SQUIRE PATTON BOGGS

# Hiring Household Employees

## Legal Considerations for Family Offices

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Our Family Office team counsels our clients on all aspects of their relationships with employees and contractors, in roles ranging from senior family office investment professionals to full- and part-time household employees and service providers.

While employment arrangements with family office staff tend to follow a familiar path, hiring household or personal employees can be an unfamiliar process for family members, and can give rise to a number of legal pitfalls that may be unexpected.

Here, we explore five key US employment law considerations for family offices to keep in mind when making arrangements to retain household and personal employees for the families they serve. Family offices located outside the US should make sure that they consider similar issues and legal requirements within their jurisdictions.

1. **I-9 compliance** – All employers in the US are required to verify the identity and employment authorization of their newly hired employees, whether they are citizens or noncitizens. This obligation applies to an individual person or a family office, just as it does to large companies. Family offices must, therefore, ensure the I-9 form is properly completed and the proper identification documents are presented within three business days of the hire date. While the Department of Homeland Security (DHS) temporarily allowed employers to accept certain expired identification documents due to the COVID-19 pandemic, DHS ended such policy in 2022 and employers now must again accept only unexpired versions from the List B.
2. **Background checks** – With family office employees often working within the household and sometimes around vulnerable family members, background checks may be advisable. However, employers must take care to comply with the Fair Credit Reporting Act (FCRA), which requires specific authorizations and disclosures to be submitted and completed before an employer can obtain a third-party background report, and also before and after an employer makes an adverse employment decision (including a no-hire decision) based on the results of a background report. Note further that some jurisdictions have state-specific forms and disclosures that are required in addition to the federal FCRA, including, for example, California, Massachusetts, Maine, Minnesota, New Jersey, New York, Oklahoma and Washington.
3. **Confidentiality and nondisclosure agreements** – It remains a best practice for family offices to require all staff to enter into at least a basic confidentiality agreement prohibiting the individual from disclosing sensitive family and other business information obtained through their employment. We also generally recommend that such agreements for in-home employees contain provisions relating to photography and social media restrictions and, potentially, a non-disparagement provision, depending on state law. Note that with the recent passage of the federal Speak Out Act, employers should take care to avoid any nondisclosure provisions that prospectively prohibit employees from discussing a sexual harassment or sexual assault dispute.

   In addition, in light of the recent McLaren Macomb decision issued by the National Labor Relations Board (blogged about here), employers should carefully consider confidentiality and non-disparagement restrictions for non-supervisory level employees, including either exclusion of such restrictions or a carve-out clarifying nothing in the agreement is meant to interfere with the employee engaging in protected concerted activities under Section 7 of the National Labor Relations Act.
4. **Minimum wage and overtime** – Wage-and-hour compliance is tricky for all employers, especially family offices with a hybrid workforce of hourly and other in-home employees. Family offices are advised to ensure all hours worked are carefully tracked for non-exempt employees, and that all such employees are properly paid overtime compensation for hours worked over 40 each workweek (even if the overtime hours were not approved). Critically, state laws often set different and additional minimum wage and overtime compensation standards, and family offices should ensure they properly compensate hourly employees in accordance with the local and state laws, in addition to federal requirements. California, for example, sets overtime compensation requirements based on daily hours in addition to workweek hours, and has separate requirements regarding periods of rest. As a final note, we flag that, while federal law exempts some live-in domestic service workers from overtime compensation requirements, employers should carefully review the relevant state law as well to ensure a similar exemption exists under the state's minimum wage and overtime laws, as applicable.

5. **State and local law considerations** – In addition to the above-mentioned wage-and-hour issues that often arise under state and local laws, family offices should generally take care to review other state and local employment laws impacting their workforce. By way of broad example, many states and localities contain separate laws (often with low employee count thresholds) relating to the following areas: paid sick leave, paid family or medical leave, anti-discrimination laws expanding protected classifications (including hairstyle), drug testing, noncompete agreement bans, mandatory rest periods and days of rest and payout of unused vacation time at time of termination. Employers should also take care to post (or distribute to employees if there is not a place to post) the various federal, state and local employment law posters, which can often be found on the state's administrative services website.

Especially at times of hire and termination, the employment relationship can be rife with legal risks for home offices to consider. The above key considerations highlight a few of the more common issues. Reach out to employment counsel at the front end to avoid costly disputes down the line!

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