

# PROBONO<sup>®</sup>

**P A R T N E R S H I P**

Volunteer Lawyers Strengthening Nonprofits & Our Communities

## **SUCCESSFULLY TRANSITIONING FROM A VOLUNTEER-ONLY TO A STAFFED ORGANIZATION**

**Part 2: We've decided to hire our first staff person!**

**What are the initial legal and compliance issue we need to know?**

David R. Jimenez, Adam J. Lyke

Jackson Lewis P.C. | Hartford, CT

[david.jimenez@jacksonlewis.com](mailto:david.jimenez@jacksonlewis.com), [adam.lyke@jacksonlewis.com](mailto:adam.lyke@jacksonlewis.com)

(860) 331-1556, (860) 256-2824

March 7, 2024

#PBPstrong | [probonopartner.org](https://probonopartner.org)

© 2024 Pro Bono Partnership. All rights reserved. No further use, copying, dissemination, distribution or publication is permitted without express written permission of Pro Bono Partnership.



# Disclaimer

This presentation is provided as a general informational service to clients and friends of Pro Bono Partnership. It should **not** be construed as, and does not constitute, **legal advice** on any specific matter, **nor** does this presentation create an **attorney-client relationship**. You should seek advice based on your particular circumstances from an independent legal advisor.



# What is the Pro Bono Partnership?

- Pro bono legal assistance for nonprofit organizations through the services of our staff and corporate and private attorneys
- To be eligible, the organization must be:
  - Nonprofit, tax-exempt (or seeking 501(c)(3) status);
  - Primarily serving the poor and disadvantaged or enhancing the quality of life in neighborhoods in CT, NJ, and NY;
  - Focusing on health and human services, community development, affordable housing, neighborhood revitalization, environmental protection, and the arts; and
  - Unable to pay for legal services without significant impairment of program resources.
- More information at [www.probonopartner.org](http://www.probonopartner.org)
- Please sign up for our email updates and check out our upcoming webinars and workshops!

