

FOR YOUR INFORMATION

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Did you Know:

- Our firm has a Chicago loop consultation and meeting location in Greektown.
- Our firm can currently offer the translation of documents in the Spanish, French, Polish, German, Mandarin, Urdu, Hindi and Punjabi languages.
- Our firm has a new website. Please check it out!!

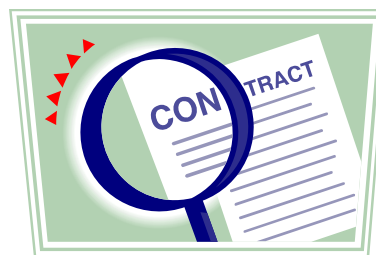
WHEN WAS THE LAST TIME YOU LOOKED AT YOUR CONTRACT?

Many employers rely on boilerplate form contracts to conduct their business. While these contracts can be useful as a starting point, it is likely that they can be improved upon to better suit your own particular business's needs. Common contract problems that we see in our practice revolve around jurisdiction, duties, remedies, and dispute resolution issues.

Jurisdiction. Many people do not realize that if they do business with a company headquartered in another state and they are unable to resolve a problem, they may not be able to successfully sue that company in the State of Illinois for relief, but would have to file suit in the state where that business is located, greatly adding to legal costs. You can reduce the risk of this happening, however, if you:

1) Specify that the choice of law for your contract should be Illinois law; 2) Specify that the forum for any disputes will be your local county court (e.g. DuPage County Circuit Court); and 3) Require the other party to agree in advance to submit to Illinois personal jurisdiction. You should also take care that you yourself do not unintentionally submit yourself to another state's jurisdiction by how you are marketing your business, e.g. having a highly interactive website.

Duties. Contracts often only specify the payment duties of the parties, but in reality, all



important responsibilities of each party that could result in loss or contract failure, e.g. meeting deadlines, should be clearly referenced to prevent misunderstandings. You can only breach a duty if it is in the contract! You should also take care not to agree to a duty yourself that you know you cannot guarantee.

Remedies. People should not assume that all of their losses in a failed business transaction will be covered by their contract, but should consider the appropriate remedy for each separate breach of duty. You cannot usually get reimbursed for your legal fees, for example, unless your contract specifies so, or unless the statute you are using to sue allows it. You also may not be able to assess late fees and penalties for non-payment without advance notice. Before signing a contract, try to consider every worst case scenario, and what your losses could be for each possible situation. Sometimes it may not be possible to accurately estimate in advance what a loss would be, but a liquidated damage provision could be helpful. Conversely, if you are

facing a contract that provides for a long list of possible remedies for the other side, be sure to ask for clarification of what it could cost you before you sign it.

Dispute Resolution. Sometimes there are less costly alternatives to litigation that are just as effective. Dayna Wheatley, herself a certified mediator, strongly advocates mediation and believes that it can lead to more satisfactory outcomes. The Center for Conflict Resolution (CCR) in downtown Chicago is a highly reputable, non-profit organization that does not charge for its services. Arbitration via an agreed-upon arbitrator or arbitration service is another option. If you want to use an alternate dispute resolution method, however, you should agree to it in advance. A right to litigate provision can still be included if that method fails, or if a party is not satisfied with an outcome.

Final Tip: If you do draft or modify a contract yourself, you should have an attorney review it to ensure that it will be enforceable and otherwise complies with the law.

These guidelines are useful to assist in designing a compliance program, even though you will hopefully never have to use them in a criminal context.

CORPORATE I-9 COMPLIANCE PROGRAMS

As many of you are aware, the U.S. Government is no longer relying on civil fines to enforce I-9 violations, but is now criminally charging employers.

