



Fox Rothschild LLP
ATTORNEYS AT LAW

**CAMP STAFF
EMPLOYMENT CONTRACTS &
WAGE & HOUR OVERVIEW**

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Seminar Conducted By:

John D. Horowitz, Esq.

FOX ROTHSCHILD LLP

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I. EMPLOYMENT CONTRACTS

A. General Principles

1. Employment At-Will - employees may be fired or may quit at any time, for any reason not otherwise prohibited by law.
2. Exception to Employment At-Will
 - a. Employment Contract
 - (i) Specified term.
 - (ii) Sets out specific grounds for termination.
 - (iii) Can be written or oral.
 - b. Detrimental Reliance - where applicant reasonably relies on employer's representation, that he/she will have a job for a definite period of time.
3. Handbooks, Policies and Procedures
 - a. Handbooks, employment applications and other oral or written statements could create implied contracts of employment under which employees may be terminated only for cause or in accordance with specified procedures.
 - b. To avoid this result, employers should clearly and expressly state that the employee's status as an at-will employee is unaffected.

B. Employment Contracts

1. The Employee's Responsibilities
 - a. Job duties.
 - b. Employer's right to modify job duties.
 - c. Good faith & best efforts.
 - d. Exclusivity.
 - e. Duty of loyalty.

2. The Employer's Commitments

a. Salary

- (i) Hourly.
- (ii) Salary.
- (iii) Exempt v. Non-exempt.
- (iv) Frequency of payment.

b. Bonuses/Commissions

- (i) Incentive-based.
- (ii) Eligibility requirements.
- (iii) Discretionary v. fixed standards.
- (iv) Determining when the bonus is earned.
- (v) Determining when the bonus is payable.
- (vi) Pre-conditions and forfeiture provisions.
- (vii) Deductions and give-backs.
- (viii) Right to modify plan.

c. Benefits

- (i) Medical.
- (ii) Insurance.
- (iii) Right to discontinue or amend.

d. Paid Time Off

- (i) Accrual method v. prospective grant.
- (ii) Determining when it can be used.
- (iii) Subject to business needs.
- (iv) Payout for unused PTO.
- (v) FMLA.

3. Duration of Agreement
 - a. At-will.
 - b. Fixed term.
 - (i) Grounds for early termination of the agreement by the parties.
 - (ii) Procedures for the renewal of the agreement.
4. Severance Benefits
 - a. Discretionary v. fixed plan.
 - b. Unemployment insurance.
 - (i) No other benefits other than those in the agreement.
 - (ii) Non-Compete Agreements
5. Employer's Need for Restriction
 - a. Protect confidential information.
 - b. Uniqueness of employee.
 - c. Protect customer contacts.
 - d. Other business justification.
6. Length of Restriction
 - a. Reasonable length of time.
7. Geographic Scope of Restriction
 - a. Reasonable territorial limitation.
 - b. Specific customer contacts.
8. Activity restrictions
 - a. Identify how employee can compete directly and indirectly.

9. Enforcement of Non-Compete Agreement
 - a. Legitimate business justification for enforcement.
 - b. Reasonableness of restriction on employee's ability to earn a living.
 - c. Reasonableness of restriction as to general public.

C. Non-Solicitation Agreements

1. Customer/client contacts
 - a. Directly or indirectly.
 - b. Time Restrictions.
 - c. Distinguishing between customers/clients that employee came in contact with before and after employment with employer.
 - d. Identify specific customers/clients.
2. Employees
 - a. Directly or indirectly.

D. Separation Agreements

1. Establish Terms of Separation
 - a. Voluntary or involuntary.
 - b. Effective date.
 - c. Duty to assist in transition.
 - d. Payment of earned wages, sick days, vacations and mandatory severance.
2. Employee Release of Claims
 - a. Release all known and unknown claims up to date of agreement.
 - b. Cannot release future claims.
 - c. Cannot waive workers' compensation claims.

- d. Cannot waive right to file charge with government agency.
3. Consideration to Employee
- a. Payment of additional compensation.
 - b. Unemployment benefits.
 - c. Non-admission of liability.
4. General Provisions
- a. Return of camp property.
 - b. Employee confidentiality of separation agreement.
 - c. Employee covenant of non-disparagement.
 - d. Establish remedies for breach.
 - e. Incorporate or re-establish non-compete provisions.

