

EMPLOYMENT LAW DESK REFERENCE

Throughout the life cycle of a start-up, it is important to seek consultation when many key issues, situations, and milestones arise. Refer to this document regularly and consider contacting an Epstein Becker Green employment, employee benefits, or immigration lawyer if:

ONBOARDING AND COMPENSATION

- » You are considering hiring your first employee.
- » You are posting a job description.
- » You are hiring an individual with an existing non-compete from another employer.
- » You want to hire a non-citizen.
- » You are hiring an intern.
- » You are engaging an independent contractor or freelancer.
- » You are preparing to enter into stock-option and deferred compensation arrangements.
- » You are paying someone solely with deferred compensation or stock options.
- » You have independent contractors performing the same job function as W-2 employees.
- » You want to offer health care coverage to your workforce.

MANAGING EXISTING WORKFORCE

- » You have a longtime independent contractor.
- » You learn that an employee wants to take a leave of absence of any kind.
- » You receive a phone call, a letter, or any other document from an attorney, a court, or a government agency.
- » You want to protect yourself against an employee who may be in a position to take your ideas and go work for a competitor.
- » You are not sure whether a person is entitled to overtime compensation.
- » You are concerned about an employee's performance or behavior.
- » You are contacted by a union seeking to represent your employees.

SEPARATION

- » You are preparing to terminate an employee for poor performance.
- » You wish to terminate an employment or a consultancy agreement.
- » You have a worker who is leaving and may be in a position to take your clients, your talent, and/or your ideas and go work for a competitor or himself/herself.
- » You are considering paying an employee severance.
- » You receive a "lawyer's letter" from an attorney representing a former employee.
- » A former employee files for state unemployment benefits, and you receive notice of same.
- » You plan to merge, buy, sell, or close your business.

It Is Also Important to Know the Thresholds for Coverage Under Several Key Statutes—Triggered by Employee Count

EMPLOYEE COUNT	STATUTE APPLICABLE
<p>0-3 employees</p>	<ul style="list-style-type: none"> » Fair Labor Standards Act (“FLSA”)—establishes minimum wage, overtime pay, and related requirements. » New York State Wage and Hour Law—sets minimum wage, overtime pay, worker misclassification, and related requirements. » New York State Labor Law—establishes the minimum wage as well as regulations concerning hours of work, payment of wages, deductions from wages, and related requirements. » New York Wage Theft Prevention Act—requires employers to give written notice of wage rates to each new hire in his or her primary language, including overtimes rates (if applicable). » New York City Earned Sick Time Act—establishes requirements for providing employees with unpaid sick time policies that comply with the statute’s requirements (once an employer has five employees, it must provide paid sick leave). » California Labor Code and Industrial Welfare Commission Wage Orders—specify wages, hours, and working conditions (including minimum wage, overtime pay, and meal/rest break requirements), and provide record-keeping requirements for personnel and payroll records. » California Wage Theft Prevention Act—requires employers to provide notice to new hires of information pertaining to wages and sick leave entitlements. » California Fair Employment and Housing Act (“FEHA”)—prohibits harassment and requires employers to take reasonable steps to prevent harassment and to investigate harassment claims. » California Healthy Workplaces, Healthy Families Act—establishes minimum paid sick leave requirements for employees who work more than 30 days in California during their first year of employment. » California Kin Care Law (Labor Code 233)—entitles an employee to use up to one-half of his or her annual paid sick leave to attend to the care of a “family member” (as defined by the statute).
<p>4 or more employees</p>	<p>All of the above statutes, plus:</p> <ul style="list-style-type: none"> » New York State Human Rights Law—prohibits discrimination in employment based on age, creed, race, color, sex, sexual orientation, national origin, marital status, domestic violence victim status, disability, military status, arrest record, conviction record, and predisposing genetic characteristics. » New York City Human Rights Law—prohibits employment discrimination in hiring, firing, and work assignments; salary; benefits; promotions; performance evaluations; and discipline on the basis of actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, or alienage or citizenship status of any person.
<p>5 or more employees</p>	<p>All of the above statutes, plus:</p> <ul style="list-style-type: none"> » New York City Earned Sick Time Act—establishes requirements for providing employees with paid sick time policies that comply with statutory requirements. » California FEHA—requires equal employment opportunities, and provides protection against discrimination or retaliation in employment because of age, ancestry, color, race, religious creed (including religious dress and grooming practices), mental or physical disability (including HIV and AIDS), marital status, medical condition (cancer and genetic characteristics), genetic information, military and veteran status, national origin (including language use restrictions), race, sex (which includes pregnancy, childbirth, breastfeeding, and medical conditions related to pregnancy, childbirth, or breastfeeding), gender, gender identity, gender expression, and sexual orientation. » California Pregnancy Disability Leave Act—provides up to four months of unpaid leave to employees who are disabled due to pregnancy, childbirth, or related medical conditions.
<p>15 or more employees</p>	<p>All of the above statutes, plus:</p> <ul style="list-style-type: none"> » Title VII of the Civil Rights Act of 1964 (“Title VII”)—prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex, or national origin. » Americans with Disabilities Act of 1990 (“ADA”)—requires reasonable accommodation and prohibits discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.
<p>20 or more employees</p>	<p>All of the above statutes, plus:</p> <ul style="list-style-type: none"> » Age Discrimination in Employment Act of 1967 (“ADEA”)—prohibits discrimination against people who are age 40 or older. » Consolidated Omnibus Budget Reconciliation Act (“COBRA”)—requires access to continued health coverage after termination and in other circumstances (consider also state “mini-COBRA” laws for lower thresholds).
<p>50 or more employees</p>	<p>All of the above statutes, plus:</p> <ul style="list-style-type: none"> » Family and Medical Leave Act (“FMLA”)—provides certain employees with up to 12 weeks of unpaid, job-protected leave per year and requires that their group health benefits be maintained during the leave. » California Family Rights Act—provides similar benefits to California employees as the FMLA with some key distinctions, including coverage for registered domestic partners. » California FEHA—employers must provide at least two hours of anti-harassment training to supervisors every two years. » Affordable Care Act—requires employers with 50 or more full-time (including full-time equivalent) employees to offer compliant health care coverage to its full-time employees and their dependents or be subject to shared responsibility payments.