

A background image showing a microscopic view of several red blood cells. The cells are biconcave and have a reddish-brown color. They are slightly out of focus, with one cell in the foreground being more prominent than the others.

**Morgan Lewis**

# **THE LIFE SCIENCES GROWTH SERIES**

**Piloting Through the Pathways of Employment Law:  
An Essential Guide for Emerging Companies**

May 1, 2019

Morgan Lewis

**PROTECTING COMPANY ASSETS:  
CONFIDENTIALITY,  
INVENTION ASSIGNMENT, &  
RESTRICTIVE COVENANT  
AGREEMENTS**

# **HOW TO PROTECT YOUR ASSETS FROM USE OR DISCLOSURE**

**CONFIDENTIALITY  
AGREEMENTS**

**INVENTION  
ASSIGNMENT  
AGREEMENTS**

**RESTRICTIVE  
COVENANT  
AGREEMENTS**

# CONFIDENTIALITY / NON-DISCLOSURE AGREEMENT ("NDA")

- **Legally binding **contract** that requires parties to keep confidentiality for a defined period of time**
  - Require **applicants** to execute
  - Condition of **employment offers**
  - Include in **employment contracts**
  - Require from **third parties**
    - Consultants
    - Vendors
    - Affiliates
    - Investors



# ENFORCEABILITY OF NDAS

- Must take **steps to protect** confidential information - Just defining “confidential” in NDA is not enough
  - Protocols - “**CONFIDENTIAL,**” “**TRADE SECRET,**” and “INTERNAL USE ONLY”
  - Passwords
  - Need-to-know access
  - Restrict USB drives, personal cloud storage, external email
  - Monitor downloads and files sent externally
  - Protocol for departing employees, consultants, interns
- Have **counsel** review NDAs periodically
  - Ensure NDA is **broad enough** but **not overly broad**
  - Ensure NDA is **suitable for the circumstances**
  - **Do not overreach** with applicant NDAs, consultant and other third party NDAs



# INVENTION ASSIGNMENT AGREEMENTS

- Legal contract that gives an employer **certain rights to inventions** created by an employee or consultant **during the employment/consulting relationship**
  - Require detailed **disclosure of *prior* inventions**
  - Define what **future** inventions will belong to employer
    - Require disclosure of **future inventions**
    - Require “**assignment**” (**legal transfer**) of ownership rights
    - Require **cooperation** in **patent** process



# ENFORCEABILITY OF INVENTION ASSIGNMENT AGREEMENTS

- You can require an employee or consultant to sign an invention assignment agreement as a **condition of employment** or **engagement**
- Some **states limit** the extent to which an employer can require an employee to give up rights
- Seek counsel on **state** law before you implement an invention assignment agreement that covers that state
  - **California** invalidates invention assignment agreements to extent invention did not rely on use of employer's **resources** and was created during employee's **personal** time
    - Delaware, Illinois, Kansas, Minnesota, **North Carolina**, and Washington have similar laws
  - **Nevada** and **Utah** have unique invention assignment restrictions

# RETRICTIVE COVENANT AGREEMENTS ("NON-COMPETES" & "NON-SOLICITS")

- **Non-Competes** - also known as covenant not to compete
  - Legal contract an employee or consultant signs **agreeing not to start a competing business** to **work for a competitor** for a stated period of time after the relationship ends
    - Upon hire/engagement
    - Upon promotion
    - During employment
    - Upon separation from employment
- **Non-Solicits** – may limit solicitation of employees and/or customers
  - Legal contract an employee or consultant signs **agreeing not to solicit employees and/or customers for the benefit of a competing business** for a stated period of time after the relationship ends



# RETRICTIVE COVENANT AGREEMENTS ("NON-COMPETES" & "NON-SOLICITS")

- Factors Impacting Enforceability
  - Consideration for promise (employment, engagement, access, training, special payment, bonus)
  - Protectable interest
  - Impact on individual (paid severance, ability to earn living) (re: Non-Competes)
  - **SCOPE**

