9 for an employee;
- ❖ Employee's name missing in Section 1;
- ❖ No box checked on the Form I-9 or multiple boxes were checked attesting to the employee's status;
- ❖ Employee failed to sign Form I-9, or failure to sign after on or before first day of work;
- ❖ No A-number provided in Section 1 (for non-citizens), and the number is not recorded in Section 2 or 3, or there is not a legible copy of the document bearing the number retained with the form and presented at inspection;

Section 2 – Employer:

- ❖ Document information was not fully recorded in Section 2, and legible copies of the documents were not retained and provided to ICE;
- ❖ Unacceptable documents recorded in Lists A, B and/or C;
- ❖ Employer failed to sign Form I-9 within three business days of hire;

Section 3 – Reverifications and Rehires

- ❖ Failing to verify the correct documents in Section 3;
- ❖ Failing to correctly describe the document in Section 3, when a legible copy of the document was not retained and provided to ICE at the time of inspection;
- ❖ Failing to sign Section 3 when required;
- ❖ Failing to date Section 3, or date the section no later than the date of expiration of the individual's work authorization.

❖ Form I-9 Fines

- Penalties for a first offense and substantive violations or uncorrected technical errors range from **\$252 to \$2,507**
- Many years of inadequate management could easily lead to cumulative errors with potential fines ranging from **\$100,000 – 500,000**

OVERALL FINDINGS – 2022 FORM I-9 AUDIT

Overall Findings

2022 Form I-9 Audit

I-9 Forms Reviewed	Overall Findings		% of Errors
	#	Description	
Active Employees: 14	0	No discrepancies	
	14	Forms with discrepancies	100%
Technical Findings			
	#	Description	
	9	N/A missing from fields	
	9	Section 1 discrepancies	
	9	Section 2 discrepancies	
	% Technical Findings		193%
Substantive Findings			
	#	Description	
	3	Missing I-9 forms	
	2	Wrong version of I-9 form	
	7	Section 1 incomplete	
	5	Section 2 incomplete or missing	
	2	Certified date exceeds 3 business days	
	1	Acceptable documents unsigned	
	% Substantive Findings		143%
Overall Findings			
Terminated: N/A	#	Description	
		No discrepancies	
		Discrepancies	
Total Substantive Violations	1st Offense per each Form I-9 with Violations		Possible Fines*
20 (143%)	\$1,948 x 20		\$38,960.00

Audit findings and estimated fines could be reduced 5% or more for a good-faith effort of meeting ICE regulations.

OVERALL FINDINGS – 2022 FORM I-9 AUDIT

Overall Findings

2022 Form I-9 Audit

I-9 Forms Reviewed	Overall Findings		% of Errors
	#	Description	
Terminated: 41	0	No discrepancies	
	41	Forms with discrepancies	100%
Technical Findings			
	#	Description	
	38	N/A missing from fields	
	38	Section 1 discrepancies	
	14	Section 2 discrepancies	
	% Technical Findings		278%
Substantive Findings			
	#	Description	
	3	Missing I-9 forms	
	28	Wrong version of I-9 form	
	22	Section 1 incomplete or missing	
	33	Section 2 incomplete or missing	
	9	Acceptable documents unsigned	
	1	Certified date exceeds 3 business days	
	5	Incorrect date of employment	
	% Substantive Findings		246%
Total Substantive Violations	1st Offense per each Form I-9 with Violations		Possible Fines*
101 (246%)	\$1,948 x		\$206,949.00

Audit findings and estimated fines could be reduced 5% or more for a good-faith effort of meeting ICE regulations.

❖ Unemployment Claims

- Potentially huge increase in **UI tax rate** which can last for years
- Can lead to more **exposure to risk**
- **A damaged reputation** which can prevent you from attaining clients
- Negative effect on **company culture & recruiting**

❖ Unemployment Claims

- Ex-employees who are not entitled to unemployment benefits:
 - An employee who voluntarily quits for personal reasons
 - » This could be securing a better job, going to school full-time, staying home with a new baby, etc.
- Ex-employees who are entitled to unemployment benefits:
 - An employee who quits for a cause related to the work
 - » This could be sexual harassment, bullying, having their salary cut by at least 20%, etc.
 - An employee who is laid off for lack of available work
 - An employee who can no longer work due to a medically-verifiable illness
 - » However, you as the employer would not be charged for those benefits, so this instance would not affect your tax rate
 - An employee whom you fire is entitled to unemployment
 - » Unless you can prove that you fired the employee for misconduct ideally after written warnings

❖ Employee Harassment Claims

- Requires a **formal investigation**

❖ Steps for an Appropriate Investigation

- Ensure confidentiality & trust
- Provide interim protection
- Select the investigator
- Create a plan for the investigation
- Develop interview questions
- Conduct interviews
- Make a decision
- Closure of investigation
- Develop written summary investigation results

❖ Employee Misclassification

- Employee versus contractor
- Exempt employees versus non-exempt

DOL “Independent Contractor Status Under the FLSA January 2021

This rule emphasizes two core factors for determining if someone is an independent contractor:

- a worker's control over the individual's work, and
- the person's opportunity for profit or loss.