II. WAGE & HOUR OVERVIEW

A. EXEMPTIONS - FLSA

1. Executive Exemption

In order for an employee to be exempt as a bona fide executive, he/she must meet all of the following tests:

- a. Primary duty must be management of the enterprise, or of a customarily recognized department or subdivision. Under the FLSA, the employee *generally* cannot spend more than 49% of his/her time performing non-exempt work. **NOTE: Under New Jersey law, the percentage limitation is 20%.**
- b. Customarily and regularly directs the work of at least two or more other employees.
- c. Has the authority to hire and fire, or whose suggestions and recommendations as to the hiring, firing, advancement promotion or any other change in status of other employees are given particular weight.
- d. Paid on a salary basis at the rate of at least \$455 per week.

2. Administrative Exemption

In order for an employee to fall within the administrative exemption, he/she must meet all of the following tests:

- a. Primary duty must be the performance of office or non-manual work relating to management policies or general business operations of the employer or the employer's customers. Under federal law, the employee cannot spend more than 49% of his time performing non-exempt work. **NOTE: Under New Jersey law, the percentage limitation is 20%.**
- b. Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance;
- c. Paid on a salary basis at the rate of at least \$455 per week under federal law.

3. Professional Exemption

In order for an employee to fall within the professional exemption, he must meet all of the following tests:

- a. The primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of study or specialized intellectual instruction; or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
- b. Paid on a salary basis a salary of at least \$455 per week.

4. Outside Sales Exemption

An employee falls within this exemption if the employee:

- a. Has as his primary duty making sales within the meaning of Section 3(r) of the FLSA; and,
- b. Is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.
- c. The specific term "salesman" has been replaced with the term "outside sales employee."
 - (i) There is no salary requirement applicable to the outside sales exemption.

B. EXEMPTIONS FROM MINIMUM WAGE

1. Federal – Employees of organized camps are exempt from federal minimum wage requirements if the camp is open to the general public and either:
 - a. Does not operate for more than 7 months in any calendar year; or
 - b. During the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year.

2. New Jersey – Exempts employees working during June-September at summer camps, conferences, or retreats operated by any **nonprofit or religious corporations** or associations, from state minimum wage and overtime requirements.
 - a. Minors - Minimum wage rate guarantees do not apply to employees under the age of 18 who do not have special vocational school graduate permits.
 - b. Resident Employees – Employees who reside on employer’s premises, and whose hours worked are **irregular and intermittent** so that it is not feasible for the employer to account for hours actually on duty, must be compensated for **not less than 8 hours/day** on duty.

C. HOURS OF WORK

1. General Staff

a. New Jersey

- (i) “Hours of work” is defined as “All the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.”
- (ii) Employer is not required to pay employee for hours employee is not required to be at his/her place of work because of: holidays, vacation, lunch hours, illness and other similar reasons.
- (iii) A workweek is a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods. May begin on any day of the week at any hour of the day.
 - (a) The workweek shall be designated to each employee in advance. Once established, it remains fixed regardless of schedule of hours worked. However, the beginning of the workweek may be changed if the intent is to make a change permanent, rather than to evade OT requirements.

2. Minors

a. New Jersey

- (i) Under 16 years of age - may not work before 7am or after 7pm.
- (ii) Between 16 - 18 years of age
 - (a) May not work before 6am or after 11pm.
 - (b) May work after 11pm during any regular vacation season or, with a special written permit from parents/legal guardians.
 - (c) These rules are inapplicable to the employment of minors between 16 and 18 from June-September by a summer **resident camp** operated by a nonprofit or religious corporation or association, **unless employment primarily consists of general maintenance work or food service activities.**
- (iii) Under age 18 - may not work more than:
 - (a) 6 consecutive days in any 1 week.
 - (b) 40 hours in any 1 week.
 - (c) 8 hours in 1 day.
 - (d) Not more than 5 hours continuously without at least 30 minutes for lunch. Employer may not avoid this limitation by providing shorter breaks during the day.

D. OVERTIME OBLIGATIONS

1. General Staff

a. New Jersey (profit and non-religious institutions)

- (i) Paid at rate of 1 ½ x employee's regular hourly wage for each hour worked in excess of 40 hours in a given workweek.

