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PSA

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Subject: Obligations of Employees

employers of all shapes and sizes are requiring their Employees, whether at will or term, to execute employment agreements that clearly define the obligations and duties the Employee owes to the Employer both during and after the employment relationship. Some of the general duties encompassed in employee agreements include:

- 1.To do what a reasonable employee would do in any situation.
- 2.Duty to be honest.
- 3.Duty to be loyal.
- 4.Not to disrupt business, for example, taking part in industrial action.
- 5.Disclose wrongdoing (does not include ‘spent’ convictions).
- 6.Carry out and follow orders of the employer, (as long as they are legal).
- 7.Not to disclose the employer’s confidential information.
- 8.Work with reasonable care and skill.
- 9.Look after the employer’s property if using it.
- 10.Not to compete in business against the employer while still working for them as an employee.
- 11.Not to take bribes.
- 12.Be prepared to change when the job changes. For example, if computers or other machinery are introduced to help the employees do their job.
- 13.Give any inventions to employer if developed by the employee during their employment.

These duties may be encompassed in contract of employment, but even if no contract exists the law of agency dictates that these certain obligations and duties are owed by an employee to the employer, even if the contract does not mention them.

The duties during employment translate into obligations of an employee post termination of the employment relationship. Most common obligations that survive post termination center around confidentiality, intellectual property protection, non-solicitation and non-competition. The breadth or complexity of the employment agreement depends on each particular case. For instance, an employment

Subject: Obligations of Employees

agreement for an executive will likely be more complex and the duties to the employer greater vis-a-vis a lower level employee, but there are more similarities than one might think.

In the case of contract or term employees, the employee is expected to perform faithfully the services for which he or she contracted for the entire term or period of service. Courts presently hold if an employee leaves before the expiration time, he or she cannot claim pay for the work done. Some courts hold, however, that even in this case the employee is entitled to pay for work done “quantum merit” less what the employer lost by necessity of paying higher wages to the employee’s successor, or the amount lost by the employee’s failing to perform his contract.

The key provisions to include in employment agreements are as follows:

- 1.Term of employment;**
- 2.Duties;**
- 3.Compensation and benefits;**
- 4.Effects of early termination and termination in general;**
- 5.Compliance with hours;**
- 6.Ownership and protection of information and intellectual property;**
- 7.Post-employment non-competition, non-solicitation obligations;**
- 8.Default and remedy section; and**
- 9.Miscellaneous provisions such as jurisdiction and venue.**

The importance of employment agreements, whether they set out the parameters of an “at will” hourly arrangement or a salaried “term” relationship, cannot be understated. In this day and age when investment in employees and protection of intellectual property costs employers a great deal of revenue and time, a properly drafted employment agreement which adds an extra layer of insulation or the force of a hammer to an employer, at a time of need, can be vital.