

Employment Contracts: Best Practices & Common Mistakes

Learning Objectives

The world of employment contracts is ample, allowing for parties to develop mechanisms to create and protect the type of business relationship which may best suit their needs. This presentation will focus on the preparation, development and best practices associated with various types of employment agreements, including, executive compensation and independent contractor relationships in at-will and for-cause jurisdictions. Also, as restrictive covenants are common in employment contracts today, the presentation will also focus on the legal requirements to draft valid restrictive covenants and common mistakes to avoid when developing such covenants.

Reference Material

I. Legislation

1. Federal Arbitration Act, 9 U.S.C.A. §1 et seq.
2. Act No. 28 of January 21, 2018, Special Leave for Catastrophic Illnesses
3. Act No. 60 of January 27, 2018, to amend Act No. 180 of July 27, 1998, P.R. Law Ann. Tit. 29 §250d.
4. Act No. 180 of July 27, 1998, P.R. Law Ann. Tit. 29 §250d.
5. Act No. 4 of January 26, 2017, also known as the Labor Transformation and Flexibility Act.
6. Act No. 80 of May 30, 1976, Indemnity for discharge without just cause, 29 LPRA § 185b.
7. Act No. 130 of May 8, 1945, Labor Relations of Puerto Rico Act.
8. Act No. 148 of June 30, 1969, Christmas Bonus

II. Case Law

1. At-will Employment
 - a. *Swindol v. Aurora Flight Scis. Corp.*, 805 F.3d 516 (5th Cir. 2015), certified question answered, 194 So. 3d 847 (Miss. 2016).
2. Independent contractor vs. Employee
 - a. *Roldán Flores v. M. Cuebas*, 199 D.P.R. 664 (2018)
 - b. *SLG Ortiz Jiménez v. Rivera Núñez*, 194 D.P.R. 936 (2016)

- c. *Meléndez González v. M. Cuebas*, 193 D.P.R. 100 (2015)
 - d. *Whittenburg v. Col. Ntra. Sra. del Carmen*, 182 D.P.R. 937 (2011)
 - e. *Romero v. Cabrer Roig*, 191 D.P.R. 643 (2014)
3. Just cause
- a. *Lunneborg v. My Fun Life*, 421 P.3d 187, (Idaho 2018)
 - b. *Rosa Maisonet v. ASEM*, 192 D.P.R. 368 (2015)
 - c. *SLG Torres-Matundan v. Centro Patologia*, 193 D.P.R. 920 (2015)
 - d. *Santiago v. Oriental Bank & Tr.*, 157 D.P.R. 250 (2002)
 - e. *Díaz v. Wyndham Hotel Corp.*, 155 D.P.R. 364 (2001)
4. Class action waivers
- a. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018)
5. Arbitration
- a. *New Prime, Inc. v. Oliveira*, No. 17-340, 2019 U.S. LEXIS 724 (Jan. 15, 2019)
 - b. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. ____ (2019)
 - c. *Britto v. Prospect Chartercare SJHSRI, LLC*, 909 F.3d 506, 508 (1st Cir. 2018)
 - d. *Conduragis v. Prospect Chartercare, LLC*, 909 F.3d 516 (1st Cir. 2018)
6. Employment agreement considerations
- a. *Beall v. Edwards Lifesciences LLC*, 310 F. Supp. 3d 97 (D.D.C. 2018)
7. Non-Compete
- a. *Naperville Women's Healthcare, P.C. v. Carney-Siswick*, 2018 IL App (2d) 170401-U
 - b. *Management Registry, Inc. v. A.W. Companies, Inc. et al*, No. 0:2017cv05009 - Document 123 (D. Minn. 2018)
 - c. *Reyes Ramis v. Serra Torres*, 195 D.P.R. 828 (2016)
 - d. *PACIV, Inc. v. Pérez Rivera*, 159 D.P.R. 523 (2003)
 - e. *Arthur Young & Co. v. Vega III*, 136 D.P.R. 157 (1994)
 - f. *Lucas-Insertco Pharm. Printing Co. of Md. LLC v. Salzano*, 124 F. Supp. 2d 27 (D.P.R. 2000)
 - g. *Martin's BBQ v. Garcia De Gracia*, 178 D.P.R. 978 (2010)

- h. *EMC Corp. v. Arturi*, 655 F.3d 75 (1st Cir. 2011)
- 8. No-Poach Agreements among competitors
 - a. *United States v. Knorr-Bremse AG and Westinghouse Air Brake Technologies Corporation*, Case 1:18-cv-00747-CKK

III. Secondary Sources

1. Matthew T. Bodie, *The Best Way Out Is Always Through: Changing the Employment at-Will Default Rule to Protect Personal Autonomy*, 2017 U. Ill. L. Rev. 223 (2017)
2. Paul Salvatore, John F. Fullerton, III, *Arbitration of Discrimination Claims in the Union Setting: Revisiting the Tension Between Individual Rights and Collective Representation*, 14 Lab. Law. 129 (1998)
3. Alcides Reyes-Gilestra & Jennifer Gleason Altieri, *Apuntes Sobre La Figura Del Contratista Independiente*, 36 Rev. Juridica U. Inter. P.R. 9 (2001)
4. Luis M. Benítez Burgos, *La Injusticia De La Justicia: La Cláusula Mandataria De Arbitraje En El Contrato Individual De Trabajo*, 7 U. Puerto Rico Bus. L.J. 235, 253 (2016)
5. Rafael E. González Ramos, *El Arbitraje Dentro De La Contratación Individual Patrono-Empleado En Puerto Rico Y Sus Implicaciones*, 5 U. Puerto Rico Bus. L.J. 1, 2 (2014)
6. Jena McGregor, *Google and Facebook ended forced arbitration for sexual harassment claims. Why more companies could follow*. Retrieved from: https://www.washingtonpost.com/business/2018/11/12/google-facebook-ended-forced-arbitration-sex-harassment-claims-why-more-companies-could-follow/?noredirect=on&utm_term=.2a961bdaf6b7.