

What Your Employees' Attorneys Know (That You Don't)

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Introductions



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Goals & Takeaway

Today's session is about what happens when everything goes wrong between the employer and employee....

... and how to prevent that.



Agenda

- Where Legal Exposure Starts for Employers
- “Good” Employers vs “Bad” Employers
- The Claims That Show Up Most Often
- Misclassification is More Common than Most Employers Realize
- State-specific Traps That Catch Employers Off Guard
- Why Documentation Wins or Loses a Case
- The Cost of Waiting
- What to Fix Before It Becomes a Lawsuit



Where Legal Exposure Starts for Employers

- Most exposure traces back to how HR responsibility gets assigned in the first place
- Untrained managers or HR staff creates liability
- Uninformed business owners creates the same risk
- The businesses that avoid trouble are the ones that ask questions before a problem exists



“Good” Employers vs “Bad” Employers

- There are employers who try to comply with the law, but the law is complicated and they don't always get it right
- There are employers who may do the wrong thing for “the right reason”
- There are employers who put their head in the sand
 - “We’ve done it this way for 20 years”
 - “We’re like a family”
 - “I take care of that employee”



The Claims That Show Up Most

- Wage and hour
 - Failure to pay overtime properly
 - Tipped occupations
 - Wage and hour laws are technical and damages can be significant
 - Salary alone doesn't make an employee exempt from overtime rules
- Discrimination/Retaliation
- Disability or leave accommodations
 - PFML / FMLA
 - Accommodation requests are expanding well beyond physical disabilities, including ADHD, autism, and remote work needs
- Other common calls that are not true legal claims:
 - Unfair treatment
 - Bad management



Misclassification is More Common than Most Employers Realize

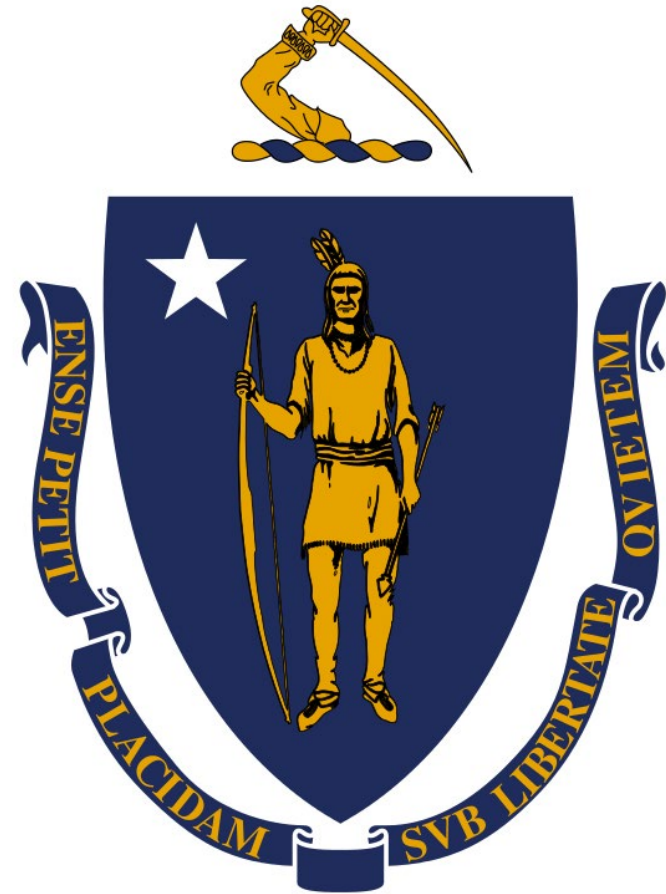


- Independent Contractor (1099) vs Employee
- A significant number of employers aren't fully compliant with wage and hour law
- Calling someone an independent contractor doesn't make it true



Massachusetts Rules Create Hidden Exposure

- Triple damages for paying an employee even one day late
- MA PFML carries a six-month presumption of retaliation for employees returning from leave
- Non-competes remain enforceable in MA, despite common misconceptions
- More rigorous standard than Feds for Independent Contractor Status



Why Documentation Often Wins or Loses a Case

- Performance reviews, written warnings, and email records are critical
- Without documentation, it becomes he said, she said, which frequently favors the employee
- If it was not written, it becomes harder to prove what happened, leading to factual disputes and credibility determinations
- Lack of documentation also makes it harder to establish no probable cause or prevail at summary judgment



The Cost of Waiting

- A \$1,000 conversation with legal counsel upfront can prevent a \$25,000 problem later
- Legal exposure is rarely about bad intent, it's about ignorance of the law and penalties that follow
- Employees may file a complaint against the employer with an agency like Department of Labor (DOL) or Massachusetts Commission Against Discrimination (MCAD), putting the employer under the spotlight





Other Traps

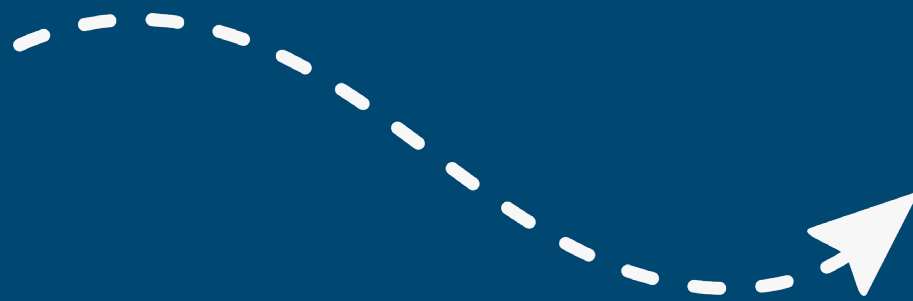
What to do Differently

- Hire employment counsel before hiring your first employee, not after a termination goes wrong
- Train managers to document everything and communicate clearly
- Most legal exposure comes down to management practices, not intentionally making illegal decisions



Questions?

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