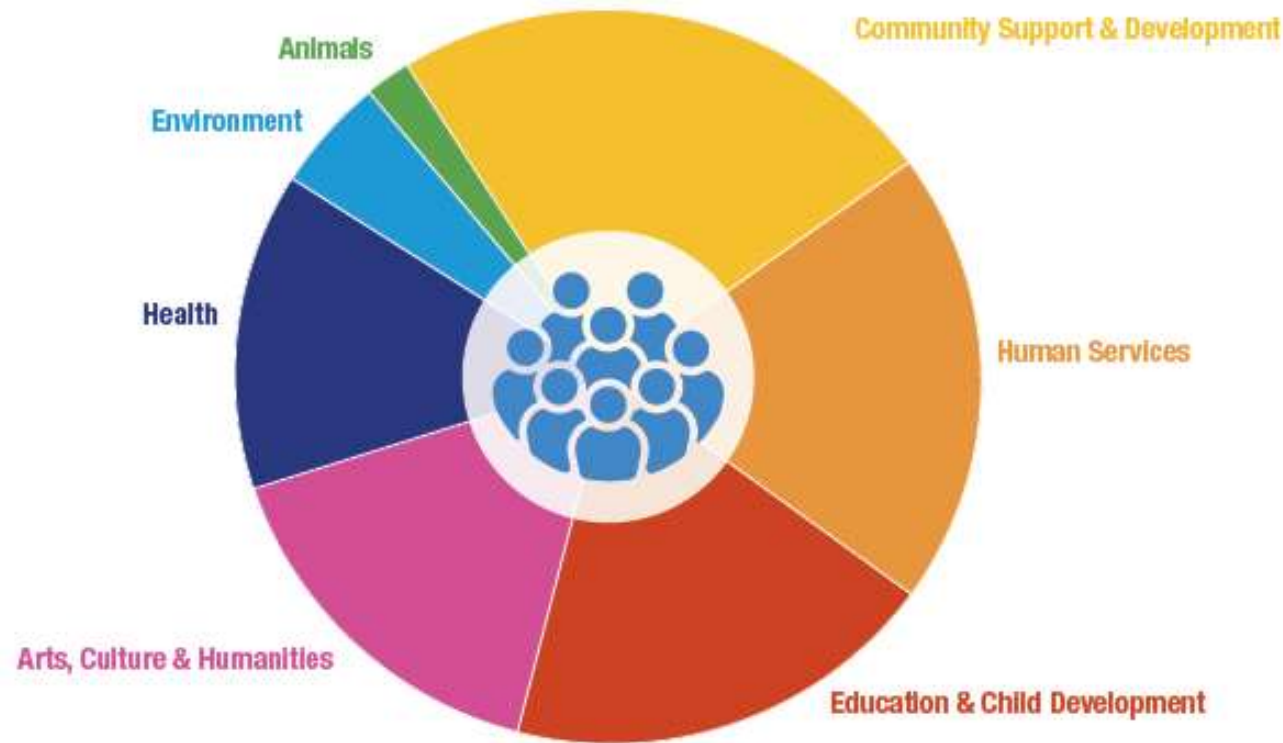


# What Assistance is Available?

- Non-litigation, business law matters, in areas such as:
  - Corporate structure and governance
  - Contracts
  - Employment law
  - Environmental law
  - Intellectual property law
  - Real estate (including lease reviews)
  - Regulatory compliance (e.g., registration, annual reporting, charitable solicitation, lobbying)
  - Tax law and tax exempt status



# 98% of the Partnership's clients serve low-income individuals & provide important services in our communities



# Overview

- The Search and Interview Process
- The Offer Letter
- Wage and Hour Basics
- Registering as an Employer
- Posters, Training, Payment into Paid Leave Fund
- Employee Handbook
- Performance Management
- Termination



# The Search And Interview Process – Do's And Don'ts; Non-discrimination



# Job Description

## **Before posting a position:**

- Review the job description for accuracy.
- Essential duties?
- Non-essential duties?
- Responsibilities?
- Physical requirements?
- Work environment?





# Selecting Applicants to Interview

- Develop a documented structured review process. For example:
  - 1<sup>st</sup> cutoff – minimum qualifications
  - 2<sup>nd</sup> cutoff – relevant work experience
  - 3<sup>rd</sup> cutoff – “tie breakers” (educational background, job experience, etc.)
- Compare applicants to criteria not each other



# Before The Interview

- Prepare a list of job-related questions – know **why** you are asking the question.
- Limit inquiries to those subjects necessary to evaluate the applicant’s suitability for the job!
- *Applicants and EEOC will presume that an employer used all the information it has about the applicant in making its decision.*
- Review the application for “red-flags”
- **Key Areas of Focus:**
  - Experience
  - Skills & abilities
  - Past performance



# The Interview

- Set aside enough time to ask the interview questions and evaluate the responses.
- Describe the job expectations (days of week, etc.).
- Treat everyone the same.
- Address red flags that arise during the interview.
- When in doubt, **don't ask!**
- Document, document, document!
  - Take objective notes.
  - Record answers & behaviors – **NOT** conclusions.
- Have a plan to conclude the interview.
  - Follow-up steps.



# Interviewing

## Beware Of Negative Indicators At The Hiring Stage

- Frequent job changes, erratic career path
- Negativity about former employers or co-workers
- Revealing confidential information about former employer
- Gaps in employment
- Demanding or difficult at the pre-hire stage
- Negative information in background checks
- Seems too good to be true
- Trust your instincts



# What You Should NOT Ask/Discuss

## Don't ask about:

- military service or type of discharge;
- arrests;
- how he/she spends spare time (clubs or organizations);
- what languages he/she can speak (unless job requirement);
- whether the applicant was ever a member of a union or how the applicant feels about unions.



# What You MAY Ask

- Follow-up on applicant's responses on the application/resume.
- Why applicant left former employment.
- What were applicant's prior job duties (skills).
- What job duties the applicant is interested in.
- What the applicant liked/disliked about prior jobs.
- Hypothetical questions:
  - "How would you handle a situation like this?"
- **CAUTION**: Such questions must be used consistently among applicants.



# Beware - Social Media

## Problem:

A search may identify an applicant's protected characteristics such as age, race, sexual orientation, pregnancy, marital status, arrests or other factors that should not be considered in a hiring decision.

## Solution:

Have a non-decision maker conduct the search and filter out **protected** information.



