

HR Basics for Solos & Small Firms

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Agenda

- Introductions
- Unsolicited Advice
- Managing Growth
- Relevant Laws
- Whether to Have an Employee Handbook
- Discussion

Introductions

- Your name and firm
- Your 1 minute elevator speech
 - Why did you start your own firm?
 - What is your practice area?
 - What differentiates your service from your competitors?
- What do you want out of today's session?

Unsolicited Advice

- “No good deed goes unpunished.” Oscar Wilde
- It’s a very small town.
- Get a good accountant.
- Focus on one practice area and one market at the beginning.
- The little voice in your head is the only thing in life that bats 1000.
- Never hire friends or family.
- A lease can be a dangerous thing.
- Persevere.

Managing Growth

- In your initial decision tree do you (a) hire independent contractors (“IC’s”), or (b) employees?
- You will only have employees if there is sufficient initial funding or sustained income to pay them.
- You need enough predictable cashflow to pay employees their wages, plus taxes.

Managing Growth – IC's

- Characteristics of IC's
- Benefits
- Burdens

Managing Growth – Employees

- Characteristics of Employees
- Burdens
- Benefits

Relevant Laws

- Discrimination, Harassment, and Retaliation
- Fair Labor Standards Act (FLSA)
- Americans with Disabilities Act
- Medical Marijuana
- Accrued Sick and Safe Leave
- Family and Medical Leave
- Universal Paid Leave

D.C. Human Rights Act: Protected Traits

Modeled after Title VII of the federal Civil Rights Act, the DCHRA prohibits an employer from basing employment decisions on any of 20 protected traits:

- Credit Information
- Race
- Color
- Religion
- National Origin
- Sex
- Age
- Marital Status
- Personal Appearance
- Sexual Orientation
- Gender Identity or Expression
- Familial Status
- Family Responsibilities
- Matriculation
- Political Affiliation
- Genetic Information
- Disability
- Source of Income
- Status as a Victim of an Intrafamily Offense
- Place of Residence or Business

Discrimination/Harassment/Retaliation

- **Discrimination** is an adverse employment action against an employee on the basis of a protected characteristic.
- **Harassment** is unwelcome verbal or physical conduct that is sufficiently pervasive or severe as to seriously affect a term, condition, or privilege of employment.
 - **Sexual Harassment** is unwelcome verbal or physical conduct based on the sex of the employee. The conduct does not need to be overtly sexual.
- **Retaliation** is an adverse action against an employee on the basis of a protected activity.

Discrimination/Harassment/Retaliation

- Once the plaintiff makes a prima facie showing, the burden shifts to the employer to “articulate some legitimate, nondiscriminatory reason” for the adverse action.
- Burden shifts back to the employee to show that the reason is not the real reason for the adverse action.

Other D.C. Employment Laws

- **Protected Leave** – Employers may not retaliate against an employee who requests or uses leave that is protected by law.
- **Pregnant Workers** – Employers may not retaliate against an employee who requests or uses a pregnancy-related reasonable accommodation.
- **Unemployed Individuals** – Employers may not fail to consider or fail to hire an individual due to his or her status as unemployed.

Other D.C. Employment Laws

- **Marijuana Testing** – An employer may not test prospective employees for marijuana use until after a conditional offer of employment.
- **Criminal Record Screening** – An employer may not inquire or require an applicant to disclose an arrest, or a criminal accusation against the applicant that is not then pending or did not result in a conviction.

Americans with Disabilities Act (ADA)

- Employers may not discriminate based on known physical or mental disability.
- Employers must provide reasonable accommodation for an applicant or employee who requests it.
- Employers are not obligated to provide reasonable accommodation if doing so would place an undue burden on the business.

Medical Marijuana

- Under D.C. law, a qualifying patient may possess and administer marijuana to treat a qualifying medical condition in the patient's residence, or, with permission, in another individual's residence or medical treatment facility.
- A qualifying patient must obtain a registration identification card from the D.C. Department of Health.
- D.C. law provides no express employment protections for qualifying patients, except for restrictions on pre-employment testing.

Medical Marijuana

- Federal law prohibits marijuana usage, and the ADA most likely does not protect medical marijuana users.
- However, courts have differed on whether state anti-discrimination laws protect employees who are medical marijuana users.

Fair Labor Standards Act: Exempt/Non-Exempt Employees

- ▶ Non-Exempt Employees: Must be paid minimum wage and overtime pay for any time worked beyond 40 hours in a given week.
 - ▶ Overtime pay = 1.5x their regular rate of pay for each hour of overtime.

