

Norris Legal Consulting - American Law Specialists, Auckland New Zealand/Houston, Texas USA

Norris Legal Consulting is honored to have been invited to contribute to the American Chamber of Commerce New Zealand's monthly newsletter. In partnership with the Chamber, our objective is to provide Chamber members with information on the complex US legal landscape, which might assist in US-NZ business relationships, and to assist NZ businesses expanding into the lucrative US markets. We will write about legal issues which we deal with in our representation of NZ businesses doing business in and with the US, however, we are also open to suggestions on topics about which members are interested in learning. So, please feel free to email us with your comments, questions and any suggested topics at [info@nz-uslegal.co.nz](mailto:info@nz-uslegal.co.nz).

### **US Employment Issues - Part 1 - The At-Will Employee\***

New Zealand businesses expanding into the US often face the following decisions of whether: (1) to directly hire employees in the US; (2) to hire a third-party contractor who acts as the Kiwi business's agent, (3) to hire a third party employment agency to manage and pay any individuals performing work for them; and/or (4) to bring in Kiwi employees to run the business in the US. All of these options require consideration of the impact of US employment law.

Many New Zealand businesses in the US market are often overwhelmed by the complexity of US employment law. In addition to the federal system, each state has its own individual legal system with employment and labor laws which apply to employees of businesses located in that state. While this additional layer of complexity can be daunting, a Kiwi business will be pleasantly surprised to learn of the "pro-employer" tone of most US employment law.

Generally, the fundamental legal principle underlying all employment law in the United States is the At-Will Doctrine. Under the At-Will Doctrine, an employer is free to terminate an employee for any reason whatsoever, without notice or need for just cause. Generally, the only limitations on the At-Will Doctrine are restrictions on terminations for discriminatory purposes based on an employee's race, gender, religion, national origin, age, pregnancy status, and disability status. Bearing in mind these limitations, in essence the At-Will Doctrine allows employers to act nimbly and quickly in making adjustments to their labor forces and incentivizes employee performance.

The At-Will Doctrine can often be augmented or replaced altogether by a written employment contract, and sometimes by promises made in an employee handbook (depending on the relevant case law of each state). New Zealand businesses which are already operating directly in the US, considering should take care in the shaping of their US employment policies in order to not unnecessarily eliminate the competitive advantage allowed for US employers by the At-Will Doctrine.

This is just one example of the substantive differences between US and New Zealand employment law. A legal assessment of your business plan in the US by a US lawyer will assist

you in creating employment policies which make sure your business complies with US law and retains the advantages offered by the At-Will Doctrine.

In Part 2 of this series which will appear in next month's issue, we will address some of the basic legal considerations regarding entering into an independent contractor agreement in the US.

-Zachary D. Norris, JD, LL.M and Ada Echetebe, JD, LL.M.

\*This article is for general informational purposes only and does not constitute legal advice, nor should it be construed as constituting any legal advice from Norris Legal Consulting, The Norris Law Firm or any of its affiliated lawyers. For specific analysis of your US legal issues, please contact the attorneys at Norris Legal Consulting at +64 (0)9-889-2602 or visit us on the web at <http://nz-uslegal.co.nz/>