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STARTUP & ACCELERATE

Building a Team – Employee Onboarding

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EMPLOYEE ONBOARDING

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Employee Onboarding Agenda



Recruiting and Hiring Hazards

Interview Questions, Pay Equity / Salary History, Criminal History, Financial Status, Immigration, Restrictive Covenants



Diversity and Inclusion



Documenting Terms and Conditions of Employment

At-will status, Offer letter v. employment contract, Employee handbooks, policies, Anti-Harassment Policy



Misclassification and Wage & Hour Considerations

Non-exempt Employees, Hours worked and pay, Independent Contractors (and the Gig Economy), Interns

Federal and state discrimination laws

- Title VII of the Civil Rights Act of 1964
 - 15 or more employees
 - Protected categories include race, color, national origin, sex/pregnancy, religion
- Age Discrimination in Employment Act of 1967
 - 20 or more employees
 - Age (over 40)
- Americans with Disabilities Act of 1990
 - 15 or more employees
- State laws vary

Recruiting Hazards



Interview Questions

Never ask a question concerning a protected category and be sensitive not to inadvertently ask any question which may reveal a protected category and run afoul of federal, state and local hiring laws



Salary history (pay equity laws)

Many states prohibit employers from screening applicants based on prior wages, salaries or benefits, or using that info to satisfy any minimum or maximum criteria



Criminal History

Criminal Background Checks



Financial Status

Credit record and Fair Credit Reporting Act



Immigration Considerations

Permissible pre-hire inquiries:
Are you legally authorized to work in the US? Do you now, or will you in the future, require immigration sponsorship for work authorization (for example, H-1B status)?

Employment Eligibility:
Verification form (I-9) within three days of hiring

Agreements to Watch for and Consider

Non-Competition Agreements

Prevent someone from entering into a particular profession

Non-Solicitation Agreements

Prevent someone from soliciting a company's clients or employees

Consider new restrictive covenants for key employees

Reasonable agreements for senior management

Focus on enforceability of restrictive covenants

Varies by state

Confidentiality/Inventions Assignment

Restrict someone from disclosing or using a company's proprietary information

Arbitration Agreements

With some exceptions, requires employees to resolve disputes related to employment in arbitration rather than bringing a lawsuit in court

Document Terms and Conditions of Employment

- At-will vs. contractual employment for a term
 - Be sensitive to statements concerning future earnings and length of employment
- Offer letter vs. employment agreement
 - Include contingencies (e.g., availability of funding, execution of non-disclosure/noncompete agreement, execution of arbitration agreement)
 - Right to severance
 - Notice periods
 - Right to stock or stock options
 - Compensation, commissions, and bonus arrangements
 - Tailor to particular employees or job classes

Employee Handbooks and Policies

- Employee handbooks not required by law, but certain policies must be provided in writing
- Handbooks, manuals, policies, communications regarding employee expectations;
 - Within policies, include equal employment, non-discrimination, non-harassment, meal/rest, timekeeping, payroll, leaves of absence, vacation accrual and payout, sick time, parental leave, scheduling, exempt vs. non-exempt status, workplace safety, social media, expense reimbursement
 - Ensure uniform application

Employer Obligations with Respect to Harassment

- Adopt a strong anti-harassment policy
- Periodically train each employee on its contents (some states and localities mandate regular training)
- Vigorously follow and enforce it
- The policy should comply with any applicable state and local laws, and, at a minimum include:
 - Explanation of prohibited conduct, including examples
 - Assurance that employees who make complaints or provide information related to complaints will be protected against retaliation
 - Complaint process that provides multiple, accessible avenues of complaint
 - Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible
 - A complaint process that provides a prompt, thorough, and impartial investigation
 - Assurance that the employer will take immediate and appropriate corrective action **if** ~~when~~ it determines that harassment has occurred

Diversity and Inclusion



Recruit, hire, and promote with equal employment opportunity principles in mind

Diversify leadership

-Some states (like California) require diversity for directors of publicly held companies

Openly address workplace diversity

Approaches employers can take to reach diversity goals

-Implement policies to diversify the pool of candidates: A rule or policy that requires all candidate pools to include a minimum number of candidates of color, for example, is one strategy that has been adopted to increase diversity in hiring. Such a rule does not require hiring a person of color, or giving preference to a person of color; rather, it ensures that the selection pool includes at least one person of color

