



A LAW TO THINK ABOUT

The Lifecycle of Employment

July 10, 2019



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Today's Agenda

- Onboarding Employees
- Worker Classification
- Employee Agreements
- Attracting, Retaining, and Incentivizing Employees
- Employment Policies, Discipline, and Termination

ONBOARDING EMPLOYEES

Onboarding Your Employee

- Background Checks
- Drug Testing
- Social Media



Considerations When Performing Background Checks

- Who performs the check – Employer or Agency?
- FCRA Requirements
- EEOC Considerations
- Statutory Limitations
- A note on Social Media



The Pros & Cons of Drug Testing

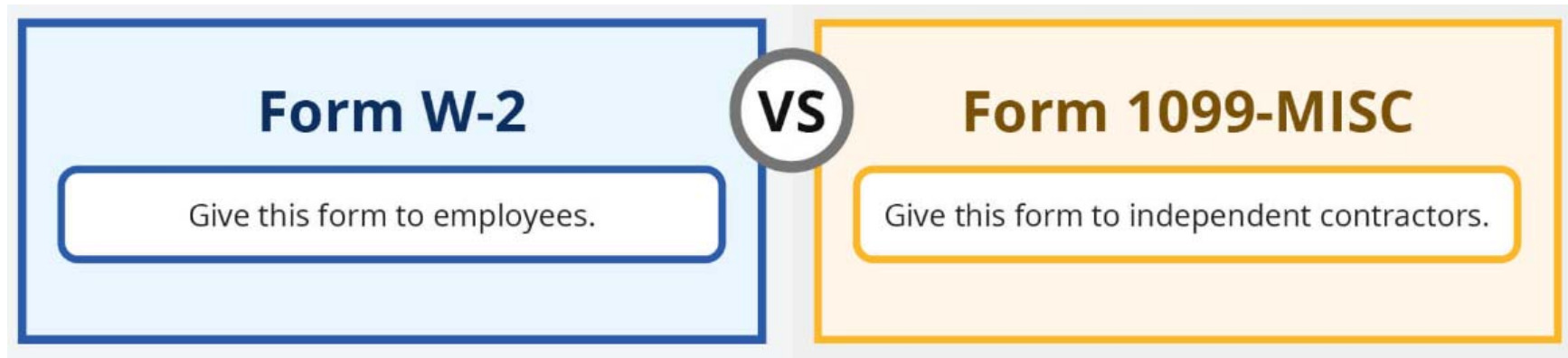
- Why would you drug test?
- Who should be tested?
- At what stage do you test?
- Complications created by the growing trend of legalized marijuana



WORKER CLASSIFICATION

Worker Classification

- Lots of words: Contractor, Employee, Full-time, Part-time, Exempt, Non-Exempt...
- Pay – 1099 or W2???



1099 Contractor vs. W2 Employee

- Why this matters?
- “Control” Test and “Economic Realities” Test
- Considerations when classifying an employee as a contractor
- Worker’s Compensation Act Protections
- Affordable Care Act Exposure

A YES answer to the following indicates that the worker is likely to be considered an EMPLOYEE:						
* Most important factor	IRS	EDD	INS	Work Comp	US Labor Dept	CA Labor Com
☐ Important factor						
✓ Lesser factor						
Does the company exercise control over the manner in which the work is performed?	*	*	*	*	☐	*
Does the company provide instructions?	☐					
Is training provided to the worker?	☐					
Must the work be performed by the worker and not by an assistant?	☐	✓				
Is the work part of the hiring company's primary business?	☐	☐	☐	☐	☐	☐
Are there set work hours?	☐	✓				
Is the relationship on a continuing basis?	☐	☐	☐	☐	☐	☐
Does the company exercise any control over the worker's assistants?	☐		☐	☐		☐
Does the company determine the location of the work?	☐	✓	☐	☐		☐
Does the company set the order of work done?	☐					
Does the worker have to provide interim reports?	☐					
Is the worker paid by the hour and not by the job?	☐	☐	☐	☐		☐
Does the company reimburse expenses?	☐					
Does the company provide the necessary tools?	☐	☐	☐	☐		☐
Can the worker be fired at will?	☐	*	☐	☐		☐
Is the worker paid for partial work?	☐					
Is the work typically supervised?		☐	☐	☐		☐
Was the worker hired by the same person who hires employees at the company?	☐					

Employees...Are They “Exempt” or “Non-Exempt”?

