



DOING BUSINESS IN CALIFORNIA

Basics of Typical Contracts

Part 2 - Office Lease, Employment Agreement and others (典型的契約の基礎知識 パート 2 - オフィスリース、雇用契約、その他)

Presented by:

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A Variety of Basic Contracts used in US(米国で使用されるさまざまな基本的な契約書)

- Part - 1
 - NDA - Non-Disclosure Agreement(秘密保持契約)
 - LOI/MOU/Term Sheet
 - Sales Contract(売買契約)
- Part – 2
 - Office Lease (事務所賃貸借契約書)
 - Employment Agreement/Offer Letter(雇用契約書)
 - Independent Contractor Agreement(独立請負人契約書)
 - Settlement and Release Agreement(和解権利放棄契約書)
 - Parent–Sub Agreement(親子間契約書)
- Part – 3
 - Basics of US IP(アメリカの知的財産権の基礎知識)
 - IP License Agreement(知的財産権使用許諾契約)

- Attorney's Involvement in Lease Transactions(リース契約への弁護士の間与)
 - Comparison between Japan and USA(日米の比較)
- Historical Development of Office Leasing Practice(事務所リース契約の歴史的展開)
 - From pre-printed agreement to negotiated agreement(定型書式から交渉契約へ)
- Tenant Protection under Civil Code and Landlord Agreement(民法によるテナントの保護と大家側契約書)
 - Landlord agreement contains provisions to waive tenant rights under Civil Code(大家側の契約書は民法上のテナント保護をすべて放棄させている。)

- Core Terms(主要条文)
 - Description of premises/building/project(物件の詳細)
 - Use of Premises(物件の使用方法)
 - Parking(駐車場の割り当て)
 - Term and Extension Option(期間と更新オプション)
 - Commencement date(占有開始日)
 - Base rent(基本家賃)
 - Tenant's percentage share(経費のテナント負担率)
 - Security deposit(保証金)
 - Utilities And Services(電気、水道等のアレンジメントとサービス)
 - Maintenance and Repairs(維持と修繕)
 - Alterations, Additions and Improvements(改装、増設、改善)

- Core Terms(主要条文)
 - Indemnification (免責保証)
 - Insurance(保険)
 - Casualty/Destruction (災害による破壊)
 - Condemnation –Eminent Domain (公用徴収)
 - Relocation (転居)
 - Assignment and Subletting (譲渡と転貸)
 - Default and Remedies (債務不履行と救済方法)
 - Estoppel Certificates (禁反言証明書)
 - Holdover Tenancy (ホールドオーバー)
 - Signage Rights (看板権)
 - Guarantor(保証人)

Offer Letter/Employment Agreement (雇用契約書)

- Differences in Offer Letter/
Employment Agreement (雇用契約書とオファーレター)
 - Generally (一般的に言って)
 - Offer Letter — for regular employees (一般従業員用)
 - Employment Agreement — for executive level employees (エグゼクティブ用)
- Not legally required, but, better to execute (法律上必要ではないが、締結したほうがベター)
 - Importance of “At Will” provision (アットウイル条項の重要性)
 - Importance of expectation of each other (双方が何を期待しているかの明確な理解)

Offer Letter/Employment Agreement (雇用契約書)

- Core Terms(主要条文)
 - Appropriate job title and detailed job description (職名と詳細な仕事内容)
 - Salary/Wage (給与)
 - “At Will” provision or clear provisions regarding term and termination (アットウイル条項、または、契約期間と解除条項)
 - Appropriate classification of position as exempt or on-exempt(エグゼンティブ・ノンエグゼンプトの適切な区別)
 - Work hours (勤務時間)
 - Location of employment (勤務地)

Offer Letter/Employment Agreement (雇用契約書)

- Core Terms(主要条文)
 - Benefits and incentive compensation (福利とインセンティブ)
 - Paid Vacation (有給休暇)
 - Sick Leave (病気休暇)
 - Health Insurance (健康保険)
 - 401k plan (年金プラン)
 - Incentive Bonus (インセンティブボーナス)
 - Stock option (ストックオプション)

