



THE LAW OFFICE OF
CYNTHIA E. WELLBROCK, LLC

Employment Law Traps to Avoid

1. Employment Discrimination Laws

- **Colorado Anti-Discrimination Act:** Prohibits discrimination on the basis of:
 - Gender
 - Race
 - Victims of Domestic Violence
 - Age
 - Disability
 - National Origin
 - Marital Status
 - Sexual Orientation
 - Religion
 - Lawful Off-Duty Conduct
- **Prohibited Actions:** Failure to Hire, Termination, Demotion, Failure to Promote, Different Compensation Harassment and Retaliation
- **Amount of Damages** – dependent on size of employer
Compensatory Damages (Emotional Distress)
 - 1 – 4 employees: \$10,000
 - 5 – 14 employees: \$25,000
 - 15-100 employees: \$50,000 (Note: after 15 employees FEDERAL laws kick in with higher damages available)Plus: Punitive Damages (unless can show Employer acted in good faith) and Attorneys Fees to successful Plaintiff

2. Misclassifying An Employee as Independent Contractor

- An I.C. must be “free from control and direction”
- Must be “customarily engaged in an independent trade, occupation or profession or business related to the service performed”.
- Employer may not: establish a quality standard for the work; require exclusivity; pay a salary or hourly rate (must be fixed or contract rate); provide tools; dictate time of performance (completion schedule is allowed); pay to the trade or business.

- Penalties for Violation:
 - a. Must pay employee's back taxes and interest!
 - b. Willful violations fined \$5,000 for 1st employee
Then up to \$25,000 for each after that!

3. Misclassifying Employees as Exempt From Overtime Pay

- Only a few exceptions to Overtime (must earn \$23,600/year or more)
 - Executive: manages the enterprise and directs others
 - Professional: requires advanced knowledge/exercise of discretion
 - Administrative: office work related to the management of operations
 - Computer Employee: high level, i.e. systems analyst, not the IT "tech"
 - Outside Sales: away from employer's place of business
 - Highly Compensated: \$100,000/yr or more + 1 duty of an executive, professional or administrative.
- **Penalties for Violation:**
 - Liquidated Damages of 100% amount proven due
 - Punitive Damages and Attorneys fees

4. Non-Compete Agreements

- Only enforceable against Executive and Management employees
- Workaround: Non-Solicitation Agreements and Agreement for Protection of Confidential Information and Trade Secrets. Must truly be Confidential, Secret and of Value

The Law Office of Cynthia E. Wellbrock, LLC is a boutique law firm that provides high quality and innovative employment law services to its clients. The firm handles issues such as harassment & discrimination, wage & hour, severance agreements, non-competes agreements and agreements for the protection of confidential information and trade secrets as well as investigations of allegations of harassment or discrimination. Cynthia is also a certified mediator and has mediated dozens of disputes in a variety of legal areas in addition to employment law.