

Three Things To Know About Doing Business in California

Xconomy , California (January 28, 2016) –

Since the 1849 gold rush, California has had a reputation as a great place to seek—and find—your fortune. The Golden State is home to the Golden Gate Bridge, the Golden State Warriors and, in Silicon Valley, golden opportunities. But, as you might suspect, California sometimes operates like its own country, with laws that aren't like anyone else's. Here are three areas where California law puts a unique twist on business. If you're running a startup here, or if you're thinking of doing so, you'll need to pay close attention to these quirks:



Daniel Zimmerman

It's All About Equity

I often counsel foreign startups eager to enter the California marketplace, and they're always surprised by the perks that Silicon Valley workers want. No one—and I mean no one—is interested in a company car. But stock options? Bring 'em on.

It's common in Silicon Valley to grant options or shares to advisors, early employees, key contributors, including landlords and banks. Many want to cash out and use the windfall to buy a home or just pay the rent in the country's most costly real estate market.

California is one of the few states that carefully regulate filing requirements for stock plans. The state can levy fines on companies that fail to file or remain in compliance. Founders must also comply with federal regulations, spelled out in the scintillating Internal Revenue Code. It requires that deferred compensation be paid by March 15 of the following calendar year, except for stock options that are exempt, provided they are granted at fair market value. This clearly isn't something you want to puzzle out on your own. Consult a lawyer and valuation experts to be sure you're not running afoul of either California or federal law. Or both.

Goodbye, Colleague, Hello Competition

So many potentially brilliant ideas are erupting in Silicon Valley that it's no wonder this area is prone to earthquakes. Smart and ambitious people think big, and sometimes those big thoughts happen while they're working for someone else—like you.

Unlike many other states, California law generally bars post-employment non-compete agreements. They're against public policy and ultimately unenforceable here, except in narrow circumstances, so there's really nothing you can do to prevent your employees from jumping ship and signing on with your biggest competitor.

You also can't stop them from leaving to launch their own business, even if it's in the same space as yours, provided they haven't hijacked your vital intellectual property or trade secrets when they do so. (Of course, before their first day of work, you did have them sign over to the company all rights to anything they developed on the job, right?) They also must have developed their product, software or ideas on their own time with their own resources.

California law offers few protections in this area, but I can suggest a strategy that offers some defense against competitors who rise from your ranks: Insist that employees sign a non-compete agreement that is enforceable in states that permit it. This could deter a subset of your team from setting up shop in Austin or Boston, because Texas and Massachusetts are less restrictive with respect to non-competes.

Free Labor, Costly Problems

California has always attracted innovators, whether it's O'Neill surfboards or Apple computers. Tech companies large and small are deluged with requests from college students who want to breathe that heady startup air. They're so eager for the experience that they're willing to "intern" for free. It's tempting to take advantage of that kind of enthusiastic workforce, especially in costly California. The State's minimum wage rose from \$9 per hour to \$10 an hour on Jan. 1. The hourly wage in San Francisco jumps to \$13 on July 1 from \$12.15.

College students and new grads may insist they're thrilled to work as unpaid interns, but you must proceed with caution. If they're doing routine office tasks, such as packaging products for shipment, you must pay them the mandated minimum wage. If they're getting college credit for skilled work—think beta-testing software or developing a marketing campaign—you should have them acknowledge that they know they are not employees and won't claim to be. Unfortunately, even this precaution is no guarantee against being sued later for back pay.

And an intern could, in theory, attempt to charge you for a detailed analysis he or she spent months preparing for your team. Protect your company's interests by requiring all interns to sign paperwork affirming that everything they invent or develop during their time with you belongs to your business alone.

—By Daniel Zimmerman, WilmerHale

[Daniel Zimmerman](#) is a partner in the Palo Alto office of WilmerHale, where he is a member of the firm's Corporate, Venture Capital and Emerging Company Practices.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Xconomy, or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.