- Why this matters?
- Current Salary Basis Requirements

Non-Exempt	vs.	Exempt
Entitled to overtime pay at 1.5 times their regular rate		NOT entitled to overtime pay at 1.5 times their regular rate
Could be paid a salary or an hourly wage		MUST be paid a salary, not an hourly wage
Could earn any amount per week		MUST earn at least \$455 per week
Could work in any field		Job must fit into one of eight categories

EMPLOYEE AGREEMENTS

Use of Employee “Agreements” to Protect the Employer's Business Interest

- NDAs and Confidentiality Agreements
- Non-Competition and Non-Solicitation Agreements



ATTRACTING, RETAINING, AND INCENTIVIZING EMPLOYEES

Attracting, Retaining, and Incentivizing Your Team Through Equity

What are your options?

1. If your entity is a corporation:

- Shares
- Restricted Shares
- Options
 - Qualified
 - Non-Qualified
- Phantom Equity or SARs
- Bonus Plan

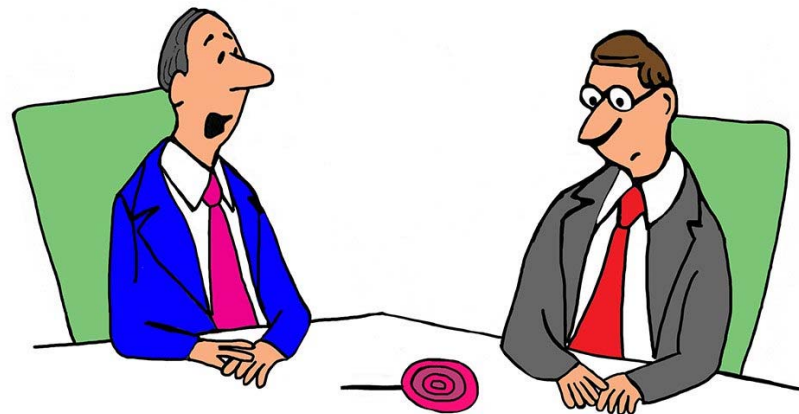


Attracting, Retaining, and Incentivizing Your Team Through Equity

What are your options?

2. If your entity is taxed as a Partnership (LLC, LP):

- Units
- Restricted Units
- Options
- Phantom Equity
- Profits Interests



“You’re a Super Performer ... so you get a lollipop.”

Attracting, Retaining, and Incentivizing Your Team Through Equity

Corporation – Shares / Restricted Shares

What are they?

Advantages / Disadvantages

- Tax implication upon issuance
- Dilution
- Tax upon sale



Attracting, Retaining, and Incentivizing Your Team Through Equity

Corporation – Options – Qualified / Non-Qualified

What are they?

Advantages / Disadvantages

- Tax implication upon issuance
- Dilution
- Tax upon sale



Attracting, Retaining, and Incentivizing Your Team Through Equity

Corporation – Phantom Equity / SARs / Bonus Plan

What are they?

Advantages / Disadvantages

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- Tax upon sale



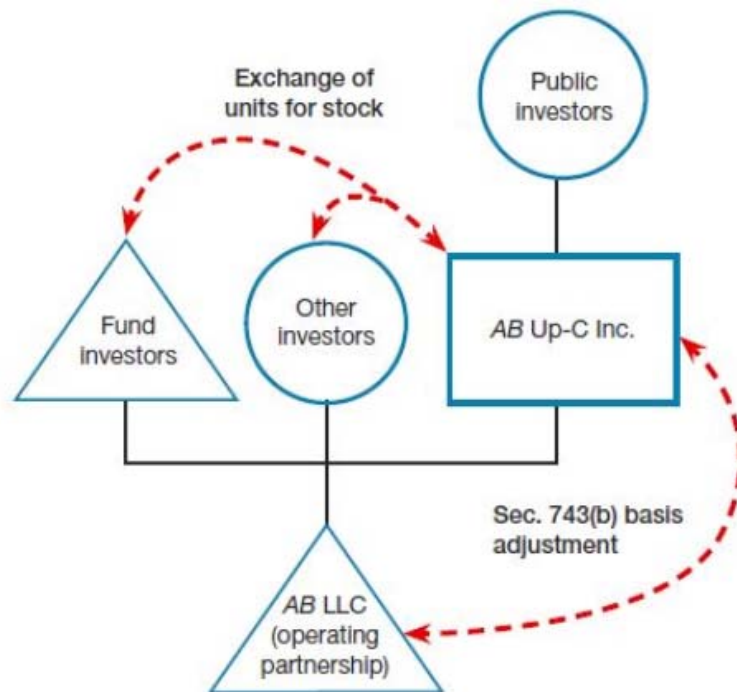
Attracting, Retaining, and Incentivizing Your Team Through Equity

