



Domenique Camacho Moran,
Partner at Farrell Fritz P.C.
and featured speaker at
HIA-LI's CEO Roundtable

Workplace Litigation: Don't Let it Keep You Up at Night

By Alan Starost
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Attending the HIA-LI's CEO Roundtable series has always been an exciting event for the attendees because they get to meet high-level executives up-close and personal and get insight on how they achieved success. But for attendees at the October session, they got all the above and a whole lot more – they were able to receive free legal advice on the human resource challenges that keep business owners up at night from Domenique Camacho Moran, Partner at Farrell Fritz P.C.

Ms. Moran, who oversees the employment law division of Farrell Fritz, was very comfortable speaking in front of a group of more than 25 business owners and business development representatives in attendance. Her presentation was extremely well thought out and had a great deal of relevance with current employment topics that many business owners are facing on a daily basis.

"As you look at the market place, one of the things you hear over and over again, we are put into a place where we have to defend our employment practices and decisions. We are dealing with these issues of hiring, leaves of absence, and procedures and the laws have changed dramatically. We all just want to do business," stated Terri Alessi - Miceli, HIA-LI President.

Some of the issues Ms. Moran addressed were the cost of misclassification of employees and independent contractors; criminal background checks; social media in the work place; drug testing in light of the legalization of medical marijuana; as well as enforcing post-employment restrictive covenants. Domenique spoke about these issues in detail and

gave real life examples, withholding company names of course.

Ken Dunne, President of Island Group Plans, a benefits consulting firm and sponsor of the event, was very pleased to be updated in the current aspects of the law. "I felt this was a great opportunity for me to meet new people and learn about the employee aspect," said Ken.

Carmella Fazio, marketing consultant with All Island Media, stated, "It's always exciting to meet new entrepreneurs and hear what they are doing and how they got there. That's why I enjoy hearing the different speakers at HIA-LI's CEO Roundtable Series."

One of the issues Ms. Moran addressed in detail was the misclassification of independent contractors. The problem she often sees is when contractors are on an indefinite timetable and when consultants seem to only have one client. "You can't have a human resources consultant who is at your workplace every single day, all day long and call them a consultant," stated Moran. "Human resources consultants are people who are contracted to do project-based work. They are going to handle your handbook, provide some training and give you advice for an hour a week - because you don't need anything more," Moran continued.

Another issue Domenique ran across with subcontractors is the "Try and Buy" also known as the "Temp to Perm" situation. "A 'try and buy' arrangement is not an independent contractor. If I am going to work in a location for eight hours a day, five days a week and I have a consulting agreement for three months that is ultimately going to lead to a full time job, that is not an independent contractor," Moran stated.

One of Moran's favorite situations is when an independent contractor is required to sign a non-compete agreement. "One of the benefits of being an independent contractor is that you can offer your services to a whole bunch of people. If you cannot offer your services to other people, it's hard to be an independent contractor. However, there is no issue with an independent contractor having to sign a non-disclosure agreement," states Ms. Moran. Not knowing the laws is not an excuse and your company can be charged with a hefty bill for back pay and fines.

The use of social media has become a huge issue in many workplaces lately. It has been coming up in screening applicants, the disciplining of employees and termination decisions. "Applicant research is very popular and everyone is guilty. You can find out all sorts of things on Facebook that you really don't want to know." The best advice is that people who are in the position of hiring should not be doing research on Google. You should designate somebody in your office, not the hiring manager, to do the research to find out if there are inconsistencies with their resume," believes Moran. "You don't want the hiring manager to make a judgment or to ask an unlawful question based on what they may have found out. It may lead your company to discrimination complaints.", she continued. The best advice you can receive is that if you are unsure, ask an Employment Law specialist.

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