



# What Every Employer Needs to Know

FEBRUARY 10, 2021

© The Campbell Law Group P.A. —

Corporate Law • Family Law

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

# Agenda



## **Necessary Forms**

I-9's and W-4's and W-9's Oh my!



## **Wages, Compensation, Improper Classification of Employees and Time and Employee Record Keeping**

Improper Wage and Salary

Non-Exempt vs. Exempt

Misclassification of independent contractors

Time and Employee Record Keeping



## **Employment Agreements and Policies**

Employee Agreements

Termination/Release Agreements

Employee Handbooks and/or Company Policies

Additional Necessary Agreements

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

# Agenda (Cont'd)



## **Compliance and Mitigating Liabilities and Risk**

Importance of Compliance and Proper  
Insurance  
Mitigating Liabilities and Risk



## **Closing**

Summary  
Questions and Answers

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.





# I-9, W-4 and W-9

(Update these forms annually)

---

- **Employers must obtain an I-9 and W-4 form from all employees and a W-9 from all independent contractors.**
- **Employers must not discriminate** against any individual based on actual or perceived national origin, citizenship or immigration status Immigration Reform and Control Act of 1986 (IRCA).
- **Don't forget to verify eligibility.**
- **Don't forget you must keep each employee's I-9 and all supporting documents.**

To determine the length of time in which you are required to keep the employee's documents, the employer must calculate the time period as set forth below commencing on the date in which the employee stopped working for the company.

- If the employee worked for the company for less than 2 years, the company should retain the employee's forms for three years after the date in which the employee first started his or her employment with the company;
- If the employee worked for the company for more than two years, the company should retain the employee's forms for one year after the date the employee stopped working for the company.

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.