# Legitimate Reasons To Reject

- Cannot work scheduled hours
- No experience with our volume of work
- Not able to fully explain...
- Not sufficiently qualified in...
- Questions about resume, unable to confirm employment history
- Skills set not as good as selected candidate





# After The Interviews

- Compare qualifications and notes
- Document the decision, **why** you selected the individual
  - Factual not conclusory
- “Not the best qualified” = Bad
- “Lacked experience in...” = Good



# Remember:

**If you hire based on job qualifications and document your decision-making process, you will reduce your risk substantially.**



# The Offer Letter



# Conditional Offer

- Once you have selected the best candidate, make a conditional offer of employment.
- Offer is conditioned on satisfactory background check, which may include criminal record check, DMV history, confirmation of employment history, references and/or educational qualifications, medical examination, and/or completion of satisfactory drug test (be sure to follow rules for drug test of prospective employee: 1) written notice; 2) required methodology; and 3) copy provided to applicant).



# Offer Letter

- Offer should be documented in an offer letter. This letter should be in writing and **must** include:
  - 1) employee's pay rate;
  - 2) hours of employment; and
  - 3) wage payment schedule.
- Offer letter should also include:
  - Position name
  - Whether position is full time/part time
  - Whether there is a probationary period, how long it is, and whether it could be extended
  - Whether the position is salary or hourly
  - Whether the position is exempt or non-exempt
  - The start date
  - Employment at will disclaimer—This employment is at will.
  - Contract disclaimer, conditional offer and space for signature of applicant—not a contract for continued employment.



# Introductory Periods

- Pros and Cons
- Clearly state employees are at-will during and after successful completion of introductory period
- Consider no use of PTO/vacation during introductory period
- Consider “performance review” upon completion



# Wage and Hour Basics



# What is the FLSA?

The **Fair Labor Standards Act (FLSA)** is a federal law that sets the standards for child labor, equal pay standards, minimum wage, and overtime pay.

Among other important outcomes, this Act is in place to ensure that employees are “paid a fair day’s wage for a fair day’s work.”

The Act distinguishes between **exempt** employees, who perform certain duties and are paid a minimum salary amount, and those who are **non-exempt** and are entitled to overtime pay for hours worked over 40 in a workweek.

- Employees who are “exempt” are not entitled to overtime pay.
- Employees are presumed to be non-exempt – it is the employer’s burden to prove exemption.

All companies in the U.S. are required to remain in compliance with the rules within the Act.

Connecticut has its own version, the **Connecticut Minimum Wage Act (CMWA)**.

The FLSA sets the floor; the CMWA creates additional requirements.





# Exemption Tests

## THREE MAIN PARTS

- Salary Level
- Salary Basis
- Job Duties

## MAIN EXEMPTIONS

- “White Collar” Exemptions
  - Executive
  - Administrative
  - Professional



# POP QUIZ!

- Can these jobs be classified as exempt?
  - Manager of 10-employee operation in warehouse
  - Assistant manager of a large retail store
  - Insurance claims adjuster
  - Accounts payable manager
  - Accountant at large firm with 3 years' exp.



# FLSA Pitfalls:

- Independent Contractors
- Counting All Hours Worked



# Registering as an Employer



# Registering So You Can Pay Your Employees

- To hire an employee, you will need an Employer Identification Number (EIN) with the IRS and a state tax ID
- An EIN is like a Social Security number (SSN) for a business. You can get it for free by applying online through the IRS.
- If you're a sole proprietor or partnership, you can apply for an EIN and use that in place of your SSN for taxes.
- For a legal entity (LLC, LLP, corporation or other) first, so you can get the tax ID in your business's name instead of your own.



# Posters, Training, Paid Leave Fund, Unemployment Compensation



# Required Posters

- **Federal:**

1. [Fair Labor Standards Act \(FLSA\) Poster](#) (Minimum Wage Poster)
2. [Family and Medical Leave Act \(FMLA\) Poster](#)
3. [Occupational Safety and Health Act \(OSHA\) Poster](#)
4. [Davis-Bacon Act Poster](#)
5. [Employee Rights for Workers with Disabilities/Special Minimum Wage Poster](#) (Fair Labor Standards Act, McNamara-O'Hara Service Contract Act and Walsh-Healey Public Contracts Act)
6. ["Know Your Rights" Poster](#)
7. [Employee Polygraph Protection Act \(EPPA\) Poster](#)
8. [Uniformed Services Employment and Reemployment Rights Act \(USERRA\) Notice/Poster](#) (PDF)

