

## **Attorney tells how to survive employment law minefield**

*Appeared in the Tri-City Herald February 19, 2006*

“Make sure you aren’t doing anything illegal, or you’ll get hit as if by a train.”

Wise advice from Devra Hermosilla, an attorney who specializes in employment law at the Spokane office of Paine, Hamblen, Coffin, Brooke & Miller LLP.

“You can’t begin to know all of the laws affecting employment,” Hermosilla recently told the Three Rivers Entrepreneur Network. “But you can learn how to protect your company so that when an issue arises, you will recognize the problem and seek professional help.”

Hermosilla highlighted five difficulty-prone areas.

**Interview process:** Federal law prohibits discriminating against current and prospective employees. Even if obvious, do not ask about race, ethnic origin, marital status, children, religion, sexual preference, age, country of origin or disability. And always document the true reasons why you hired one candidate and not another.

**Employment contracts:** Washington is an at-will employment state. The employer or the employee can end a job without cause or notice, except in cases of wrongful termination, such as whistle blowing, and employment under contract.

Entrepreneurs are especially vulnerable to contract issues, Hermosilla said. Carefully define the key portions of any employment contract—duration, termination and remedy for breach. An implied contract is easy to create inadvertently and difficult to undo. “Be aware of what you and your managers are saying, writing and e-mailing,” Hermosilla said. This includes employee handbooks and policies, as well as informal promises or statements.

Traditional non-compete agreements are rarely upheld in Washington State. “Think about the one thing you want to protect and get an expert to draft very specific non-compete and trade secret documents,” she said.

**Employment laws:** “Ignorance is no defense for violating employment laws,” Hermosilla said. “You and your management must understand the basics of wage and hour, leave, discrimination and harassment laws, plus those for unemployment, workers’ compensation, occupational safety, non-documented workers, employee benefits and teen and minor employment.”

“One of the hottest areas of law suits against employers is violation of wage and hour laws,” Hermosilla said. “It is your responsibility to correctly classify employees based on the content, not the title, of the job,” she said.

**Discrimination and termination:** As in the hiring process, several federal and state laws prohibit workplace discrimination. They also forbid harassment and retaliation, including

adverse employment actions, such as termination or denial of promotion. Although these laws often apply only to larger companies, Washington courts have applied them to small firms as a matter of public policy, Hermosilla said.

Prevention is the best tool to eliminate discriminatory practices. She urged employers to clearly communicate that certain behaviors will not be tolerated, establish an effective complaint or grievance process and take immediate and appropriate action when an employee complains.

“There are countless ways to get sued for employment law violations,” she said. “The best route for any entrepreneur is to follow the laws meticulously and document, document, document.”

Slides from Hermosilla’s presentation are posted on the Pacific Northwest National Laboratory’s Economic Development Office website [www.pnl.gov/edo](http://www.pnl.gov/edo).

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