# SCOPE IMPACTS ENFORCEABILITY

- **To be enforceable, non-competes and non-solicits must be reasonable in scope and duration and tailored to protect legitimate business interests**
- **Considerations:**
  - Limited to accessible confidential info / trade secrets (not public information)
  - Applicable to relevant employees and customers (those who have access)
  - Relevant geographic scope
  - Defensible temporal scope (how long is information protectable)

# SCOPE OF NON-COMPETITION AGREEMENTS

- Courts closely **scrutinize** language and enforceability **varies by state**
- Courts may or may not be permitted to “**fix**” overly broad agreements
  - Courts in states that follow the **reformation** approach (least restrictive) will infer the intent of the parties and modify (Colorado, Florida, Illinois, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Tennessee and Washington)
  - Courts in states that follow the **blue pencil** approach (moderately restrictive) will only strike out the unenforceable portions (Arizona, Louisiana, Maryland and North Carolina)
  - Courts in states that follow the **red pencil** approach (very restrictive) will toss out the entire agreement if any portion of the agreement is unenforceable. (Virginia)
  - In some states, non-competition agreements are **prohibited** (California and Oklahoma)

# CONCLUSION

- Employ protocols and other security measures to protect confidential and sensitive information
- Use appropriate confidentiality, invention assignment and restrictive covenant agreements
- Regularly review for enforceability and sufficient protections
- When unsure, contact **Morgan Lewis** for legal advice

The background of the slide is a close-up, artistic rendering of several red blood cells. The cells are a deep red color and have a biconcave, disc-like shape. They are arranged in a way that creates a sense of depth, with some cells in sharp focus in the foreground and others blurred in the background. The lighting highlights the texture of the cell surfaces.

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# **INDEPENDENT CONTRACTORS**

# TYPICAL CLASSIFICATION CATEGORIES

- **Regular Employee:** A person rendering actual service in any business for an employer, whether gratuitously or for wages
- **IC:** A person who renders services for specified payment or a specified result where the employer exerts control only as to the result of the work, not as to the manner or means by which the result is accomplished
- **Joint Employee:** An employee deemed to have two (or more) "employers." Workers typically supplied by employee leasing firms or temporary staffing agencies.

# MISCLASSIFICATION RISKS

- Classification is important
- Misclassification carries significant risks and potential exposure
  - Multimillion-dollar wage and hour and other employment claims
  - Liability for payroll taxes subject to withholding from “wages”
  - State unemployment insurance payments
  - Workers’ compensation insurance premiums (and potential liability for workplace injuries)



# WHY IS THIS AN ISSUE NOW?

- If companies have been using large numbers of ICs for decades, why is this an issue now?
- Growth of the “gig” economy
- Federal/state budget deficits
  - Increased tax payments
  - Increased unemployment, workers’ compensation, disability contributions
- Focus of plaintiffs’ attorneys
  - New area of traditional securities/product liability class action firms
  - Big damages that are easy to prove
  - Significant attorney fees

# DOL: ECONOMIC REALITIES TEST

- DOL issued an Opinion Letter on April 29<sup>th</sup> reaffirming that it looks at whether a worker is “economically dependent” on a potential employer
- When determining economic dependence it looks at the following six factors:
  - The nature and degree of the potential employer’s control;
  - The permanency of the worker’s relationship to the potential employer;
  - The amount of the worker’s investment in facilities, equipment, or helpers;
  - The amount of skill, initiative, judgment, or foresight required for the worker’s services;
  - The worker’s opportunity for profit or loss; and
  - The extent of integration of the worker’s services into the potential employer’s business.

