

# SET IT UP AND STAFF IT RIGHT

## A Legal Guide for Small Business Success and Costly Mistakes to Avoid

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PRESENTED BY: CHRISTINA M. REGER, ESQ.



# About SCORE

As a resource partner of the SBA, we help small businesses by:



Providing free business advice and mentoring



Offering low or no-cost business training



Sharing free business templates and resources

Request a SCORE mentor at [www.score.org/find-mentor](http://www.score.org/find-mentor)

# Your Presenter

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Law and Compliance Counselor &  
Co-Founder



*(The Fine Print: While we hope this session will contain information you find both useful and fascinating, nothing we discuss will constitute legal advice, and your time spent with us today will not create an attorney-client relationship).*

# AGENDA

- The importances of setting up your business correctly
- Independent Contractors vs Employees
- Common Hiring Pitfalls
- Restrictive Covenants
- Remote Workers and Multi-Jurisdictions
- Discipline and Termination Best Practices





# **PART ONE**

## **The Importances Of Setting Up Your Business Correctly**

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# Starting a Business and Making it Official

- Get an EIN
- Start an LLC

## What are the benefits?

- ❑ Protect yourself
- ❑ Protect your brand

## What are the requirements?

- ❑ Pass through impact on taxes
- ❑ Open bank accounts in LLC
- ❑ Enter contracts
- ❑ Get business licenses and permits



# How Do I Protect Myself?



## What is the Right Corporate Structure?

- Corporate Structures
  - ❑ Protect your personal assets
  - ❑ Provide tax benefits
  - ❑ LLC, LLP, S Corp., C. Corp. or Inc.
- When to have a multi-level LLC

## Bringing on a Partner?

- The Importance of Having an Operating Agreement or Shareholder Agreement
  - ❑ Decision-Making
  - ❑ Dispute Resolution
  - ❑ Termination or Withdrawing partner





# **PART TWO**

## **Independent Contractors vs Employees**

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# The Current State of the Law

- Eliminated 6 Factor Test (Federal Level)
- New Rule Focuses on 2 Factors
  1. Degree and Control of the Work
  2. Opportunity for Profit and Loss

Proposal emphasizes **"the actual practice of the parties involved"**

\* Keep in mind – the State Law has not changed



# The PA State IC Analysis

## State rules still apply – the 6 Factor Test

Opportunity for Profit/Loss

Investments by Worker vs Potential Employer

Degree of Relationship Permanence

Degree and Nature of Control

Integral Part of Business

Skill/Initiative



# To Hire or to Contract and Why It Matters

## FIRST

- Examine what you need worker to do
- Length of time for proposed work
- Control over work
- Cost of an employee

## THEN

- Have a good independent contractor agreement
- Encourage EIN/LLC if worker does not have
- Business Cards





# PART THREE

## Common Hiring Pitfalls

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# Hiring Landmines That Could Create Liability



- Applications Errors
- Interviews:
  - Follow up on Gaps
  - Confirm employment history complete
- Background Checks – Don't skimp out
  - Following the FCRA
- Minimum Wage Increase?
- Job Descriptions – why are they important?
  - Can they perform with or without reasonable accommodations?
  - Sign them

# Onboarding New Employees



- Allow employees time to review documents
- Have a handbook
  - DON'T CHAT GPT IT!
  - Consider signing significant policies separately if applicable
  - Medical Marijuana considerations
- Complete the I-9
- Training
- Signing Restrictive Covenants - **NEXT**

# How Do You Pay Your Employees?

- Avoid Misclassification
- How do you decide if someone is paid hourly or salary?
- Governed by the FLSA
- Five Exemptions
  - Executive
  - Administrative
  - Professional
  - Computer Employee
  - Outside Sales