Partnership – Units / Restricted Units

What are they?

Advantages / Disadvantages

- Tax implication upon issuance
- Dilution
- Tax upon sale



Attracting, Retaining, and Incentivizing Your Team Through Equity

Partnership – Options

What are they?

Advantages / Disadvantages

- Tax implication upon issuance
- Dilution
- Tax upon sale



Attracting, Retaining, and Incentivizing Your Team Through Equity

Partnership – Phantom / UARs / Bonus Plan

What are they?

Advantages / Disadvantages

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- Tax upon sale



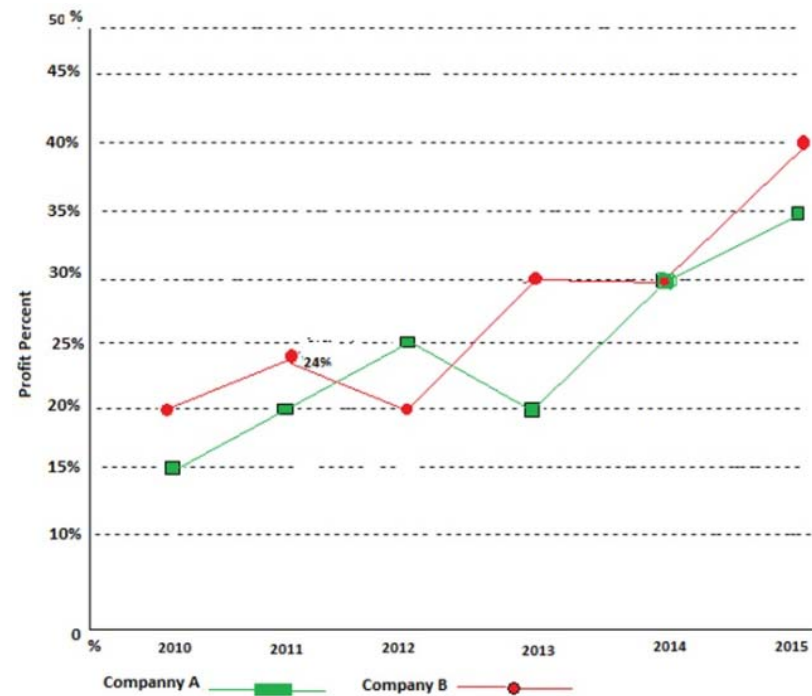
Attracting, Retaining, and Incentivizing Your Team Through Equity

Partnership – Profits Interests

What are they?

Advantages / Disadvantages

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EMPLOYMENT POLICIES, DISCIPLINE, ...AND TERMINATION

Developing and Improving Your Employee Handbook

- When do you need a handbook?
- Why do you need a handbook?



The Typical Employment Policies to Include

- “At-will” Employment Provision
- Equal Employment Opportunity (“EEO”) and Anti-Discrimination and Harassment Policies
- Company Property, Computer Systems, and Internet Usage
- Pay and Time Keeping Policies
- Workers’ Compensation and Injury Reporting
- Drug and Alcohol Testing
- Disciplinary Actions



Other Employment Policies to Consider

- Remote Work
- Maternity/Paternity Leave



Tips for Dealing With Discipline and Termination Situations

- Follow your Policies
- Be Consistent
- Be Direct and Honest
- Be Clear



"Coles, we've decided to cut back on people named Coles."



"WOULD YOU PREFER A QUICK TERMINATION OR A SLOW, PAINFUL PHASEOUT?"

Questions?

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Tell us what you think!
#ALawToThinkAbout @BoyarMiller