



TOP 10 EMPLOYMENT LAW MISTAKES OF START-UPS

PRESENTED BY:
AMANDA FUGAZY, ESQ.
WWW.EGSLLP.COM

Ellenoff Grossman & Schole LLP

EGS

Amanda M. Fugazy, Esq.

Ellenoff Grossman & Schole LLP

Founded in 1992, Ellenoff Grossman & Schole LLP is a New York City-based law firm comprised of approximately 80 professionals, offering its clients legal services in a broad range of business related matters. Amanda Fugazy is a Partner in Ellenoff Grossman & Schole LLP and is head of the firm's Labor & Employment Practice Group.

Much of the firm is focused on corporations, from start-ups through public companies and many of our clients are technology related companies. The firm, through our "Women's Initiative" is also particularly interested in representing women-owned businesses.

afugazy@egsllp.com

(212) 370-1300

www.egsllp.com



WHY DO ENTREPRENEURS MAKE EMPLOYMENT LAW MISTAKES?

- ▶ Short on time
- ▶ Short on money

SO WHAT IF I MAKE A FEW EMPLOYMENT LAW MISTAKES?

- ▶ Not the same as creative mistakes
- ▶ Costs time
- ▶ Costs money

1. I NEED HELP!!!– I'LL TAKE ANYBODY!

- ▶ Hasty hiring leads to all sorts of problems
- ▶ Prepare a job description
- ▶ Prepare a mental image of perfect candidate
- ▶ Take your time
- ▶ Background checking
- ▶ Avoid illegal inquiries

2. WHO HAS TIME FOR ALL THESE FORMS AND POLICIES?

- ▶ Offer letter with at-will language
- ▶ Federal forms: W-4, I9
- ▶ State forms: IT-2104, 195(1)
- ▶ At-will contract
 - Confidentiality
 - Arbitration
 - Ownership of work product/inventions assignment
 - Non-compete
- ▶ Employee handbook
 - Reviewed for legal compliance/completeness

3. I'LL JUST MAKE HER A CONSULTANT

- ▶ There are no excuses for misclassification
 - I don't have time to worry about payroll
 - I want to try her out before hiring her
 - I want to save money on my taxes
 - She insists (usually because she wants to save money on her taxes)
 - I don't want her to have any rights
- ▶ If she walks like a duck, and quacks like a duck, she's a duck!

4. WHO HAS TIME TO TRACK HOURS AND WHY WOULD I WANT TO? I'LL PAY HER A FIXED SALARY

- ▶ Almost all employees are entitled to overtime after 40 hours of work per week
- ▶ You/she must track hours accurately
- ▶ Get legal advice if not paying OT or looking for creative solution

5. I'LL PROMISE OWNERSHIP, BUT I'LL WORRY ABOUT THE DOCUMENTS LATER

- ▶ Operating/shareholders agreement
- ▶ Employment contract
- ▶ Stock incentive plan
- ▶ Grant forms
- ▶ Option agreements

6. WHO HAS TIME TO MANAGE?

- ▶ Your employee's problems are your problems
 - Focus on the professional, not on the personal
- ▶ Deal with issues as they arise
- ▶ Don't put off hard conversations
- ▶ If you didn't write it down, it didn't happen
 - – EEOC Official

7. THIS SHOULDN'T BE MY PROBLEM- I'LL DEDUCT IT FROM HER PAYCHECK

- ▶ Almost all paycheck deductions are illegal
 - Even if the employee's mistake cost you money (*e.g.*, cancelled plane tickets, broken equipment, lost accounts, etc.)
 - Even from the last paycheck
 - Even for overused sick or vacation time
 - Even for personal loans
 - NO PERSONAL LOANS

8. IT'S EMPLOYMENT AT-WILL, I'LL JUST FIRE HER

- ▶ At-will doesn't mean you can fire her for an illegal reason
- ▶ Almost all employees can find an illegal reason to allege if they want to
- ▶ Practice progressive discipline/don't promise it
- ▶ Don't use release forms you get from your friends or find on the internet

9. SHE WAS THE WORST EMPLOYEE EVER– SHE CAN'T GET UNEMPLOYMENT INSURANCE!

- ▶ It's business, not personal
- ▶ It's insurance
- ▶ Part of the cost of doing business
- ▶ Option of not responding

10.WHO HAS THE MONEY FOR AN EMPLOYMENT LAWYER?

- ▶ You can't afford not to have an employment attorney
- ▶ Work with someone you trust
- ▶ Seek savings where possible
- ▶ Don't be penny wise, pound foolish



QUESTIONS?

PRESENTED BY:
AMANDA FUGAZY, ESQ.
WWW.EGSLLP.COM

Ellenoff Grossman & Schole LLP

EGS