

EMPLOYMENT LAW DESK REFERENCE

In the lifecycle of a start-up, there are many key issues, situations and milestones when it is important to seek consultation. Refer to this document regularly and consider contacting an Epstein Becker Green employment, employee benefits or immigration lawyer if:

ONBOARDING AND COMPENSATION

- » You are considering hiring your first employee.
- » You are posting a job description.
- » You are hiring an individual with an existing non-compete from another employer.
- » You want to hire a non-citizen.
- » You are hiring an intern.
- » You are hiring an independent contractor or freelancer.
- » You are preparing to enter into stock-option and deferred compensation arrangements.
- » You are paying someone solely with deferred compensation or stock options.
- » You have independent contractors performing the same job function as W-2 employees.
- » You want to offer healthcare coverage for your workforce.

MANAGING EXISTING WORKFORCE

- » You have a long-time independent contractor.
- » You learn that an employee wants to take a leave of absence of any kind.
- » You receive a phone call, letter or any other document from an attorney, court, or government agency.
- » You want to protect yourself against an employee who may be in a position to take your ideas and go work for a competitor.
- » You are not sure whether a person is entitled to overtime compensation.
- » You are concerned about an employee's performance or behavior.
- » You are contacted by a union seeking to represent your employees.

SEPARATION

- » You are preparing to terminate an employee for performance.
- » You wish to terminate an employment or consultancy agreement.
- » You have a worker that is leaving and who is trying to steal your clients, your talent or your ideas to go work for a competitor or themselves.
- » You are considering paying an employee severance.
- » You receive a "lawyer's letter" from an attorney representing a former employee.
- » A former employee files for State Unemployment Benefits and you receive notice of same.
- » You plan to merge, buy, sell or close your business.

It is Also Important to Know the Thresholds for Coverage Under Several Key Statutes – Triggered by Employee Count

| EMPLOYEE COUNT | STATUTE APPLICABLE |
|--------------------------------|---|
| 0-3 employees | <ul style="list-style-type: none"> » Fair Labor Standards Act (“FLSA”) – Establishes minimum wage, overtime pay and related requirements. » New York State Wage and Hour Law – Establishes minimum wage, overtime pay, worker misclassification and related requirements. » New York State Labor Law – Establishes minimum wage as well as regulations concerning hours of work, payment of wages, deductions from wages and related requirements. » New York City Earned Sick Time Act – Establishes requirements for providing employees with unpaid sick time policies that comply with the statute’s requirements (Once you have 5 employees, must provide paid sick leave). » California Labor Code and Industrial Welfare Commission Wage Orders - Specifies wages, hours and working conditions including minimum wage, overtime pay and meal/rest break requirements, and provides recordkeeping requirements for personnel and payroll records. » California Wage Theft Prevention Act – Requires employers to provide notice to new hires of information pertaining to wages and sick leave entitlements. » California Fair Employment and Housing Act (“FEHA”) – Prohibits harassment and requires employers to take reasonable steps to prevent harassment and investigate harassment claims. » California Healthy Workplaces, Healthy Families Act (effective July 1, 2015) – Establishes minimum paid sick leave requirements for employees who work more than 30 days in California during their first year of employment. » California Kin Care Law (Labor Code 233) – Entitles an employee to use up to one-half of his or her annual paid sick leave to attend to the care of a family member (as defined by the statute). |
| 4 or more employees | <ul style="list-style-type: none"> » All of the above statutes, plus: <ul style="list-style-type: none"> » New York State Human Rights Law – Prohibits discrimination in employment based on age, creed, race, color, sex, sexual orientation, national origin, marital status, domestic violence victim status, disability, military status, arrest record, conviction record, and predisposing genetic characteristics. » New York City Human Rights Law – Prohibits employment discrimination in hiring, firing, and work assignments; salary; benefits; promotions; performance evaluations; and discipline on the basis of actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person. |
| 5 or more employees | <ul style="list-style-type: none"> » All of the above statutes, plus: <ul style="list-style-type: none"> » New York City Earned Sick Time Act – Establishes requirements for providing employees with paid sick time policies that comply with the statute’s requirements. » California FEHA – Requires equal employment opportunities and provides protection against discrimination or retaliation in employment because of age, ancestry, color, race, religious creed (including religious dress and grooming practices), disability (mental and physical) including HIV and AIDS, marital status, medical condition (cancer and genetic characteristics), genetic information, military and veteran status, national origin (including language use restrictions), race, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, and gender expression and sexual orientation. » California Pregnancy Disability Leave Act - provides up to four months of unpaid leave to employees who are disabled due to pregnancy, childbirth or related medical conditions. |
| 15 or more employees | <ul style="list-style-type: none"> » All of the above statutes, plus: <ul style="list-style-type: none"> » Title VII of the Civil Rights Act (“Title VII”) – Prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin. » Americans with Disabilities Act (“ADA”) – Requires engaging in process to provide disabled employee with a reasonable accommodation and prohibits discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. |
| 20 or more employees | <ul style="list-style-type: none"> » All of the above statutes, plus: <ul style="list-style-type: none"> » Age Discrimination in Employment – Prohibits discrimination against people who are age 40 or older. » Continuation of health coverage under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) (consider also State mini-COBRA laws for lower thresholds) |
| 50 or more employees | <ul style="list-style-type: none"> » All of the above statutes, plus: <ul style="list-style-type: none"> » Family Medical Leave Act (“FMLA”) – Provides certain employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave. » California Family Medical Leave Act – Provides similar benefits to California employees as the FMLA with some key distinctions, including coverage for registered domestic partners. » California FEHA – Employers must provide at least two hours of anti-harassment training to supervisors every two years. » Affordable Care Act (“ACA” / “Obamacare”) – Requires employers with 50 or more full-time (including full-time equivalent) employees to offer compliant healthcare coverage to its full-time employees and their dependents or subject to shared responsibility payments. |