# TRADITIONAL STATE TESTS/IRS MULTI-FACTOR TEST

- **Right-to-Control Test**

- Primary Question: Does the worker have the right to control the manner in and means by which he or she carries out the job?
- Factors to Consider:
  - Whether the person performing the services is engaged in an occupation or business distinct from that of the principal
  - Whether the work is a part of the regular business of the principal or alleged employer
  - Whether the principal or the worker supplies the instrumentalities, tools, and place for the person doing the work
  - The alleged employee's investment in the equipment or materials required by his or her task or his or her employment of helpers



# THE ABC TEST

Workers are presumed to be employees unless the hiring company can show that the worker:

- A. Is free from the control and direction of the hirer in the performance of the work, both under the contract for the performance of the work and in fact; **and**
  - B. Performs work that is outside the usual course of the hiring entity's business; **and**
  - C. Is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed
- This is the test used by California courts



# CLASSIFICATION OF WORKERS – JOINT EMPLOYER ISSUES

What is a joint employer?

- Employee deemed to be employed by two or more entities
- Differences between joint employment and IC
  - Joint employment – workers are employees and receive benefits of employee status
  - IC – operate their own businesses and do not receive the benefits of employee status
- Companies deemed to be a joint employer are fully responsible for any employment-related liability arising out of an employment matter, including overtime/minimum wages, meal/rest premiums, and expense reimbursement

# RECOMMENDATIONS FOR REDUCING RISK

## Understand Key Risk Areas

- Lack of due diligence with respect to (1) use of contingent workers by business lines and (2) potential business partners
- Contracts that retain control over contractors, or managers that maintain control in fact (regardless of terms of the contract)
- Contractors that work alongside, and perform the same tasks as, employees
- Contractors that work only for one entity and perform work on a consistent and usual basis

# BEST PRACTICES FOR STRUCTURING THE INDEPENDENT CONTRACTOR RELATIONSHIP

- Allow IC to determine how, when, and where work will be performed
- Manage only results, not methods
- Avoid treating exempt employees and ICs the same
- Avoid training
- Arrange for ICs to use their own tools or equipment
- Off-site work preferable



# BEST PRACTICES

- Arbitration!
- Audit work relationships—"and in fact"
- Agency contractors with indemnity provisions
- Audit vendors and think about resiliency of indemnity agreements
- Standards for single-person service providers
  - Incorporation
  - Separate business and income
  - Website and advertising
  - Separate place of business with business address
- Consider cost/benefit of alternative arrangements (short-term employment)

# STAFFING AGENCY AGREEMENTS

- Indemnification provisions—but retain right to choose counsel and provide obligation for judgments/settlements and fees
- Compliance with law representations/compliance certification
- Confirm who controls hiring, training, evaluations, etc.
- Vendor does not supply workers exclusively for the employer, and workers and vendor are free to work for other firms
- Careful with communications from business to agency

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# **RECRUITING AND RETAINING FOREIGN NATIONAL TALENT**

# RECRUITING AND RETAINING FOREIGN NATIONAL TALENT

- Ask the safe questions, and only the safe questions, preferably on an application.
- The following language is acceptable if asked of all applicants:
  - Are you legally authorized to work in the United States? \_\_ Yes \_\_ No
  - In order to obtain or to maintain your employment eligibility, will you now or in the future require the company's sponsorship for an immigration-related employment benefit (e.g., H-1B, TN, etc.)? \_\_ Yes \_\_ No
- Hiring decisions based on an applicant's need for immigration sponsorship are not considered discriminatory, provided that the policy is not applied in an inherently discriminatory manner (sponsorship only of certain nationalities).

# WHAT DO I NEED TO KNOW?

The basics needed in order to assess visa options are:

- Job Offer

- Job Title
- Job Description
- Job Location
- Salary (or range)
- Job Requirements (degree/years)
- Start Date
- Supervisor/Manager
- # of Direct Reports, If Any

- Candidate

- C.V. or Résumé
- Prior/current US Immigration documents (e.g., receipts, approvals)
- Passport Bio Page
- Current I-94
- Information
  - *Degree level*
  - *Years of post-bachelor's experience*
  - *Prior time in H or L status*
  - *Family members?*

