



# BUILDING YOUR TEAM

Key Employment Law Issues

# Get It In Writing!



- Freelance Isn't Free Act
  - Applies to NYC freelancers
  - Agreement must be in writing
- And while you're at it...
  - Include an IP assignment agreement
  - Include a confidentiality provision

# Independent Contractors vs. Employees

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- It's All About Control
    - Whose equipment is used?
    - Where is the work performed?
    - What happens if the contractor blows a deadline?
    - Can the contractor take on other clients?
    - Is the contractor in business for him/herself?
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# Independent Contractors vs. Employees

- Why is this important?
  - Workplace protections differ based on characterization
  - Failure to pay contractor = breach of contract
  - Failure to pay employees = Labor Law violation
  - Employment taxes (state and federal) need not be paid for independent contractors



# Interns vs. Employees

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## The “Primary Beneficiary” Test

Does everyone understand that the position is unpaid?

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Does the internship provide training similar to that in an educational or clinical environment?

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Is the internship tied to the intern’s formal education?

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Does the internship conform to the academic calendar?

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# Exempt vs. Non-Exempt Employees

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- Exempt = annual salary + an exemption category
    - Administrative
    - Executive
    - Professional (learned or creative)
    - Computer
    - Outside Sales
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# Exempt vs. Non-Exempt Employees

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- Non-Exempt Employees
    - Must be paid at least minimum wage for all time spent working
    - Must be paid overtime for all time worked in excess of 40 hours in a week
    - Must record time worked
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# Anti-discrimination Laws

- Federal and local laws prohibit discrimination in employment against any member of a protected class, including but not limited to:
  1. Age
  2. National Origin (including ancestry)
  3. Race
  4. Sex
  5. Sexual Orientation (actual or perceived)
  6. Gender (including gender identity)
  7. Disability
  8. Unemployment Status





# That Doesn't Apply To Me, Right?

STATUTE	COVERED EMPLOYER
New York Labor Law (NYLL)	All employers.
New York City Human Rights Law (NYCHRL)	Four (4) or more employees.
New York State Human Rights Law (NYSHRL)	Four (4) or more employees.
Article 23-A of the New York State Corrections Law (Article 23-A)	Ten (10) or more employees.
Title VII of the Civil Rights Act	Fifteen (15) or more employees.
Americans with Disabilities Act (ADA)	Fifteen (15) or more employees.
Pregnancy Discrimination Act (PDA)	Fifteen (15) or more employees.
Age Discrimination in Employment Act (ADEA)	Twenty (20) or more employees.
Family Medical Leave Act (FMLA)	Fifty (50) or more employees.

# Doing Business In New York City

- Can't refuse to hire, terminate, or otherwise discriminate against any person because of membership in a protected class
- Can't deny employment to an applicant who has been convicted of a crime because of a) the prior conviction or b) a finding that the individual lacks good moral character
  - Background check ok after a conditional offer of employment, but other requirements before you can deny employment
- Provide reasonable accommodations to qualified applicants and employees with disabilities, unless it would be an undue hardship

# Doing Business In New York City

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- No harassment
  - Can't compel a pregnant employee to take a leave of absence
  - Individual Supervisor Liability – if you have an ownership interest
  - At-will employment – may generally terminate an employment relationship at any time and for any reason, unless a law or agreement provides otherwise
    - No retaliation
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# And Now We Go Our Separate Ways...

- Separation Agreement can “smooth things over” or “buy peace”
  - Present in an exit interview – “A means for us to part amicably without any future disputes”
- Significant Provisions
  - Statement of the last date of employment, last date on active payroll, last day of company provided benefits eligibility
  - Acknowledgment by the employee that:
    - Received all wages, bonuses, vacation, etc.
    - Payment of severance to which the employee is not otherwise entitled
  - Employee’s general release of all claims, known and unknown, that the employee has or could have, including but not limited to New York employment claims, as well as a promise not to file any claims in the future arising out of the employment relationship



# Litigation Avoidance Strategies

- Diverse applicant pool
- Documentation
  - Discipline
  - What does success at your company look like?
- Postings (more to come...)
- Training
- Understand insurance options



# Posters and Notices: Examples

Subject of Poster/Notice	Pursuant to
Wages and Hours	New York State Labor Law
New York State Notice of Pay Rate and Pay Day	New York State Wage Theft Prevention Act
Unemployment Benefits	New York State Unemployment Insurance Law
Occupational Safety and Health	New York State Labor Law
Workers' Compensation and Disability Benefits	New York State Workers' Compensation Law
Smoking	New York State Clean Indoor Air Act
Discrimination	New York State Human Rights Law
Pregnancy Accommodation (NYC)	New York City Human Rights Law
Sick Leave (NYC)	New York City Earned Sick Time Act

# The Importance of Written Policies

- Fairness
- Uniformity
- Legal Ramifications
  - Lawsuits
  - Unemployment insurance benefits
  - Safeguard inventions and proprietary information
- Helps with HR—especially when you don't have designated HR personnel
- Morale



# Most Important Policies

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- If Handbook, Not a Contract
  - Equal Employment/No Harassment
  - Reporting Procedures/No Retaliation
  - Hours – No OT Without Prior Approval
  - Discipline and Termination
  - Disability and Leave of Absence
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# Final Notes About Policies

Must Apply  
Uniformly

Should be  
Accessible

Subject to  
Change



# Takeaways

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- Protect Your Property – In Writing
  - Maintain Clear Distinctions Between Non-Employees (Contractors and Interns) and Employees
  - Be Clear on Culture
  - Maintain an “Open Door”
  - Be mindful of all notices/posters that must be distributed/displayed
  - Maintain policies to protect the business and educate employees about rules and expectations
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# Thank you!



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