Offer Letter/Employment Agreement (雇用契約書)

- Core Terms(主要条文)
 - Proprietary rights and confidentiality provisions (知的財産権と秘密保持条項)
 - Non-disclosure or non-use of confidential information of company and company's customers (会社情報と顧客情報の非開示と不使用)
 - Assignment of inventions and IP (職務発明の会社への譲渡)
 - Non-use of prior employer's confidential information or IP (以前の勤務先の秘密情報やIPの不使用)
 - Arbitration provision for all disputes (仲裁条項)

Offer Letter/Employment Agreement (雇用契約書)

- Covenant not to compete after termination is not enforceable in California (競業禁止義務はCAでは無効)
- Non-solicitation obligation of company's customers are treated the same as non-compete obligation.(会社の顧客への勧誘禁止条項は競業禁止と同じに扱われる。)
- Alternatively, the employer can prohibit an employee from soliciting other employees for certain limited period or using the employer's trade secret. (一定期間の他の従業員の引き抜きや、トレードシークレットの使用禁止義務を課すことは出来る。)
- But, Inevitable Disclosure Doctrine was rejected by a CA court (開示不可避論はCAの裁判所で否定された。)
- Non-solicitation provision or confidentiality agreement must be supported by consideration (引き抜き禁止契約や秘密保持契約には対価が必要)

Offer Letter/Employment Agreement (雇用契約書)

- Arbitration provision for all disputes (仲裁条項)
 - Need to satisfy the case law requirements (判例による要件遵守が重要)
 - Availability of appropriate discovery (証拠開示手続き)
 - Availability of damages including punitive damages (制裁的損害賠償を含めて損害賠償が認められること)
 - Company needs to pay cost of arbitration. (仲裁の実費は会社負担)
 - Selection of neutral arbitrators (中立的な仲裁員の選定)

Independent Contractor Agreement (独立請負人契約)

- Examples of Independent Contractor Agreement
(独立請負人契約の例)
 - Consulting Agreement (コンサルタント契約)
 - Service Agreement (サービス契約)
 - Development Agreement (開発委託契約)
 - Sales Representative Agreement (セールスレップ契約)

Independent Contractor Agreement (独立請負人契約)

- Core Terms of Consulting Agreement (コンサルタント契約の主要条文)
 - Term (契約期間)
 - Description of Consulting Services (コンサルサービスの内容)
 - Independent contractor provision (独立請負人条項)
 - Warranty and Representation (保証と表明)
 - Compensation (報酬)
 - Confidential information (秘密保持)
 - Intellectual property-work made for hire and assignment (知的財産権の帰属)
 - Facilities, equipment and supplies (設備、機器、道具)
 - Dispute resolution (紛争解決方法)

Independent Contractor vs. Employees

(独立請負人と従業員)

- What is the difference between an employee and an independent contractor? (従業員と独立請負人の違い)
 - Independent Contractor
 - No withholding obligations (源泉徴収不要)
 - No health insurance (健康保険不要)
 - No paid vacation (有給休暇不要)
 - No labor law protection such as overtime payment or minimum wage obligations (残業代や最低賃金の保証などの労働法上の保護不要)
 - No workers' compensation (労災保険不要)
 - No duty under OSHA to provide a safe and healthy work environment (職場における安全衛生基準の遵守不要)

Independent Contractor vs. Employees (独立請負人と従業員)

- What are Risks in Misclassification? (何がリスクか)
 - Violation of withholding obligation (源泉徴収義務違反)
 - Workers' compensation (労災保険)
 - Litigation from independent contractors alleging “employee status” (従業員の地位を主張する裁判のリスク)
 - Vizcaino v. Microsoft (9th Cir.1996) (マイクロソフト裁判)
 - Saving Plus Plans (年金プラン)
 - Employee Stock Purchase Plans (自社株購入制度)