# TYPES OF NONIMMIGRANT (TEMPORARY) VISAS

- Based on proposed activities
  - Temporary intent a key factor in many visa categories, including B, F and J, but not H-1B or L-1.
  - Some common work visas:
    - **H-1B: Professional\***
    - H-1B1: Professional – Chile or Singapore
    - H-2B: Temporary Seasonal/Unskilled
    - **L-1: Transferee\***
    - **TN: NAFTA Professional**
    - **E-1/E-2: Treaty Trader/Investor**
    - E-3: Australian Professional
    - **O-1: Extraordinary Ability\***
  - Other temporary classifications:
    - B-1/B-2: Visitor
    - **F-1: Student**
    - J-1: International Exchange Visitor
    - VWP/ESTA: Visa Waiver Program
- \* = dual intent classification

# SCENARIO: STUDENT WITH F-1/OPT

- Post-Completion Optional Practical Training (OPT)
  - Limited to 12 months post-completion
  - Possible extension beyond 12 months for 24 additional months for STEM graduate and E-Verify employer
- OPT runs out of time and needs to be followed by an H-1B or another type of employment-authorized status



# H-1B BASICS

- Specialty occupation:
  - Job must require a specific degree
  - Candidate must have the specific bachelor's degree or the equivalent
  - Highly restrictive adjudicatory environment
- First-time H-1B petitions:
  - Subject to annual cap (lottery)
  - If the cap has been reached, cannot apply until the following April
    - Start date on/after October 1
- Current H-1B holder:
  - Candidate may switch employers only with a new petition
- Prevailing wage requirement
- Employer liable for reasonable costs of return transportation (to home country) if employee is terminated early
- Material change requires a new/amended petition
- Duration: cumulative total of 6 years

# H-1B FOR LIFE SCIENCE PROFESSIONALS

- Current restrictive adjudication standard:
  - Role requires a specific degree and individual possesses that degree
- Examples of stronger cases:
  - Chemist with a degree in chemistry
  - Biomedical engineer with a degree in biomedical engineering
- Examples of challenging cases:
  - Clinical data manager
  - Statistician
  - Market research analyst
  - Computer systems analyst

# H-1B BUDGETING

- Total budget should be around \$6,500 for initial petition with premium processing
  - Legal fees (+/- \$2,500)
  - Government filing fees (\$1,500 + \$500 + \$460)
  - Incidental fees (+/- \$250)
  - Optional: premium processing (\$1,410 + legal fees);
  - Family members will create additional costs
  - Possible education credentials evaluation required
- Wage and hour issues when employee pays H-1B costs
- Certain fees must be paid by employer

## O-1: EXTRAORDINARY ABILITY

- To qualify for an O-1 visa, the beneficiary must demonstrate extraordinary ability by sustained national or international acclaim and must be coming temporarily to the United States to continue work in the area of extraordinary ability.
- Extraordinary ability means a level of expertise indicating that the person is one of the small percentage who has risen to the very top of the field of endeavor.
- Typical Life Science O-1A positions:
  - Senior researcher or scientist
  - Chief medical officer
  - C-Level executive with record of significant achievement

# O-1: EXTRAORDINARY ABILITY

- Must either have received a major, internationally recognized award, similar to a Nobel Prize, or submit evidence to satisfy 3 of the 8 criteria below:
  - Receipt of a lesser nationally or internationally recognized prize or award for excellence in the field of endeavor
  - Membership in an association that requires outstanding achievement of their members as judged by recognized national or international experts
  - Published material in professional or major trade publications or major media about the foreign national that relates to the individual's work in the field
  - Participation on a panel or individually as a judge of the work of others in the same or in an allied field of specialization
  - Original scientific, scholarly or business-related contributions of major significance
  - Author of scholarly articles in professional journals or other major media
  - Has or will be employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation
  - Has or will command a high salary or other remuneration