Terms and Conditions of Employment

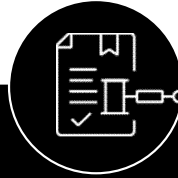
Management Strategies



Communicate expectations;
Provide feedback



Document performance or disciplinary issues and create clear progressive discipline guidelines for HR and managers



Ensure adverse employment actions are made for legitimate, business reasons, and document these reasons



Ensure similar, problematic behavior is handled uniformly

Misclassification: Overtime Exemptions

- Are employees properly classified as exempt or nonexempt for overtime purposes (FLSA/state law)?
 - Potential Red flag – none or very few nonexempt employees
- Potential repercussions for misclassification:
 - Liability for all unpaid overtime (may run back as far as three years in cases of willful violations)
 - Liability for withholding wages
 - Liquidated damages
 - Fines and penalties
 - Attorney fees exposure
 - Recordkeeping liability (e.g., where employer has failed to properly record employees' hours worked)

Issues Relating to Work Hours and Pay



Establish expected work hours, breaks, and time recording procedures particularly for nonexempt employees



Establish mechanisms to ensure that employees are actively working and meeting goals/deliverables (including regular responsive communications with team members, 1:1s)

But be sensitive to morale and PR issues related to these mechanisms



Comply with applicable wage payment laws (e.g., timing of payment)

Compensation Issues for Nonexempt Employees

- Accurately record *all* hours worked
 - Consider timekeeping systems and whether modifications are needed for remote setting
 - Consider attestations/acknowledgments regarding the complete and accurate recording of all time worked, and compliance with meal/rest period expectations
 - Consider BYOB mobile device policies and whether non-exempt employees receive work emails and calls on their personal cell phones.
 - Beware of “on-call” treatment, if employees are expected to stand by for assignments
 - Remote meetings and training are generally compensable, unless *completely voluntary; not directly related to employee’s job*; and no “productive work” performed
 - Meal and rest breaks
- Overtime pay for hours worked over 40 hours per week – pay attention to state-specific nuances

Misclassification: Independent Contractors

Service Providers

- Properly classified as a contractor, consultant, or advisor, rather than as employees?
 - How much control over the worker does the company have?
 - Are they held out to be an employee of the company (e.g. company email, bio/photo on company's website)?
 - Are they free to perform work for other entities?
 - Are they performing the same work as employees of the company?

Potential repercussions for contractor misclassification

- Misclassified contractors could be entitled to retroactive participation in employee benefits
- Payment of federal and state employment taxes and amounts that should have been withheld, including interest and penalties
- Penalties for failure to contribute to state unemployment funds
- Unpaid overtime or other wage-based claims (if the employee should have been classified as non-exempt)
- State law major risk driver

The Gig Economy and Independent Contractors

- Companies are increasingly interested in entering the gig economy, but the legal uncertainties pose some discouraging risks
- A gig economy is a market model in which workers, typically through an on-line platform, contract with organizations for temporary, short-term engagements. Typically, a worker has the ability to pick and choose when he or she will work and how often.
- Types:
 - Personal Services
 - Examples: Uber, Lyft, GrubHub, Handy, Instacart, TaskRabbit, etc. – intermediary connects consumer with service
 - Goods and impersonal services
 - Examples: AirBnB, Etsy, etc. – intermediary connects buyers and sellers
 - Crowdsourcing
 - Personal shoppers/Secret shoppers
 - Brand ambassadors/social media monitors/moderators

Mitigating Operational Measures

- Hire workers as employees
 - They can be short-term or temporary employees
 - Work with reputable third-party staffing company to hire independent contractors as the staffing company's employees
 - Include indemnification provision in services agreement
 - Include arbitration agreement with class action waiver in services agreement with employee
- If you MUST keep them as independent contractors:
 - Avoid having independent contractors perform tasks that also are performed by employees
 - Limit independent contractors to performing tasks that are *outside* the company's usual course of business
 - Avoid having independent contractors who work exclusively for the company
 - Limit the amount of control exercised over the manner and means a gig worker performs his or her tasks

