

"Employment Pitfalls Part Two"

by Joe Hadzima

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This is the second installment of our look at employment issues for entrepreneurs. Last month we explored whether someone was an employee or an independent contractor, what to avoid in employment offer letters, the use of non-competition and confidentiality agreements, and personal liability for payroll and taxes. Each of these topics could be a column itself (or even a chapter in a book), so remember that these *Starting Up* columns are designed to help you, the entrepreneur, get a handle on a number of important issues to help your business succeed. The format of a monthly column doesn't allow us to go into all the details, yet we all know that success comes in part through mastering the details. So use these columns as a sort of "checklist," but seek out competent professional assistance in applying the concepts to your particular situation. Moral: avoid the "do-it-yourself brain surgery" mentality.

So here are some other employment areas you should know about:

Government Contracts.

The workplace has become the focal point for legislation that tries to change societal attitudes and practices. There are rules governing gender, age, and disability based discrimination, affirmative action, health and safety, family leave, etc. Some of these rules may actually conflict with each other. Fortunately for the entrepreneur trying to get a business launched, many of these rules don't apply until you have a certain number of employees. However, you should be aware that many of them do apply if you have government contracts or subcontracts. Some government contract regulations apply unless you specifically exclude them in your contract or subcontract. So if you are involved directly or indirectly in government contracts, don't assume that you are exempt from these regulations. Always read your government contract solicitation before preparing a bid or proposal, and always be sure to administer your government contract in a way that fully complies with the contract.

Minimum Wages and Overtime.

With technological advances coming rapidly, high-tech companies have to meet tight deadlines that usually mean very long hours. Although you may think of a programmer as being exempt from minimum wage laws (as opposed to the traditional factory worker), the Department of Labor may think otherwise, resulting in penalties. Check this out with your employment lawyer before you have this problem.

Immigration Law.

Although we are a nation of immigrants, we have also had a history of trying to limit immigration. To a large extent immigration rules are targeted toward cheap foreign labor taking U.S. jobs, but, contrary to common misconceptions, U.S. immigration laws also treat degree professionals, entrepreneurs, and established businesses with complex and non-intuitive regulations. I have many clients who successfully hire highly trained foreigners who graduate each year from Boston's fine universities. This can be a winning strategy for you, too, but you must make sure that you understand and are able to comply with U.S. immigration law before you begin the process. With advance planning, the process can go smoothly. Failure to plan can result in a disaster. So spend the few preliminary and necessary hours with an immigration lawyer beforehand if hiring foreign nationals is a likely part of your hiring plans. Even if you do not have an active plan to hire foreign nationals, you are nevertheless required to obtain an INS Form I-9 from each new hire.

Employee Handbooks.

You are not required to have an employee handbook. However an employee handbook can be a valuable part of your human resource "package" if it reflects your philosophy of dealing with your most valuable assets—your employees. From that viewpoint alone, you should not simply copy the employee handbook of some other organization. I once had a former Digital Equipment employee start a new venture and use DEC's employee manual on the theory that DEC must have had the manual reviewed by its lawyers. However, many of the DEC employment practices are a result of laws that apply only to large employers or government contractors. Because an employee handbook can be construed as part of an "employment contract," the entrepreneur found out that he had taken on legal obligations that he did not have to incur. Perhaps more importantly, he missed an opportunity to establish a "tone" by thinking through his own approach to dealing with employees.

When you hire other people, you will inevitably have to build some infrastructure/bureaucracy to deal with these various legal requirements. You can either view this as a useless distraction, or you can take the opportunity to put in place approaches and procedures that will help maximize the potential of the people you hire. I think you will have the best results if you develop a clear philosophy of how you plan to attract, motivate, and retain good people, and then fill in the legal requirements around your plan.

DISCLAIMER: This column is designed to give the reader an overview of a topic and is not intended to constitute legal advice as to any particular fact situation. In addition, laws and their interpretations change over time and the contents of this column may not reflect these changes. The reader is advised to consult competent legal counsel as to his or her particular situation.