# L-1 (INTRACOMPANY TRANSFEREE)

- L-1A: Multinational Manager or Executive
  - 7-year maximum
- L-1B: Specialized Knowledge
  - 5-year maximum
  - Distinctive and critical knowledge within the company; knowledge that is unusual in the industry and cannot be acquired outside the company
- Requirements
  - One year of employment in the last three years at parent, branch, subsidiary, or affiliate abroad
  - Must be coming to the US to work in executive, managerial, or specialized knowledge capacity
  - Corporate relationship between transferring entity and US entity
- Large multi-national companies can have “blanket” approvals to send employees from various entities abroad to the U.S. in L status

# E-2 VISA FOR TREATY INVESTORS

- E-2 Visa Based on Investment
  - U.S. Department of State's Treaty Countries
  - Owned by and be a national of a treaty country
  - Executive, or supervisory jobs, or have special qualifications
  - Can be used intermittently
  - Apply at consulate; no prior petition required
  - Duration: Initial stay of two years.
  - Timeline: 6-8 weeks once registered with consulate



# FREE TRADE VISAS

- TN Professional work visa for Canadians and Mexicans
  - NAFTA provides a schedule or list of professions
  - Professions include engineers, accountants, systems analysts, economists
  - Must generally have a degree or license in the relevant area
- H-1B1 for Chile and Singapore
- E-3 for Australia

# EXPECT THE UNEXPECTED

- No petition or application, however strong, is guaranteed
- Delays are common
- Petition approvals may be delayed by RFEs
- Visa issuance subject to delays in getting appointments, for background checks, and other issues.
- Don't assume that visa issuance will be a "quick trip"
- Delays in other areas: SSNs, driver's licenses



# THE CURRENT IMMIGRATION ENVIRONMENT

- Greater scrutiny and unpredictability in all petition adjudications
  - Shifting standards for adjudication
  - Increased frequency of RFE issuance
  - Lack of deference to prior approvals
- Increased focus on H-1B and L-1 site visits and fraud-detection activities
- Growing delays in adjudication at USCIS and consulates
- Additional changes to established processes and standards
- More restrictive CBP determinations of admissibility
- Expansion of worksite enforcement, I-9 audits, employer compliance investigations
- DOJ/IER pursuit of charges alleging discrimination against US workers

# MBVC695

Please save this number; you will need this to receive a Certificate of Attendance. You will be contacted within 30-60 days by our CLE administrative team. We will process your credits for other states where this program has been approved.

Please email Chris Chang at **[chris.chang@morganlewis.com](mailto:chris.chang@morganlewis.com)** if you have any questions.

A microscopic view of numerous red blood cells, which are biconcave discs, filling the frame. The cells are a deep red color and are slightly out of focus, creating a sense of depth. The lighting highlights the texture of the cell surfaces.

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# ISSUES TO CONSIDER IN THE PRC

# THE START OF THE EMPLOYMENT RELATIONSHIP

- Offer letter
- Background check
- Employment contract: Local hire versus secondment
- Data protection consent form – for employee data
- Immigration considerations
- Export control considerations / restrictions (US)
- Export of data considerations / restrictions (PRC)
- Non-competition agreement
- Proprietary information and inventions agreement
- Reward and remuneration agreement for inventors

# THE START: OFFER LETTER

- Not required, but often used
- Not binding, unless expressly incorporated into contract
- Include material terms and conditions:
  - Title
  - Remuneration
  - Benefits
  - Length of contract and probation period
  - Applicability of post-employment non-competition obligation
  - Requirement to sign proprietary information and inventions agreement
  - Requirement to sign reward and remuneration agreement

# THE START: STRUCTURING THE RELATIONSHIP

- Direct Employment
  - Employment Contract:
    - Fixed term
    - Open ended
    - Duration of project / task-based
- No Independent Contractors
  - Risks: employment, social benefits, tax, immigration
- Indirect employment – labor dispatch
  - Restrictions on numbers
  - Restrictions on roles
  - Not legally compliant without a local entity in that location
  - “Equal pay for equal work”