An effective corporate compliance and ethics policy and program is a good idea for preventing violations. More than that, however, it is also a mitigating factor a judge will consider under chapter 8 of the U.S. Sentencing Guidelines Manual, as long as it meets the following seven requirements:

- 1) The establishment of standards and procedures to detect and prevent criminal conduct.
 - 2) Board or committee, and senior management oversight;
 - 3) Screening management personnel for past illegal conduct;
 - 4) Training/dissemination of information regarding compliance and ethics for directors and employees;
 - 5) Monitoring compliance with and auditing the effectiveness of the program;
 - 6) Program promotion and enforcement;
 - 7) Appropriate response to program violations.
- Steps your company can take to achieve these goals include:
- Develop a process for handling social security no-match letters;
 - Develop a process to address post-hire and initial I-9 completion issues
 - Ensure that subcontractor agreements include warranties that they will comply with immigration laws
 - Be familiar with legal immigration sponsorship requirements.
 - Be clear as to how to avoid discrimination

UPDATE: NO MATCH LETTERS

In our previous newsletter we discussed the Immigration & Customs Enforcement's (ICE) proposed regulations on "no-match" letters meant to address the unlawful hiring and employment of illegal aliens.

In August, 2007, the Department of Homeland Security (DHS) amended the regulation describing the legal obligations of an employer under the Immigration Reform and Control Act of 1986 (IRCA) after receiving a "no-match" letter from the Social Security Administration (SSA) or a "notice of suspect documents" letter from ICE. The regulation also explains "safe-harbor" procedures that employers can follow in response to receiving such notices to be certain that DHS would not use them to support an allegation that they had "constructive knowledge" that the employee referred to in the letter was an alien not authorized to

work in the United States.

In October, 2007, various labor unions and business groups were successful in obtaining a preliminary injunction, issued by Judge Charles Breyer of the Northern District of California, to stop DHS from implementing the regulation. *AFL-CIO v Chertoff*, N.D. Cal. No 3:07-cv-04472-CRB. As a result, DHS was prohibited from mailing or otherwise sending employers SSA "no-match" letter packets that included DHS guidance letters explaining the regulation. This injunction bars the regulation from taking effect until the district court decides the case on the merits, or until a higher court overrules the injunction.

On December 14, 2007, Judge Breyer granted DHS's request to stay the lawsuit until March 28, 2008 so the agency could conduct additional rulemaking actions to address concerns raised by the court. Without conceding

any of the issues in the pending litigation, on March 26, 2008, the DHS published a supplemental proposed rule. This rule does not alter any of the safe harbor procedures that employers can take in response to receiving a no-match letter, but instead: (1) clarifies DHS's policy on no-match letters; (2) alters the regulation's anti-discrimination language; and (3) provides an initial regulatory flexibility analysis. This regulation is in effect until *AFL-CIO v Chertoff* is decided.

Pending case outcome, it continues to be important for employers to take appropriate steps to deal with those employees listed on prior no-match letters, to take timely action to improve I-9 compliance, and reduce the risk of audits. Ensuring you have a corporate compliance program, as detailed above, is the best means to accomplish that goal.

PERSONNEL CHANGES AND FIRM UPDATES

We have a new attorney in residence, Wendy Taube. Wendy is not an associate of Dayna Wheatley, LLC, but she is of counsel. An "of counsel" attorney is an affiliate of a law firm who may be involved with cases but is not a member, partner, or associate. Wendy Taube practices real estate law and may be assisting Dayna Wheatley in these types of matters as well as with some civil litigation. Wendy has a 20 year background in real estate and construction. She is also fluent in German.

Robert Shindler is also being added to the firm as of counsel. Robert Shindler is the founder of "Abogados

America." He is fluent in Spanish, and he will be assisting Dayna Wheatley, LLC with criminal, DUI and traffic law work. Robert Shindler's office is located at 839 W. Van Buren in Chicago.

Finally, Janette Rivera has joined the firm as Dayna Wheatley LLC's new office manager. Janette has prior administrative experience as well as a real estate background managing foreclosed properties and processing loans. She is fluent in Spanish, is training as a paralegal, and assists Dayna Wheatley in all aspects of her practice. She is at the office every day from 9:00–1:00 p.m.

