

# Employment NewsFlash

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Employment & Labor Practice Group

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## Family Ties or Family Feud? — Deploying a Nepotism Policy Tailored to Your Business

Is CEO Corleone's son really a Michael or a Fredo? Does Cousin Vinny win big every time for your most important client? Will Mommy Dearest bring up the wire hangers yet again this year during annual review season?

Bringing family into the business can come with great success, drama or a bit of both. Some companies elect to forbid the employment of family members yet may require exceptions to that rule due to a marriage or a request from a key client. Other businesses may allow — or even encourage hiring family members in order to recruit known talent or to further succession planning goals.

Regardless of your position on hiring family members, a well-conceived and appropriately applied nepotism policy provides a critical safeguard for every business. Periodic review of the goals of such a policy and its real-world efficacy should be undertaken with the following considerations in mind.

### Is Hiring Family Members Right for Our Business?

Broadly prohibiting the employment of family members comes with the certainty of a bright-line rule that does not place the business in the position of choosing some family member hires over others. It also allows the business to avoid the appearance of favoritism, conflicts of interest or actual conflicts that may arise from such hiring. A prohibition also avoids potential compliance risks arising from hiring family members of third parties; for example, hiring or providing internships to relatives of foreign officials may pose risks under the Foreign Corrupt Practices Act.

On the other hand, simply because an applicant is related to another employee, client, vendor or referral source does not mean that the applicant is unqualified for the position. An employer may not wish to lose the opportunity to hire talent or to strengthen client relationships based on a strict prohibition against hiring family members. Additionally, particularly in a closely held business, hiring family members could lead to greater trust among different groups of owners, a sense of common purpose and positive investment in the long-term goals of the business. Certain businesses also may reap significant tax benefits from the hiring of family members.

Businesses should review the benefits and downsides of hiring family members and determine whether a bright-line prohibition is right for their business or if they want to allow flexibility. Tax, compliance and human resources advisers may also provide insights that inform the discussion.

### Safeguards for Every Business

Appropriate anti-nepotism safeguards are important for every business, whether or not the business outright prohibits family member hiring.

Safeguards include:

- **Carefully tailoring your policy.** A nepotism policy should be tailored to your business. Are certain categories of hires (e.g., family members of clients or referral sources) but not others (e.g., family members of employees or vendors) acceptable to our business? Will the policy apply to interns or to two employees who subsequently marry? Will family members be hired only if they do not reside with another employee or have attained a requisite education level? How do we plan to enforce the policy and monitor compliance?
- **Developing and communicating about a process.** If hiring of family members is prohibited across the board, clearly communicate that prohibition in a written policy and make certain that hiring officials are aware of the prohibition and follow it. If hiring will be allowed in certain instances, establish a process for vetting the hiring of family members of an employee, client, vendor or other referral source. The process should be communicated to all with hiring authority and tailored to the business, with the considerations below in mind.
- **Doing your diligence.** Is this individual qualified for the position? If not, can we articulate a legitimate reason why we chose this applicant over qualified applicants?
- **Developing a growth plan.** If an individual is hired with the expectation that the individual will grow into the role, develop a plan to provide the mentoring and guidance necessary for such growth. Hiring an unqualified individual without a growth plan is unfair to both the business and the individual.
- **Assessing conflicts of interest.** Does the employment of this family member create an actual or a potential conflict of interest? Hiring family members of third parties such as clients, vendors or other referral sources often poses the greatest risk. (For example, did the client suggest he would funnel work to us, despite his employer's rules, in exchange for our hiring his son-in-law? Will the vendor's wife have the authority to send the vendor more work if she works in our purchasing department? Is the individual a relative of a foreign official?) Compliance professionals should be consulted where applicable.
- **Setting boundaries between family members.** Employees may place greater burdens on or have higher expectations of their family members, leading to early burnout. Or they may favor their family members by letting poor performance slide or setting higher compensation than commensurate with performance, leading to allegations of bias from other employees. Ideally, family members should not directly or indirectly supervise, set or adjust compensation for — or decide when to terminate — a family member. Such restrictions are of particular importance when the family members are spouses, as even spouses (or ex-spouses) may assert sexual harassment claims against each other. Consult a human resources professional if an employee needs to change positions or if the reporting structure needs to be adjusted to allow for such boundaries, as additional legal considerations may arise. If such defined boundaries are not practicable given the size or governance of the business, then it is recommended that at least one other independent nonfamily member have a role in such decisions and actions relating to the family member in order to minimize the appearance of bias or actual bias.
- **Developing clear job descriptions, and setting expectations.** Family members coming into the business may believe they will have a greater role than is actually offered. Or greater expectations than anticipated may be placed on them. Clear job descriptions will assist in combating these misunderstandings. If an employee is hired with the expectation he or she will grow into the role, that expectation needs to be expressed to the individual.

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Employers should periodically revisit their nepotism policies and procedures with the above considerations in mind. With appropriate safeguards, businesses will be well-prepared to navigate family member employment issues before they arise.

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