# THE START: EXPATRIATES - SECONDMENTS

- Provide clear documentation for assignment:
  - Governing law
  - Secondment or dual contracts?
  - Home vs. host country benefits
- Seconded must have employment relationship with entity affiliated with the China entity

# THE START: EXPATRIATES

- Immigration issues
  - Nationality and permanent residency status matters (!)
  - Thresholds for eligibility
    - Faster, easier documentation process if Category A visa (Shanghai figures):
      - Monthly salary of  $\geq$  CNY50,000 (approx. US\$7,400) and
      - Annual tax payment of  $\geq$  CNY120,000 (approx. US\$75,000)
      - Notarization of diploma and “no criminal record” cert not required
- Work and residence permits no longer required for HMTs
- Immigration process: work and residence permits
  - Where will employee work on daily basis?
  - Where will employee and family live?

# THE START: LABOR DISPATCH

- Not available for non-PRC nationals
- Limited to “temporary, auxiliary and substitute” positions
- Consultation required for auxiliary positions
- Limited to 10% of workforce of “user entity”
- “Equal pay for equal work” principle
- Lack of control over employment decisions – you are the “secondary” employer
- Staffing agencies
  - The actual employer, although liability may be joint and several
  - Little room for negotiation
  - Full indemnification

# PROTECTING COMPANY INTERESTS – THE AGREEMENTS

- Confidentiality Agreements
  - Reasonable time limit for maintaining confidentiality obligations
- Proprietary Information & Inventions Agreements
  - Locally enforceable with local entity
- Reward & Remuneration Agreements
  - Law applies to inventions during employment term and within 1 year of termination based on employee's work
  - Three types of employee inventions:
    1. Service inventions
    2. Service-related inventions
    3. Non-service inventions

# PROTECTING COMPANY INTERESTS – THE AGREEMENTS

Reward & Remuneration Agreements (cont'd) – statutory minimums *unless agreement otherwise*:

- Reward for patent inventions:
  - Payable within 3 months from the grant of the patent:
    - $\geq$  CNY 3,000 (approx. US\$445) per invention patent; or
    - $\geq$  CNY 1,000 (around US\$150) per utility model or design patent.
- Remuneration:
  - Payable annually throughout the validity period of the patent or by way of a corresponding lump-sum payment at no less than 2% of the operating profit generated from the exploitation of an invention or utility model patent; or
  - Payable at the time of licensing the patent at no less than 10% of the royalties generated.
- Reward for patent inventions:
  - $\geq$  5% of the additional profit acquired from implementing the invention for three to five years consecutively; or
  - $\geq$  20% of the net proceeds acquired from assigning the invention.

# PROTECTING COMPANY INTERESTS – THE AGREEMENTS

- Non-competition Agreements
  - Two-year limit
  - Scope and territory subject to agreement
  - Restraint can only restrict employee's right to work for an employer that produces the same type of products or is engaged in the same type of business, or from establishing a competitive business himself
  - Only enforceable against senior managers, senior technicians and those with access to trade secrets / confidential information
  - Requires financial consideration during the restraint period:
    - Jiangsu Province: 1/3 of average monthly salary
    - Shenzhen: 50% of average monthly salary
    - Beijing: 20-60% of wages
  - PRC Law is silent regarding non-solicitation clauses

# PROTECTING YOUR IP

- Protective measures
  - Identify confidential information
  - Identify and mark trade secrets
  - Physically and electronically protect the confidential information (entry and exit access system, remove software access to the product)
  - Providing regular internal training
  - Signing legal documents (employment handbook, confidentiality agreement, non-compete agreement, etc.)
  - Monitor the protection of IP in daily operations
  - Establish hotline/complaint channel for employees and third parties to report any violation
  - Preserve evidence and take disciplinary actions against employees who violate confidentiality obligation

