

Employment Laws Affecting Your Brewery

Article #12 of Hopping on the Brewery Bandwagon Series

As your brewery ramps up production, you may need more hands on deck to handle the increased demand. Developing and managing a workforce involves legal issues and requirements that you will have to navigate to avoid brewing up a lawsuit.

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Employee Policies, Procedures and Handbooks

With an expanding workforce, it is essential to develop employee policies and procedures that clearly communicate performance expectations to your employees. This can be achieved by creating and maintaining an employee handbook that is tailored to your brewery. Establishing expectations and holding all employees to the same standards can go a long way toward limiting your exposure to employment discrimination claims, wage and hour complaints, and overtime lawsuits down the road. Additionally, developing consistent and responsible policies regarding at-work consumption and proper handling and disposal of alcohol are considerations of special importance to the brewery industry.

Employees vs. Independent Contractors

Workers generally fall within two major classifications: employees and independent contractors. If the brewery controls the "how to" of a worker's day-to-day tasks, the worker is likely an employee. In the case of a brewmaster who is highly experienced and working primarily as a part-time consultant, however, the relationship may call for independent contractor status.

It is important for a brewery to properly classify its workers. While treating workers as independent contractors may seem to be more cost-effective, a brewery may face serious consequences for improperly classifying workers as independent contractors, including tax penalties and penalties associated with health care and worker's compensation laws.

In July 2015, the U.S. Department of Labor issued guidance on the proper application of the "economic realities test," which is a multi-factor test used to determine whether a worker is an employee or an independent contractor. The



Department of Labor takes the position that most workers are actually employees when the economic realities test is applied in light of the Fair Labor Standards Act's broad definition of "employ."

Employment Agreements and Covenants Not to Compete

In Wisconsin, most employment is employment at will, meaning that an employee generally can be terminated at any time, for any reason (provided that it does not violate state or federal law). However, an at-will employee can also leave their employment whenever they wish. Accordingly, if there is an employee who is an integral part of your brewery's success, then you might consider entering into a written employment contract with the employee that provides for a fixed term of employment and includes a covenant not to compete. This can discourage the key employee from leaving to work for a competitor. A written employment agreement for your brewmaster is especially important: brewmasters know the brewery's formulas and could do significant damage to your business if they started working for a competitor. Consequently, a brewmaster's employment agreement should include an enforceable (i.e., narrowly tailored) covenant not to compete, a nondisclosure provision and a confidentiality provision. The agreement should also clearly state that the beer formulas are "trade secrets," and therefore are the property of the brewery, not the brewmaster.

Statutory Coverage

As your business expands and you begin to gain employees, you may become subject to certain state and federal employment laws. Whether your brewery is subject to these laws depends in part on the number of employees that you have. A few of these statutes are summarized below, but others may apply depending on the nature of your business.

Statute	Brief Summary	Applies if you Employ...
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Wisconsin Fair Employment Act ("WFEA")	Prohibits discrimination against a number of protected classes (i.e., sex, race, marital status, disability, etc.) in all employment practices	1 or more employees
The Americans with Disabilities Act ("ADA")	Prohibits discrimination against "qualified individuals with disabilities" in all employment practices	15 or more employees
Age Discrimination in Employment Act ("ADEA")	Prohibits discrimination based on age against individuals age 40 and over	20 or more employees
Family and Medical Leave Act ("FMLA")	Generally requires a covered employer to grant an eligible employee up to a total of 12 weeks' unpaid leave for birth or placement of child, caring for immediate family member, or the employee's serious health condition	50 or more employees within 75 road miles of each other (for example, two locations 30 miles apart)

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If you have any questions about the topics covered in this e-alert, please contact your Reinhart attorney or any member of the firm's [Labor and Employment](#) or [Food and Beverage](#) teams.

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