- **Connecticut:**

1. Electronic Monitoring (Conn. Gen. Stat. § 31-48d);
2. Minimum Wage Orders (Conn. Gen. Stat. § 31-66);
3. Unemployment Compensation (Reg. of Conn. State Agencies § 31-222-10);
4. Connecticut OSHA – State & Any Political Subdivision (Reg. of Conn. State Agencies § 37-371-2);
5. Sexual Harassment (Reg. of Conn. State Agencies § 46a-54-201);
6. Workers' Compensation (Conn. Gen. Stat. § 31-279);
7. Managed Care (Conn. Gen. Stat. § 38a-1041);
8. Paid Sick Leave (Conn. Gen. Stat. § 31-57w);
9. Sexual Harassment (Conn. Gen. Stat. § 46a-54(15)(A)); and
10. Discrimination is Illegal (Conn. Gen. Stat. § 46a-97).



# Required Training

- CHRO Sexual Harassment Training
  - Organizations with three (3) or more employees must provide two hours of sexual harassment training to all employees.
  - All Connecticut employers, regardless of their size, must provide two hours of sexual harassment training to supervisory employees within six months of an employee assuming a supervisory role.
  - Employees must be trained within six months of hire, and then be retrained at least every 10 years.
  - Existing employees should have been trained by February 9, 2021, and then retrained at least every 10 years.
  - Employers are encouraged to maintain training records for a minimum of one year.
- [Sexual Harassment Prevention Resources \(ct.gov\): https://portal.ct.gov/CHRO/Sexual-Harassment-Prevention-Training/Pages/Sexual-Harassment-Prevention-Resources](https://portal.ct.gov/CHRO/Sexual-Harassment-Prevention-Training/Pages/Sexual-Harassment-Prevention-Resources)





# Connecticut Paid Leave & Unemployment Compensation

## CT Paid Leave:

- The CT Paid Leave program is employee funded, but employers are required to collect contributions of 0.5% of employees' paychecks and remit the contributions to the CT Paid Leave Authority.
- Employers with one or more employees may be required to contribute.
  - The federal government, municipalities, boards of education, non-public schools, railroads, governments of other states, and sovereign nations are excluded.

## Unemployment Compensation:

- Connecticut Employers, including non-profits, are required to contribute to the Unemployment Compensation Benefit Fund ("the Fund").
- Non-profits have the option of meeting their contribution obligations by:
  - (1) contributing the prevailing rate for unemployment insurance to the Fund (applicable to all employers); or
  - (2) electing to reimburse the Fund for any unemployment insurance benefits paid because of employment with the subject non-profit.



# Employee Handbook



# Purposes of Employee Handbooks

- To ensure legal compliance and protect the employer
  - Certain policies are required by law
  - Best practices when it comes to complying with FLSA, discrimination/harassment laws, etc.
  - Clarify at-will status of employees and ability to change policies prospectively
  - Leave substantial discretion to employers
  - Set forth minimum standards of conduct
  - Reduce expectations of employee privacy
- Effective reference tool for employees
  - Advise employees of the Company's expectations regarding their performance
  - Make employees aware of the Company's rules, regulations, policies and organizational goals
  - Communicate culture (but don't go overboard)



# Policies To Consider

- EEO Policy
- Policy on Disabilities
- Harassment/Discrimination Complaint Procedure
- Policies Prohibiting Off the Clock Work for Non-Exempts
- Benefit Plans and Programs
- Vacation/Sick Days/PTO
- Electronic Use Policy
- Personnel Files
- Drug and Alcohol Use or Possession



# Employee Handbook Do's & Don'ts

- DO ensure the policies are consistent with Company's practices and the law
- DO use plain language and be concise
- DO consider non-English speaking employees
- DO strive for narrow, specific policies
- DO provide discretion to Company throughout
- DO keep handbook current
- DO consider maintaining electronic handbook
- DO include proper disclaimers
- DO get signed employee acknowledgements
- DO have handbook reviewed by legal counsel
- DON'T use the handbook from your last employer or buy one on the Internet
- DON'T use terms such as "the organization shall" or "the organization will"
- DON'T adopt overbroad policies
- DON'T include policies even the CEO will routinely violate
- DON'T expand an employee's legal rights
- DON'T include strict progressive discipline procedures
- DON'T use flowery "feel-good" language