Interns

Fair Labor Standards Act

- Requires “for-profit” employers to pay employees for their work. Interns and students, however, may not be “employees” under the FLSA—in which case the FLSA does not require compensation (minimum wage and overtime) for their work

“Primary Beneficiary Test”

- Determine whether an intern or student is, in fact, an employee under the FLSA
 - In short, this test allows courts to examine the “economic reality” of the intern-employer relationship to determine which party is the “primary beneficiary” of the relationship
 - Don’t forgot state and local laws may be more stringent

BENEFIT OPTIONS

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Benefit Options Agenda



Overview Of Benefit Options



Tips to Mitigate Risk



Compliance Hurdles

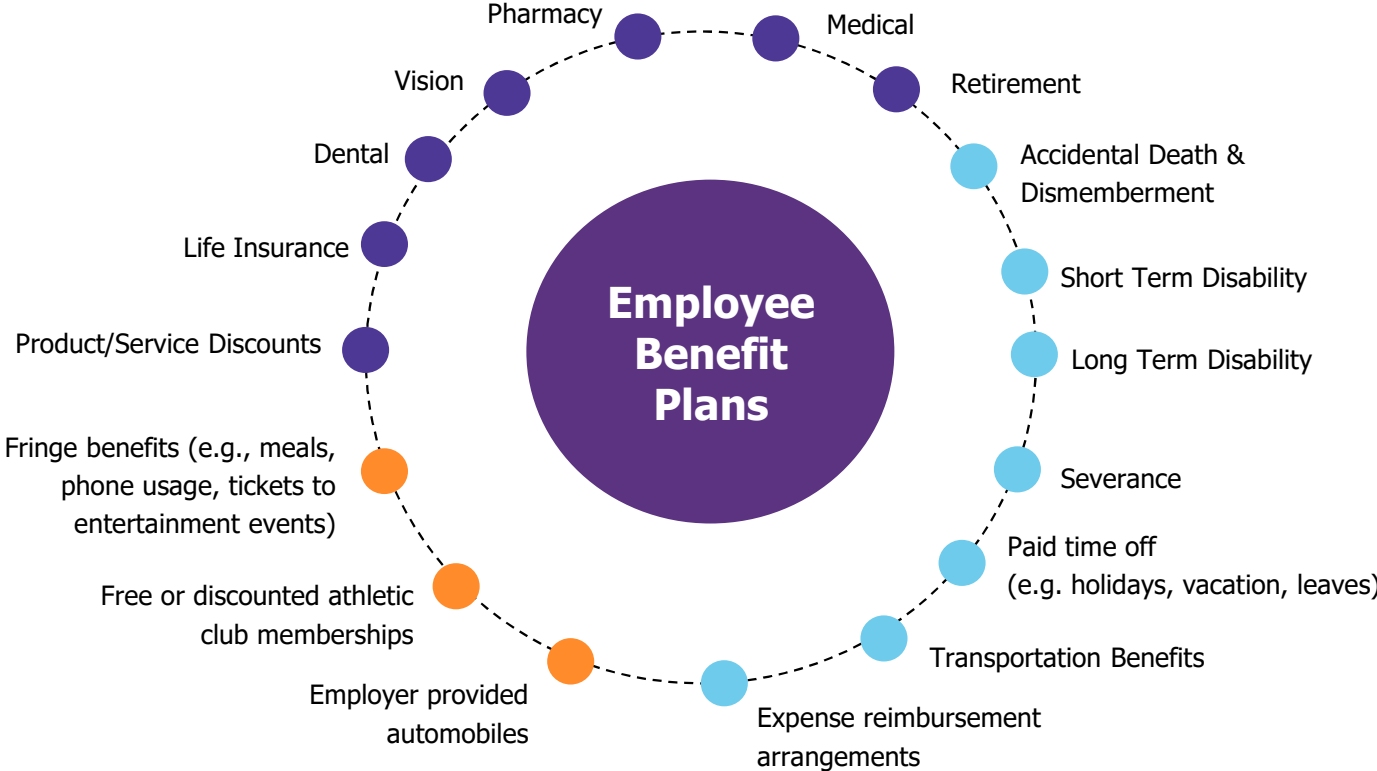


Ideas for Startups and Smaller Employers

Why Employee Benefits Matters?