Agnieszka Jury, former associate, had a healthy baby boy on April 13 and decided not to return to the practice.

Dayna Wheatley has been very active since our last issue. She most recently attended the AILA (American Immigration Lawyer's Association) national conference in Vancouver from June 24–June 29. The conference provided her with an excellent opportunity to learn about the latest developments in family and employment immigration law. She also volunteered time regularly to World Relief Citizenship Drives, and conducted training to assist other non-profit organizations with immigration issues.

UPDATE: THE STATUS OF THE E-VERIFY PROGRAM IN ILLINOIS

The U.S. government filed suit against the State of Illinois last fall for its law, 820 ILCS 55/1 et. seq. that prohibits employers from enrolling in any employment eligibility verification system, including the basic pilot program, until the U.S. Social Security Administration and Dept. of Homeland Security are able to make a determina-

tion on 99% of the tentative non-confirmation notices issued to employers within 3 days.

As of today, no trial has been held and no decision has been reached on the suit. The court granted a motion to stay (halt the proceeding) until the Illinois legislature considered an amendment to the law which may have nulli-

fied the litigation. The House did not pass the amendment, however. On June 27, 2008 the last action taken on the case was a motion filed by the U.S. to end the stay and set a deadline for the State of Illinois to respond to its motion for summary judgment (which would allow the court to decide the case without a trial).

*Illinois has agreed **NOT** to penalize employers simply for participating in the program, at least until the DHS v. Illinois lawsuit is finished.*

UPCOMING EMPLOYER SEMINARS

The firm will be offering the following seminars in 2008:

Best Employment Practices 101. This six-hour seminar will be geared to small businesses that may not have trained HR Managers. We will walk attendees through all the basics such as hiring, documentation requirements, wage and other labor laws, insurance, and terminations.

Avoiding Sexual Harassment and Discrimination Lawsuits.

This two-hour seminar will include both practice tips and an overview of the important differences in state and federal discrimination law, as well as between claims filed against employers with the Illinois Human Rights Department and the Equal Employment Opportunity Commission.

Sponsoring Aliens for Employment Visas and Permanent Residence.

This three-hour seminar will cover the different options available to employers who wish to hire workers both within and without the U.S.

Consultations and custom-tailored training is also available upon request. For more information please call us or visit our website: www.wheatleyllc.net

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Dayna Wheatley, LLC offers a 10% discount to West Chicago Chamber of Commerce Members.

MORE ABOUT DAYNA WHEATLEY, LLC

The mission of Dayna Wheatley, LLC is to: 1) Provide excellent representation for its clients for a reasonable fee; and 2) Work for the betterment of its client communities.

Dayna Wheatley, LLC does not "choose sides" as to whether we will represent only plaintiffs or employers, although we are sensitive to conflicts of interest. Rather, we are committed to working for fair employment practices and against abuses of the system.

Dayna Wheatley started the law firm of Dayna Wheatley Chang, LLC on April 1, 2004. Since that time, she has served as legal counsel to individuals, employers, religious and other non-profit organizations in the Chicago metro area. The firm's references include World Relief, Family



Dayna Wheatley, LLC is located in the historic district of downtown West Chicago.

Focus, Administer Justice, Abogados America, and the Consulates of El Salvador and Uruguay. The firm is also active in professional organizations and in volunteering its time to support important client causes, such as immigration reform, U.S.

citizenship drives, and educating employers about how to best protect themselves and their workers.

Dayna Wheatley, LLC moved to the historic district of downtown West Chicago in May, 2007. Normal office hours are from 9:00—5:00 during the week., but we will schedule appointments after hours and on Saturday mornings as necessary. The office is easily accessible from I-88, Rt. 38, Rt. 59 and Rt. 64. It is also possible to schedule appointments in downtown Chicago. Janette Rivera, the office manager, is fluent in Spanish.

If you talk to us, you will find that as a firm we live up to our mission statement. We will look forward to your call or visit!