

# Employee Thresholds That Trigger Key Employment Laws - Regulations & Issues to Look for in 2023

Presented by

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# Overview

- Applicable Legal Issues
- Independent Contractors v. Employees
  - Differences
  - How to Distinguish
  - Problems with Misclassification
- Key Legal Considerations as Your Business Grows
- Recommendations
- Immigration Insights

# Employees v. Independent Contractors

- Differences
  - ICs do not have rights to many employment benefits (i.e. workers compensation, unemployment, wages/withholding)
- How to Distinguish
  - Very fact specific (common law test)
    - Factors:
      - (1) right to control; (2) equipment; (3) method of payment; (4) right to fire
        - DOL rule also focuses on control and clarifies “economic realities” test with new “multifactor” rule.
- Agreements?
  - Helps, but not dispositive
- Problems with Misclassification

# Key Legal Considerations as Your Business Grows

- FLSA
  - “Interstate commerce” – nearly all workplaces are covered
  - Minimum wage
  - Overtime
  - Recordkeeping requirements
- SC Payment of Wages Act
  - 5 or more employees
- SC Workers Compensation
  - 4 or more employees

# Key Legal Considerations as Your Business Grows, Cont.

- Americans with Disabilities Act (ADA) / SC Human Affairs Law
  - 15 or more employees
  - *Highest percentage of EEOC claims*
  - ADA applies to applicants, too!
- Title VII / South Carolina's Anti-Discrimination Statute
  - 15 or more employees
- Age Discrimination in Employment Act (ADEA)
  - 20 or more employees
- Family Medical Leave Act (FMLA)
  - 50 or more employees

# 2023 and Beyond

- FTC's Proposed Ban on Non-Competes
- PUMP Act
- Hiring and Retention Challenges?
- Is the “Great Resignation” becoming the “Great Regret?”
- Is “Quiet Quitting” still a thing?

# Recommendations

- Plan Now!
- Onboarding
  - Offer Letter
  - Discipline
  - Progression
  - Communication
- Handbook

# Immigration Insights

- Hiring - what questions can I ask?
- Options for sponsorship
  - Common visa types: F-1, H-1B, TN, L-1
  - Expectations
- Onboarding – how do I verify status?
- Obligations after employment
  - Withdrawal, travel costs



# Immigration Insights – the bad!

- H-1B lottery odds continue to decrease
- PERM delays with DOL
- Filing fee increases on the horizon
- Online filing options?

# Immigration Insights – the good!

- Expanded premium processing
- Improved consular appointment availability
- Adjudication of concurrently filed applications
- Online filing options?

# Thank you!

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