- Competition for talent is fierce
- What you offer beyond salary can go a long way towards setting your company apart from the competition
- Offering a competitive benefits package can:
 - Help you attract talent
 - Help you retain talent
 - Increase employee engagement
 - Create loyalty among your employees

Types of Employee Benefit Plans



Governing Laws

- Laws and rules governing the design, operation and administration of employee benefit plans are complex.
- Some of the key federal statutes that govern this area include:
 - ERISA: The Employee Retirement Income Security Act of 1974, as amended
 - The Code: Internal Revenue Code of 1986, as amended
 - ACA: Patient Protection and Affordable Care Act of 2010, as amended
 - HIPAA: Health Insurance Portability and Accountability Act of 1996, as amended
 - COBRA: Consolidated Omnibus Budget Reconciliation Act of 1985, as amended

Save The Date

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**Know Your Next Steps: Later
Stage/Preferred Stock Financing**

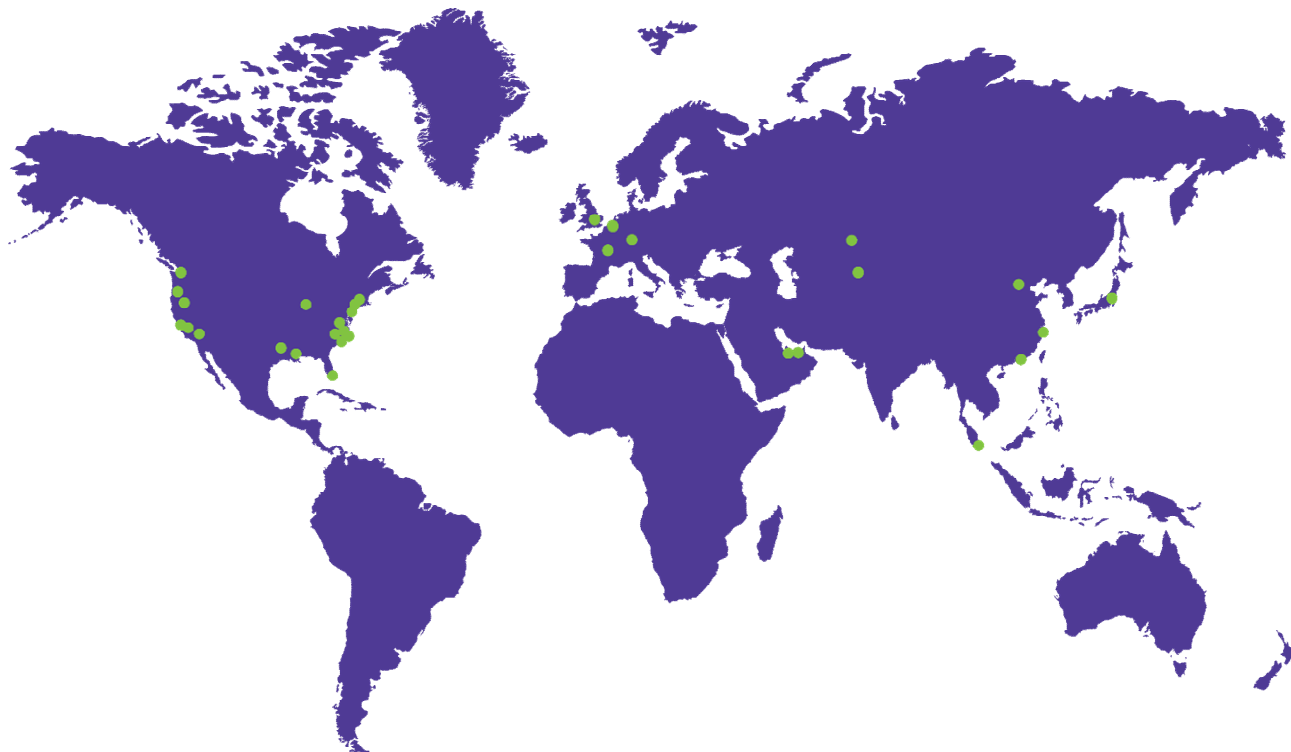
Thursday, October 13 @ 12:30pm ET

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