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EFF BOOT CAMP: Employment Basics for Start-Ups

Jennifer G. Redmond
Sheppard, Mullin, Richter & Hampton LLP
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WHEN YOU ARE LEAVING – WHAT TO DO (AND NOT DO)

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Restrictive Covenants

- Check your contracts – what contractual obligations do you have?
- Look at employment agreement, bonus plan, equity grants, etc.
- Are those obligations enforceable?
Check with a lawyer

Restrictive Covenants (cont.)

California Rules (but watch out for choice of law) when no exception applies

- Can restrict solicitation of employees
- Cannot restrict solicitation of customers except through use of trade secrets
- Cannot impose noncompete
- Can require return of all company materials

Restrictive Covenants (cont.)

California Rules (but watch out for choice of law) when no exception applies

- Can require confidentiality
- Can make preparations to compete
- Can announce new enterprise to customers of former employer (even if customer list is a trade secret)

What can you take with you?

- Take nothing without permission!
- Taking former employer materials is quickest route to expensive lawsuit
- Check home computer and laptops to take make sure all materials returned or destroyed at employer direction
- Get permission to take contacts

When are broader restrictive covenants enforceable?

- If you sold your business
- If you are member of an LLC or partner
- If necessary to protect trade secrets
- If you came from out of state or have choice of law provision (maybe)

What are trade secrets?

- Is subject to reasonable efforts to maintain secrecy
- Has independent economic value as a result of secrecy
- Customers lists – it depends



HOW TO PROTECT YOUR NEW COMPANY

Implement IP protection plan

- Confidentiality agreements
- Intellectual property assignments
- Employee non-solicitation?
- Identify trade secrets
- Protect access to trade secrets
- Audit

Screening process

- Check to see if applicants are restricted from working for you
- Make sure that applicants do not bring anything with them
- Drug testing?
- Background checks?



**EASY STUFF THAT CAN
CAUSE BIG PROBLEMS IF
YOU GET IT WRONG**

At-will employment

- At option of either party, can terminate without reason or notice
- Put it in writing
- No modification except in writing

Written agreements

- Promises should be reduced to writing
- Bonus and commission in plans should be in writing and vetted for wage and hour compliance

Handbook/Posters

- Make sure you know what laws apply to you
- Distribute handbook with required policies
- Put posters up!

No harassment policy

- Applies immediately – 1 or more employees

I-9 compliance

- Do it!
- Fill out forms as directed
- Maintain records
- Audit

Keeping track of new laws that apply as you grow

- Anti-discrimination laws – 5 employees
- Pregnancy disability leave – 15 employees
- Disability accommodation – 15 employees
- ADEA – 20 employees
- FMLA – 50 employees within 75 mile radius
- SF Paid leave ordinance – 1 employee in SF
- Supervisor anti-harassment training – required every 2 years – 50 employees

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**HARDER TO GET RIGHT,
BUT REALLY IMPORTANT**

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Wage and hour compliance

- Meal and rest periods
- Employee classifications – exempt/nonexempt
- Overtime
- Off-the-clock work
- No deferred wages
- Steve Jobs \$1 pay issue

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Making judgments on key employee policies

- Arbitration
- Blogging
- Internet usage
- Cameras
- IMs
- Texting
- Twitter
- Romantic relationships