Independent Contractor vs. Employees

(独立請負人と従業員)

- Tests (判断基準)
 - “Right to Control” (支配従属関係)
 - “Economic Realities” (経済的実態)
- Major Factors (主な判断要素)
 - Instructions (指示)
 - Training (トレーニング)
 - Integration (一体性)
 - Personal performance required (本人のサービスが不可欠か)
 - Continuing relationship (継続的関係)
 - Full-time required (フルタイムか)
 - Doing work on company’s premises (会社の事務所で働く必要性)
 - Furnishing tools and materials (道具と材料)
 - Significant investment and realization of profit and loss (投資と損益の帰属)
 - Making service available to public in other business (一般へのサービスの提供)

Settlement and Release Agreement

(和解および権利放棄契約書)

- Core Terms of Release Agreement for Employee Termination (解雇における和解および権利放棄契約書の主要条文)
 - Consideration (対価)
 - Confidential Information (秘密保持義務)
 - Payment of Salary (サラリーの支払いの確認)
 - Release of Claims (請求権の放棄)
 - Acknowledgement of Waiver of Claims Under ADEA (年齢差別に関する権利放棄条項)
 - Civil Code Section 1542 (民法1542条)
 - Non-Disparagement (非難悪口禁止条項)
 - Non-Solicitation (非勧誘条項)
 - Breach (違反)
 - No Admission of Liability (非を認めたことにはならない確認条項)
 - Costs (費用)
 - Arbitration (仲裁)
 - Effective Date (効力発効日)
 - Voluntary Execution of Agreement (任意の締結)

Settlement and Release Agreement

(和解および権利放棄契約書)

- Provision of Waiver of Section 1542 of the California Civil Code (民法1542条に基づく権利の放棄条項)
 - The Parties expressly waive any and all rights and benefits conferred upon them by Section 1542 of the California Civil Code, which states as follows (当事者は、以下のCA民法第1542条に基づく権利を理解したうえで放棄する) :
 - A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. (包括的権利放棄は、権利放棄の時点において、権利を持つ者が知っていたら、義務者との和解内容に重要な影響を与えたに違いないような自分に有利な事情があることを知らなかった、または、存在することを疑うことをしなかったようなクレームについては及ばない。)

Settlement and Release Agreement

(和解および権利放棄契約書)

- Age Discrimination in Employment Act (雇用における年齢差別禁止法)
 - Applicable to an employer with 20 or more employees (20人以上の従業員を持つ会社に適用)
 - Protect individuals at least 40 years (40歳以上の従業員を保護)
 - Special requirements for a valid release (訴訟の放棄をさせる場合の特別要件)
 - Employee has 21 days to consider the agreement (21日の考慮期間を与えなければならない)
 - Employee may revoke the agreement within 7 days after execution (訴訟の放棄書にサインした後7日間は一方向的に解除できる。)
 - In case of group layoff (複数の従業員を解雇する場合)
 - 21-day period is extended up to 45 days (45日の考慮期間)
 - Employer must inform the affected employees of certain facts regarding layoff by attaching schedule to the release agreement (他に解雇される従業員の一覧表を添付しなければならない。)

Parent-Subsidiary Agreement

(親子会社間契約書)

- Parent –Sub Agreement(親子間契約)
 - Could be service agreement, distributor agreement, sales rep agreement, or license agreement depending on subsidiary 's business in US and relationship between parent and subsidiary(子会社の編めるかにおけるビジネスの内容と親会社との関係によって、契約は、サービス契約、販売代理店契約、販売取次ぎ業者契約、ライセンス契約などさまざまなものが考えられる。)
- It is very important to keep “Arms Length” relationship in business agreements between the parent and the subsidiary to keep separation of liability between parent and subsidiary(親会社と子会社の責任の分離を維持するために、親子間におけるArms Lengthの関係の維持することが重要)