# Getting it Right

## OPERATING ASSUMPTION

EVERY Employee is an HOURLY worker

UNLESS

They qualify for an EXEMPTION

## TO QUALIFY FOR AN EXEMPTION

The Salary  
Test

AND

The Duties  
Test



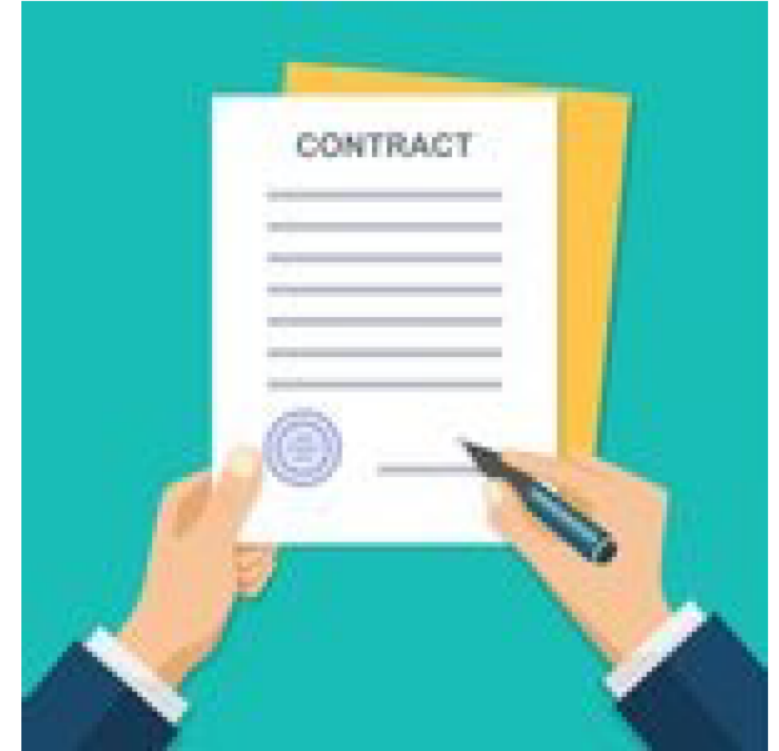
# PART FOUR

## Restrictive Covenants

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# What are Restrictive Covenants?

- Confidentiality Agreements
  - A cautionary tale about confidentiality
- Non-Disparagement Agreements
- Non-Compete Agreements
- Non-Solicitation Agreements
- Work-for-Hire Agreements



# Considering and Drafting Restrictive Covenants

## Questions to Ask Yourself:

- What confidential information do you have that you want to protect?
- What are some examples?
- What is the employee's role?
- What is the difference between a non-compete and a non-solicitation agreement?
- Why would I have one or the other?

# Considering and Drafting Restrictive Covenants – Tips on What to Include

## Issues to Consider:

- How do you define confidential information?
- What is the geographic region?
- What is the time period?
- Do you have moonlighting / conflict of interest policies for current employees?



# PART FIVE

## Remote Workers and Multi-Jurisdictions

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# Considerations When Employing Remote Workers



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- Where are they located – in state vs out of state?
- Worker's Compensation
  - If in state – Does Insurance cover?
  - If out of state – check
- Register to Do Business – Create Nexus
- Unemployment – per state



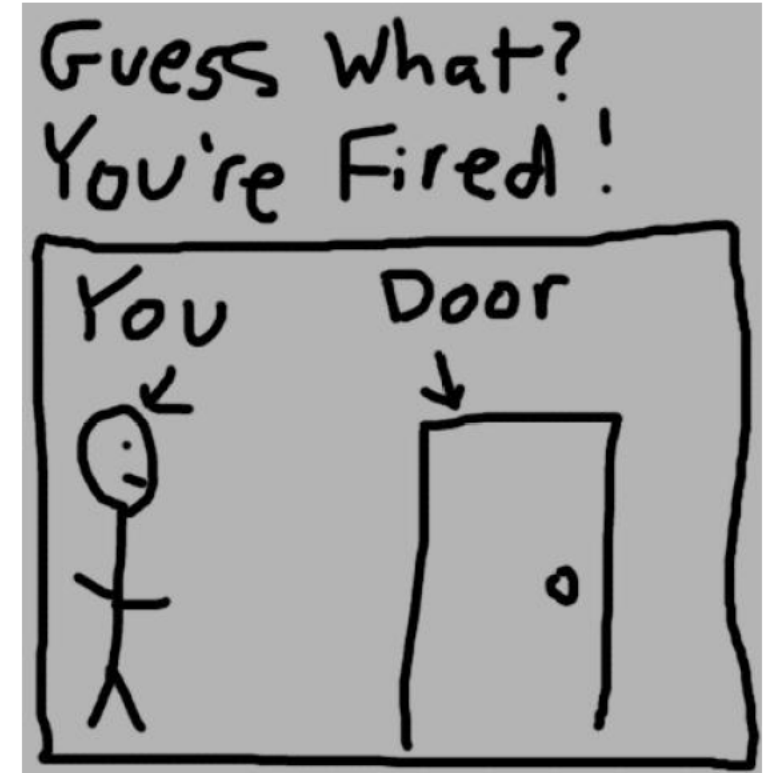
# **PART SIX**

## **Discipline and Termination Best Practices**

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# FIRING SMART: DISCIPLINE & TERMINATION BEST PRACTICES

- Establish Clear Policies – Employee handbooks should be up to date.
- Apply Policies Consistently – Avoid discrimination claims.
- Document Everything – Performance issues, warnings, and decisions.
- Progressive Discipline?
- Consider Severance



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**THANK YOU!**

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**PLEASE CONTACT US WITH ADDITIONAL QUESTIONS OR COMMENTS.**

# Helpful Links

- Find SCORE resources for small businesses at [www.score.org/templates-resources](https://www.score.org/templates-resources)
- Find more SCORE live and recorded workshops and courses at [www.score.org/get-business-training](https://www.score.org/get-business-training)
- Book an appointment with a SCORE mentor at [www.score.org/find-mentor](https://www.score.org/find-mentor)





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