# PROTECTING YOUR IP

- Protective measures to consider:
  - Restricting printing function
  - Restricting downloading or copying to external device
  - Prohibiting or restricting use of social media to conduct business (WeChat phenomenon)
    - Impact and overlap with compliance program
  - Metal detectors at entrance (similar to airport screening)
  - Mandatory check-in of smartphone or sticker over camera
  - Splitting access to trade secrets
  - Monitor employee download and access activity, particularly during notice period



# COMPENSATION AND BENEFITS: OVERTIME

- Default is standard working hours system
  - 8 hours/day, 40 hours/workweek
  - Employee consent required for OT work
- District-level government approval generally needed for alternative working hours system
  - Flexible, comprehensive working hours systems
- Express consent needed
- Compensatory time off only available for OT on regularly scheduled rest day
- Penalty: unpaid overtime + penalties
- A release may not get you out of alleged OT claims

# UNIQUE CHINA CONCERNS

- Strict data protection laws
  - covering employee data
  - third party personal and sensitive personal data: patient and clinical testing data
- Frequent interactions with HCPs / government officials
  - Generally, HCP in China = government official
  - *Anticorruption risks*: need robust policies and monitoring of conduct
  - Control of samples
  - Third party interactions – labs, testing centers, suppliers, etc.

# UNIQUE CHINA CONCERNS

- Equity is regulated
  - Requires filing and approval with State Administration of Foreign Exchange (SAFE)
  - Before a company is listed or if the equity plan is not filed and approved by SAFE, there is no effective and legally enforceable way to grant equity to Chinese nationals
  - Consider collecting wet signature to terms and conditions of equity awards
  - Courts are mixed: local employment dispute or a “foreign contractual dispute”

# Biography



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Kimberley has spent her entire legal career advising employers on labor and employment matters, including life sciences companies from startups to public conglomerates.

Kimberley handles litigation and counsels clients on labor and employment issues including enforcement of restrictive covenants, misappropriation of trade secrets, accommodating employee disabilities and medical leaves, and addressing harassment claims, employee disciplinary issues, termination decisions, and reductions in force.

Kimberley works closely with clients to address their workplace and employment concerns, including developing policies and drafting and negotiating employment agreements. When necessary, she conducts internal investigations into harassment and discrimination claims, and provides sexual harassment, antidiscrimination, internal investigation, reasonable accommodation, and other training for management and human resources personnel.

# Biography



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Russell R. Bruch defends corporate clients in employment litigation, including collective and class actions and wage and hour matters, in US federal and state courts. He represents clients at the district court and appellate levels in claims under the FLSA, ADA, ADEA, and Title VII. He also arbitrates and litigates matters relating to the enforcement of noncompetition agreements and employment contracts.

Russell advises clients in diverse sectors on compliance with the FLSA, the Service Contract Act, state wage and hour issues, per diem issues, and wage payment requirements. He also counsels on employment policies and procedures, hiring and termination issues, and executive employment contracts in order to help clients avoid claims and litigation.

Through his experience conducting numerous comprehensive internal wage and hour audits for clients, Russell helps to properly classify employees as exempt or nonexempt, and to bring other wage and hour and wage payment practices into compliance. He also works with employers to manage financial and employee relations issues associated with reclassification projects. Russell has represented clients in US Department of Labor (DOL) audits and negotiated favorable settlements.

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Eric S. Bord is nationally-recognized as a leading business immigration attorney and counselor to clients on corporate immigration issues involving the recruitment, hiring, transfer, and retention of personnel worldwide. He also heads Morgan Lewis's immigration compliance and risk management practice and regularly advises businesses on compliance and risk management in connection with their global immigration programs. This includes counseling on compliance with I-9 and E-Verify rules, representing clients during immigration investigations and in response to charges, and conducting immigration due diligence for corporate transactions.

Eric's clients come from a variety of industries, including the retail/eCommerce, financial, technology, healthcare and life sciences, energy, manufacturing, and media sectors. Clients hire Eric to manage their global immigration programs or to partner with their in-house immigration teams. He covers the entire spectrum of business immigration, including all matters for temporary and permanent business, technical, scientific, and executive personnel as well as outbound/global visas.