Fair Labor Standards Act: Exempt/Non-Exempt Employees

- Exempt Employees: Not entitled to overtime pay
 - Three prong test:
 - Employee is paid at least \$23,600 per year (or \$455 per week)
 - Employee is paid on a salary basis (does not apply to certain professions (i.e., physicians))
 - Employee performs exempt job duties (executive, professional, administrative)

D.C. Accrued Sick and Safe leave (ASSLA)

- Employees who work at least 50% in the District are entitled to 3 to 7 days of accrued sick and safe leave each year, depending on the size of the employer.
- Covers absences due to employee or family member:
 - Having an illness, injury, or medical condition
 - Obtaining medical care
 - Obtaining services related to being a victim of stalking, domestic violence, or sexual abuse

D.C. Accrued Sick and Safe leave (ASSLA)

- Employees must provide 10 days written notice, unless the reason for leave is unforeseeable. If the request for leave is for 3 or more consecutive days, employers may require documentation.
- Employees must be allowed to use leave no later than 90 days after starting service.
- Unused leave carries over from year to year.
- Your sick or universal leave policy satisfies the law if it allows the employee to accrue and use leave under equivalent terms and conditions.

What does the D.C. FMLA do?


- Requires employers employing 20 or more persons to provide covered employees with 16 and sometimes up to 26 workweeks of leave during any 24-month period.
 - Leave entitlement is unpaid
 - Employees may substitute appropriate accrued paid leave
 - Leave may be taken intermittently or all at once
- Generally entitles the employee to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave.

D.C. Universal Paid Leave

- The Act allows certain employees—generally, those working for private employers in the District—and opting-in self-employed individuals to receive paid leave benefits after a qualifying medical, family, or parental leave event beginning July 1, 2020.
- The maximum benefit period is 2 weeks for medical leave, 6 weeks for family leave, and 8 weeks for parental leave.
- The weekly benefit is 90% of average weekly wages up to 150% of 40 times the minimum wage, and 50% of average weekly wages above 150% of 40 times the minimum wage, up to a maximum of \$1,000.

D.C. Universal Paid Leave

- Benefits are paid for by a tax on covered employers equal to .62% of wages, which will be collected beginning July 1, 2019.
- Benefits run concurrently with, and not in addition to, leave taken under the federal or D.C. Family and Medical Leave Act (FMLA).



Employee Handbook: To
have or not to have; that is
the question.

Why have an employee handbook?

- An Employee Handbook will help protect against legal claims and set clear expectations of behavior.
- An effective Handbook should:
 - Provide each employee notice of local, state, and federal laws and regulations
 - Clearly identify requirements for employee conduct and notice that breach of such conduct could lead to disciplinary action up to and including termination
 - Not inadvertently create contractual obligations
 - Be signed by each new hire.

Policies You Need

- Anti-Discrimination and Anti-Retaliation
- Anti-Harassment
- Reasonable accommodations (for disability and pregnancy)
- D.C. Family and Medical Leave policy and leave request procedures
 - For employers with 20 or more employees
- D.C. Accrued Sick and Safe Leave policy and leave request procedures

Policies You Need

- D.C. Universal Paid Leave policy (beginning July 1, 2020)
- Wage Transparency
- At-Will Presumption
- Employee Acknowledgment
- Contract Disclaimer
- Reservation of Rights

Policies to Consider

- Welcome letter
- Introductory period for new hires
- Discipline: Progressive or Zero Tolerance
- Drug and alcohol use
- Confidentiality
- General employee conduct
- Separation

Onboarding

- At the time of hire, make sure that for each employee you have:
 - Completed appropriate federal and state tax withholding forms
 - Completed a Form I-9
 - Provided the employee a D.C. Notice of Hire and Acknowledgement of Wage Rate
 - Signed acknowledgement of the Employee Handbook, if any
 - Initiated benefits enrollment, if applicable

Discipline

- Uniformly and consistently apply rules and policies.
- Issue written disciplinary forms for policy violations, which should include:
 - Type of disciplinary action
 - Type of policy violation
 - Details of time/attendance, if relevant
 - Expectation for corrective action by the employee
 - Employee's comments, if any
 - Disclaimer regarding consequences of further misconduct
- Obtain employee or witness signatures on all disciplinary forms.

Termination

- I recommend providing the employee with a written termination letter, but it is not required.
- Bring a witness to the termination meeting.
- Be prepared to prove any specific reason provided for termination.
- When an employee is terminated, wages are due the next working day, or 4 days if the employee owes money.

Resignation

- Ask for a resignation letter.
- If the employee refuses to provide a letter, document your communication with the employee in a written memo.
- If the employee stops appearing at work, issue the employee a letter ending employment due to job abandonment.
- When an employee quits or resigns, wages are due the next regular payday or within 7 days, whichever is earlier.

Severance Agreements

- ▶ Always draft a written agreement, which should include provisions for:
 - ▶ Confidentiality
 - ▶ Release of claims
 - ▶ Non-disparagement
 - ▶ Enforcement, including recovery of compensation
 - ▶ Letter of voluntary resignation
- ▶ The severance pay may be a lump sum and should be tied to length of employment.

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