COMMON HR RISKS

- Employee versus contractor: TWC 20 point comparative approach

1. Instructions
2. Training
3. Integration
4. Services rendered personally
5. Hiring, supervising and paying helper
6. Continuing relationship
7. Set hours of work
8. Full time required
9. Location where services performed
10. Order or sequence set
11. Oral or written status reports
12. Payment by the hour, week or month
13. Payment of business and travel expense
14. Furnishing tools and equipment
15. Significant investment
16. Realize profit or loss
17. Working for more than one firm at a time
18. Making service available to the public
19. Right to discharge without liability
20. Right to quite without liability

Exempt Employees versus Non-Exempt

Duties Exemptions:

- Executive: if they supervise two or more employees. They also must manage as a regular duty of their job and have genuine input into or control over other employees' job status.
- Administrative: directly involves managing an employer's business operations
- Professional: must involve judgment and discretion, require specialized knowledge, and be mostly intellectual.

Salary Requirement:

- Minimum annualized salary of \$35,568/year.

❖ Employee Misclassification

- Employee misclassification carries major risks for businesses.
 - A failure to classify workers correctly could result in significant back-taxes, penalties, and/or damages.
 - You may be required to compensate workers for lost wages or benefits that resulted from the misclassification.
 - You may be vulnerable to lawsuits from groups or individuals harmed by misclassification.
- The Texas Workforce Commission sums it up like this:

“Unless an employee is clearly, absolutely, and undoubtedly in an overtime exemption category, do not pay on a salary basis, but rather pay an hourly or performance-based rate.”

❖ Employee Benefits Administration

- Simple errors, like missing add/terms, can result in big bills and even potential lawsuits
- Offering employee benefits and a retirement plan option is beneficial for both employers & employees, but you must be aware of and work to mitigate potential risks

❖ Examples of Administrative Errors

- A claim getting lost
- The plan sponsor losing an investment election or change form such that the member's investment choice was either not submitted or delayed
- Any negligent handling of a change form by the plan sponsor
- Incorrect or inadequate information being given to an employee
- Employers failing to meet their fiduciary obligations regarding retirement plans

❖ Data Security Breaches

- Attacks can come from anywhere – Cyber Criminals are becoming more and more sophisticated – and yet, the most common data security risk facing employers today is simply a breach that is self-inflicted by employees

❖ Impacts of a Security Breach

- Financial cost
- Reputational cost

◆ Best Practices to Mitigate Risk

- Pre-employment screening
- Confidentiality agreements
- Periodic training focused on identifying suspicious activity
- Limited access to personal information
- Information –security policies for employees
- Safeguards, response plan, & exit interviews

The Realities of Staffing for “Back Office” Management:

Back Office Roles:

- Accounting
- HR
- Personnel Management
- IT
- Risk Management
- Operations

Combining outsourced expertise with your internal staff:

When to Consider Outsourcing:

