

Dear clients, colleagues and friends:

I hope you all had a good Thanksgiving and are managing to stay warm as winter approaches (at least, here in the Northeast!). This month I thought I would address a number of quick reminders about issues where I find employers inadvertently stepping in legal landmines that could have been avoided with a little preparation and/or education.

Emergency Contact Forms: The start of the new year is a good time to make sure you have Emergency Contact Forms on file for each of your employees. What are you going to do if an employee stops showing up to work and doesn't contact you? You need someone to call. While it may seem hard to fathom, you may be the only one who knows this person is not accounted for. They could be sick at home, or worse. Attached is a form that can be utilized.

Reference Checking/Criminal Background Checks: When you have a promising candidate, check this person's references BEFORE you make the candidate an offer of employment. However, if you want to do a criminal background check, you may need to give the candidate a conditional offer of employment before running the background check. It is now illegal to ask about criminal convictions on an employment application (so-called "Ban-the-Box" laws) in Massachusetts, Minnesota, Rhode Island, Hawaii, and in certain cities including Newark, Philadelphia, Buffalo and Seattle. If you are uncertain of the laws that apply to your jurisdiction, consult with your employment attorney.

Employment Contracts: Although I generally recommend against having an employment contract with employees (usually, an offer letter specifying the terms of employment and an employee handbook with your policies and benefits will suffice), if you are going to utilize an employment contract, be sure that both you and the employee are clear as to the terms of the contract and that you have a document in writing to which you both agree (and which you both sign). If you make the contract for a specific amount of time, then the employee is no longer at-will which can create multiple headaches for your company. If you must do a contract for a year or two, be sure the contract has an escape-clause. Otherwise, even if you have a poor performing employee, if you promised her 1 year of employment and terminate her after 5 months, you are going to be legally obligated to pay her an additional 7 months of compensation – unless the contract specifically says that you do not need to do that.

Loaning Employees Money: In short – don't do this. But, I know that it occurs. If you are going to loan an employee money, have them sign a paper acknowledging the amount they are borrowing and the repayment terms. Otherwise the employee can say you never made the loan. Whether you can deduct repayment amounts from your employee's paycheck depends on your local state law.

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Confirming Attendance During Job Interviews: If you want to ensure that an employee will be present to do a job, you cannot ask the following because these questions are illegal: Are you pregnant? Do you have a medical condition that causes you to miss work? How many times have you taken workers' comp leave? Do you get colds frequently? Do you have a sick child at home that causes you to miss work? Do not ask these. What you can do is say that this job is important to the company and that, while you understand that emergencies happen, you would expect the successful candidate for the position to be able to be at work, on time, on a regular basis, because you need this position filled and the person to be there. If the applicant is selected for this position, is there any reason that he or she can foresee that the candidate would not be able to be present, at work, on time on a regular basis? During job interviews, ask the question you actually want answered.

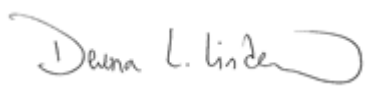
Overtime Wages: Whether an employee is entitled to overtime pay is not based on whether the employee is paid on an hourly or salaried basis. It has to do with the duties and responsibilities of the person's job. It is a rare company where no one is legally entitled to overtime wages. Unfortunately, and I know employers try to do this, you cannot contract with an employee to avoid paying it. Compensation can be set so that the base wages plus expected overtime pay is in the range the company intends to pay—but overtime wages must be paid where the law requires.

Employment lawyers, such as the experienced lawyers in our firm, are here to help you with all of these and the other crazy laws that apply when you have employees. Questions? Call us. 845-589-9300.

If there is any particular topic you would like to see addressed in this e-newsletter, please feel free to contact me. If you need a speaker for your organization, I'd be happy to discuss potential topics.

Please feel free to connect with me on LinkedIn: [Devora Lindeman - LinkedIn](#)

Warm Regards,



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