Clients value Eric as an immigration lawyer in a full-service law firm, where his strategic guidance and experience are informed by his work with lawyers in other practices that intersect with immigration, such as labor and employment, benefits, tax, and mergers and acquisitions.

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K. Lesli Ligorner has more than 20 years of experience serving clients on a wide range of labor and employment matters, with more than 10 of those years spent on the ground in China. She has been advising a broad range of financial services; telecommunications, media, and technology; life sciences; and general manufacturing clients on the full suite of employment issues in China, including involving hiring and termination, establishment and enforcement of company policies, the Foreign Corrupt Practices Act (FCPA) and local anticorruption compliance, and discrimination and harassment policies, training, and investigations.

Lesli leads the labor and employment practice in mainland China and handles cross-border employment matters and internal investigations across the Asia-Pacific region.

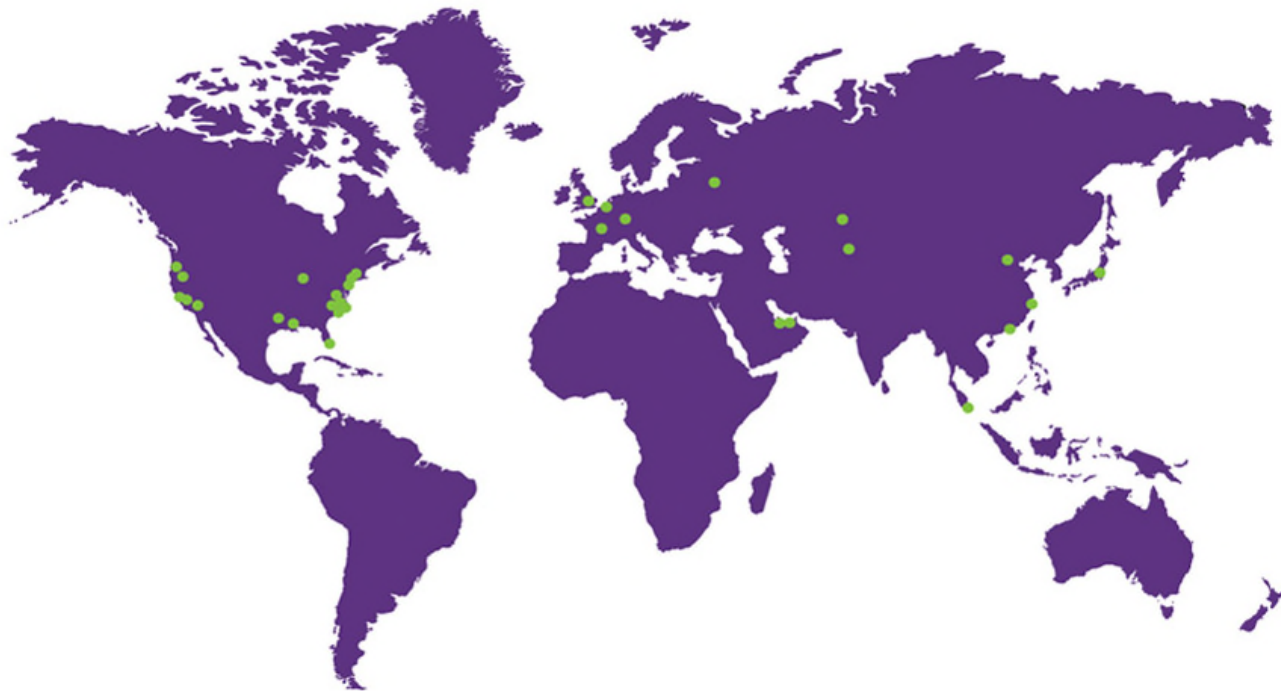
She also advises on global mobility and immigration, employment and anticorruption due diligence in mergers and acquisitions, leaves of absence, wage and hour laws, intellectual property protection, and unionization and collective bargaining.

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