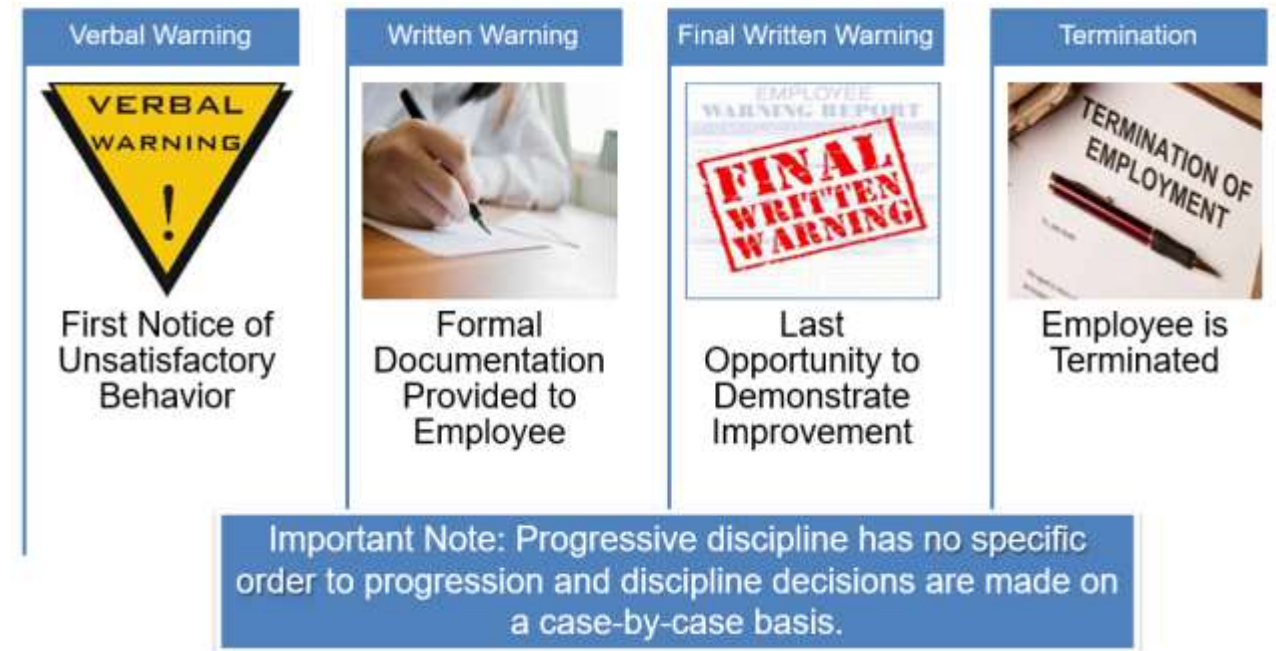


# Performance Management



# The Performance Management Process

1. Verbal coaching/warning
2. Written warnings
3. Performance Improvement Plan



# Termination





# Types of Termination

1. For performance
2. For elimination
3. For misconduct



# Key Takeaways

- Hiring employee should be a disciplined process beginning with a well-defined job description;
- How we pay our employees is important and regulated;
- Managing performance is a discipline and can be empowering if done the right way;
- Termination carries the highest risk but can be mitigated, if the hiring and performance management are done right.



# Any Questions?



# Thank You



**David R. Jimenez**

david.jimenez@jacksonlewis.com  
(860) 331-1556



**Adam J. Lyke**

adam.lyke@jacksonlewis.com  
(860) 256-2824

**jackson|lewis**

With over 950 attorneys practicing in major locations throughout the U.S. and Puerto Rico, Jackson Lewis provides the resources to address every aspect of the employer/employee relationship.

**jacksonlewis.com**



# For More Information

Priya Morganstern, Esq.  
Program Director  
Pro Bono Partnership, Inc.  
280 Trumbull Street, 28<sup>th</sup> Floor  
Hartford, CT 06103  
[pmorganstern@probonopartner.org](mailto:pmorganstern@probonopartner.org)



Sara Taylor, Esq.  
Staff Attorney  
Pro Bono Partnership, Inc.  
280 Trumbull Street, 28<sup>th</sup> Floor  
Hartford, CT 06103  
[staylor@probonopartner.org](mailto:staylor@probonopartner.org)