- (ii) OT and minimum wage pay shall be computed on the basis of each workweek standing alone.
 - (a) Hours shall not be averaged over two or more workweeks.
 - (b) OT pay based on actual wages, rather than specified minimum wage.
- (iii) OT shall not be offset by allowances for value of food/lodging/gratuities since such allowances are already considered in determining the straight time wages paid.
- (iv) Where employee's pay includes value of food/lodging/gratuities and it is not feasible to determine exact hourly wage during a particular week:
 - (a) Employer deemed to have fulfilled OT requirements if premium payment is paid in cash on basis of agreed hourly wage.
 - (b) Premium payment cannot be at a rate less than applicable minimum rate.
 - (c) OT premium payments must be paid in cash.

- 2. Minors - N/A. Child labor laws prohibit minors from working more than 40 hours/week.

E. TIPPING

- 1. General Staff - Applies to employees over age 18.
 - a. If employees practice gratuity splitting, each employee shall have included in wages only their applicable proportionate share.
 - b. Employer cannot defer compensation or credit an employee for compensation not received in that week.
 - (i) Employee must receive minimum wage as compensation for hours worked at end of each pay period.

- (ii) Tips received in lump-sum at end of each session/summer can only be credited toward the minimum wage for the pay period in which they were received, and NOT for the entire summer.

F. CALCULATING MEALS AND TRANSPORTATION

1. General Staff - Applicable to only those employees over 18 years of age.
 - a. Included in NJ definition of “wages”: Fair value of any food or lodgings supplied by an employer to an employee.
 - b. Employer-provided meals can be credited towards minimum wage obligations.
 - (i) Full amount of “fair value” may be included in wages (does not include administrative or operating expenses as part of employer’s general cost of doing business).
 - c. Computing “**Fair Value**” of furnishing the employee with food and lodging:
 - (i) Cost of operation and maintenance including adequate depreciation + reasonable allowance for interest on the depreciated amount of capital invested by the employer.
 - (ii) Shall not exceed the rental value of comparable facilities in NJ.
 - (iii) Must abide by generally accepted accounting practices.
 - (iv) Items found to be primarily for employer’s benefit, that are not included in cost.
 - (v) Lodging furnished in violation of any law or ordinance must be value at nothing.
 - (vi) Fair market value is zero where one does not exist for rental of lodging in the competitive open market.

- d. Each employer claiming credit for food/lodging as a cash substitute for employees receiving employer-provided food/lodging shall maintain and preserve records substantiating costs of furnishing such food.
- e. Transportation costs **may not** be included in conducting minimum wage calculations.

G. RECORDKEEPING

1. General Staff

Must keep true and accurate record of the following for each employee:

- a. Name/address of employee;
- b. Birth date if under age 18;
- c. Total hours worked each day and each workweek;
- d. Earnings (including regular hourly wage);
- e. Gross to net amounts with itemized deductions; and
- f. Basis on which wages are paid.
- g. Six-year record retention period.
- h. Shall be kept at place of employment or in central office in NJ, subject to unusual circumstances where it is not feasible to keep records in NJ (as determined by Commissioner).

2. Minors

- a. Must keep a record (in form approved by DOL) stating:
- b. Name, DOB and address of each employee; and
- c. Number of hours worked by that person each day, the hours of beginning and ending such work, the hours of beginning and ending meal periods, the amount of wages paid, and other information required by the DOL.

- d. Timing: Record must be kept on file for at least 1 year after the entry of the record.
 - (i) Must be open to DOL/attendance officers/police officers' inspection.
 - (ii) Employment certificate as conclusive evidence of employee's age:
 - (a) No minor under 18 shall work unless the employer procures/keeps on file an employment certificate/special permit for that minor. This certificate is issued by school district in which child resides, or of district in which the child has obtained a promise of employment if the child is a nonresident of NJ.

**THIS MATERIAL IS INTENDED TO BE AN INFORMATIVE
SUMMARY AND SHOULD NOT BE CONSIDERED LEGAL ADVICE**

For more information, please contact:

**John D. Horowitz, Esq.
FOX ROTHSCHILD LLP
100 Park Avenue, Suite 1500
New York, NY 10017
(917) 331-9053
jhorowitz@foxrothschild.com**