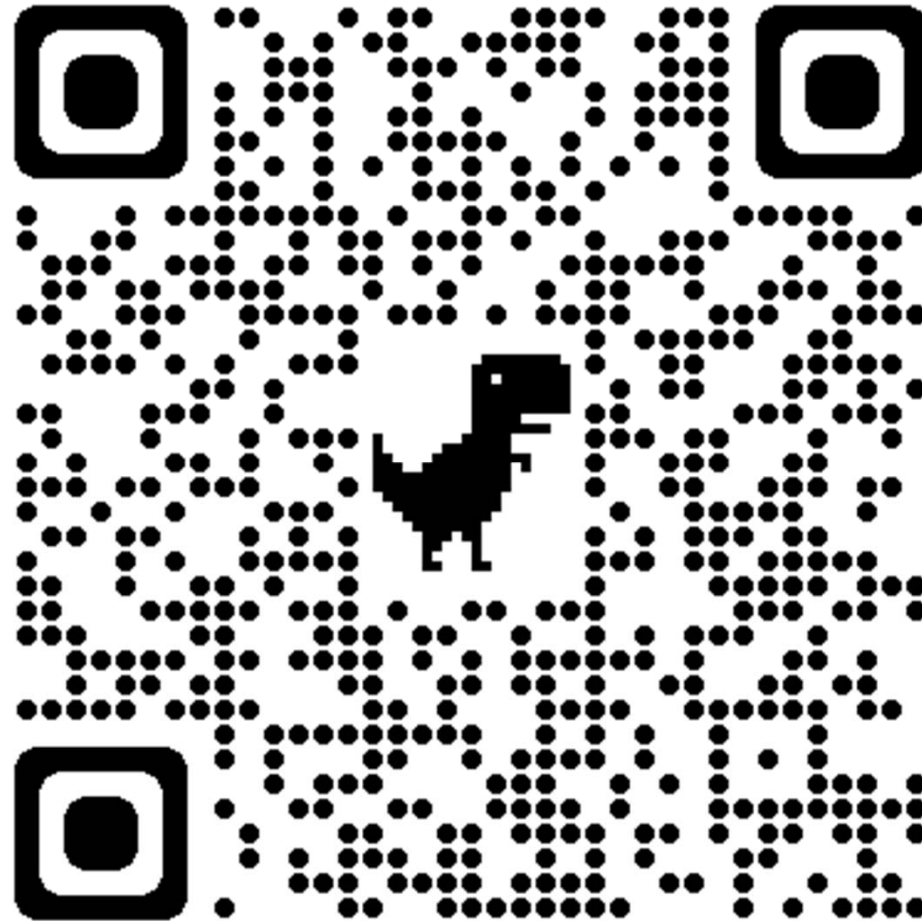
- I have a problem and am not sure how to deal with it.
- I want help managing compliance and regulations.
- My time is better spent on my business's product or service and not on administration and management.
- I need help supporting my growing or changing workforce.
- I've lost a key member of my management, HR or accounting team.

THANK YOU!

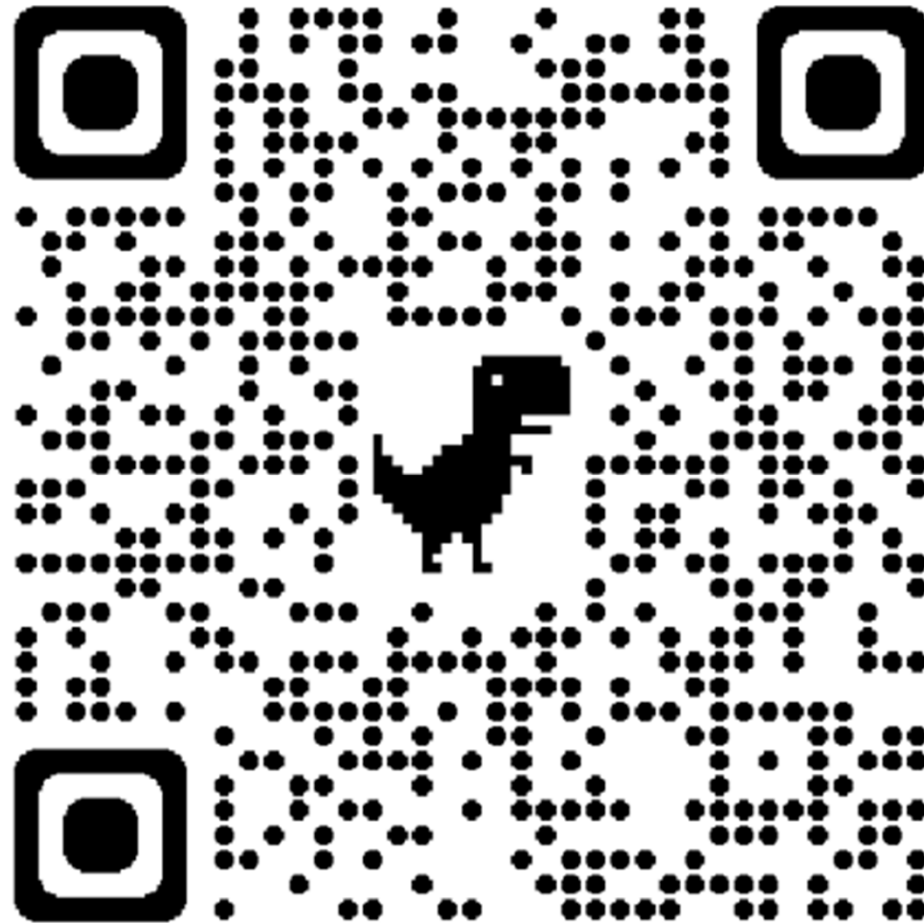


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