# Wages, Improper Classification of Employees and Time and Employee Record Keeping

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

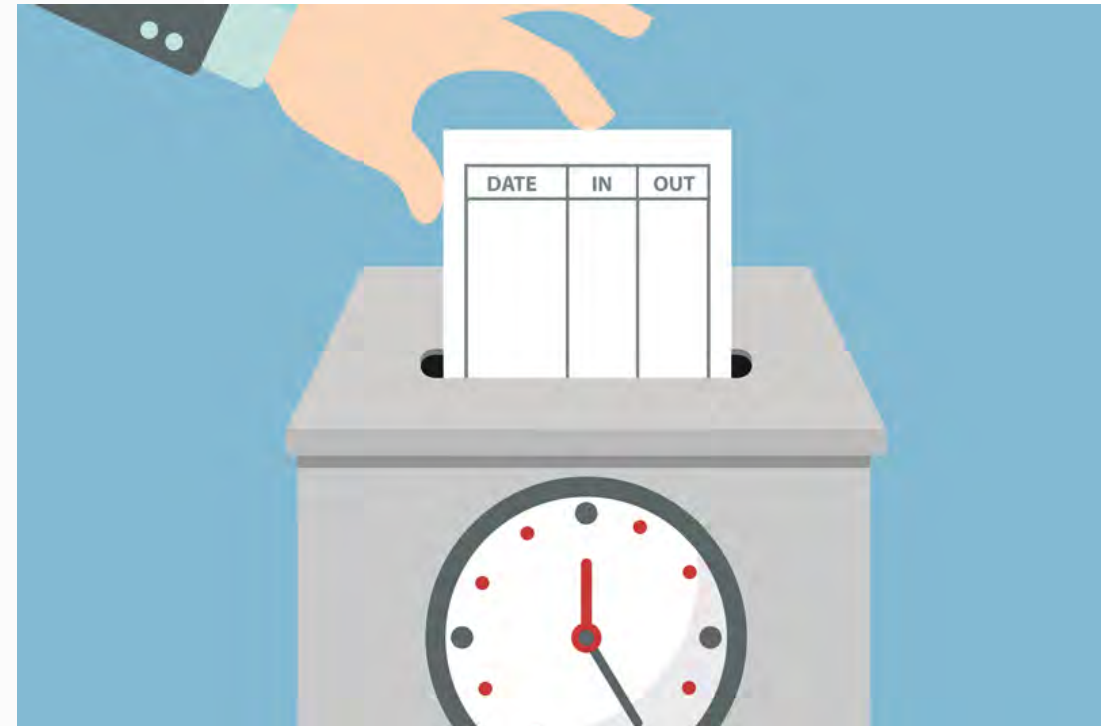


# Improper wage and salary exemptions

## • Non-exempt Employees

- Non-exempt employees are most employees and are paid hourly and overtime if they work more than 40 hours in any given work week.
  - i. Annually employers should check local, state and federal laws for changes in the minimum wage laws. Currently Florida's min. wage law, requires employees to be paid \$8.65 per hour.
  - ii. Future changes in Florida min. wage have already been determined and are set forth herein: \$10.00 per hour effective September 30, 2021. \$11.00 per hour effective September 30, 2022; \$12.00 per hour effective September 30, 2023; \$13.00 per hour effective September 30, 2024; \$14.00 per hour effective September 30, 2025; \$15.00 per hour effective September 30, 2026.
  - iii. Further Employers should also check for additional changes in wage and labor compensation laws such as changing in decisions and opinions issued by the Federal and State Dept of Labor, which may include such things as changes how you determine the amount of time an employee has worked, benefits, time off, whether travel time or prep time of an employee must be compensated.

▪ **Notice:** Keep an observant eye for potential changes in federal law by executive action that may increase the federal min. wage to \$15 per hour.



DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

# Improper wage and salary exemptions



## Exempt Employees

- Exempt employees are employees which are paid on a fixed salary basis. However, most employers do not know that a salaried employee must fall within an exemption to be able to pay a employee a fixed salary with no additional compensation for overtime hours worked. Some examples of exemptions are: Administrative, Executive, Computer Professionals and Highly Compensated Individuals.
- It is IRRELEVANT, if the employee agreed not receive overtime, if the employee is otherwise entitled to overtime under the law. Likewise, even if an employee signs a form drafted by the employer which “classifies” the employee as an exempt employee, if the employer proceeds to treat employee as a non-exempt employee throughout the course of the employment, under the law they will not be considered exempt employees irrespective of what the signed document says.
- The burden is on the Employer to prove a proper exemption.
- Proper classification can be its own art form and difficult to ascertain, especially if you have employees that perform mixed job duties.

**As a rule of thumb, when in doubt, pay hourly and overtime.**

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

# Improper wage and salary exemptions

## Misclassification of independent contractors.

This is one of the most common mistakes that employer make. Here are some of the factors that must be weighed:

1. The extent to which the services rendered are an integral part of the principal's business.
2. The permanency of the relationship.
3. The amount of the alleged contractor's investment in facilities and equipment.
4. The nature and degree of control by the principal.
5. The alleged contractor's opportunities for profit and loss.
6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
7. The degree of independent business organization and operation.
8. New factors (Discussed later in the presentation)

**Many employers tell me, but I have an independent contractor's agreement. It does not matter what your agreement says. Ultimately, when in doubt, pay the person as an employee.**



DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.



# Time and Employee Record Keeping Requirements

- The Employer has the obligation to keep proper time and employee records. **PERIOD, END OF STORY! NOPE DOESN'T MATTER IF THE EMPLOYEE IS OK WITH NO TIME OR EMPLOYEE RECORDS OR IF THE EMPLOYEE NEVER REQUESTED THEM OR TO BE PAID OVERTIME IN THE PAST.**
- FLSA requires every employer to keep the following records: full name, social security number; home address; min. wage poster, birth date (if 18 or younger); sex; occupation; the time of day and day of the week the workweek begins; hours worked each day and each workweek; basis for wages (hourly, salary, or piecework); regular rate of pay for any workweek overtime compensation is due, including the basis of pay (such as pay per hour, pay per week, pay per piece, commission, or other basis); total daily or weekly straight time earnings; total weekly premium pay for overtime hours; additions or deductions from wages; total wages for the pay period; and date of payment and the pay period covered by the payment. (29 C.F.R. § 516.2; see also DOL: Fact Sheet #21: Employers must keep payroll records for at least three years (29 C.F.R. §516.5(a)). Employers must keep wage computation records, such as time cards, wage rate tables and records of additions or deductions from wages for two years (29 C.F.R. § 516.6).
- Other Federal agencies have separate record keeping obligations that you should be aware of if applicable to your company.
- State and Local law can vary as to record keeping obligations, however these obligations would be in addition to those posed by Federal law.
- Horror story



DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

# Essential Employment Agreements and Documents



The following agreements and documents are essential for every Employer (most generally applicable, non-exhaustive list):

- Employment agreement
- Termination/release agreements
- Employee Handbook and/or Company Policies

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

# Employee Handbook and/or Company Policies

Here are some of the type of provisions and/or policies that every Employer should have either in their employee handbook or as a clearly delineated company policy:

- At will employment (with strict provision as to how the presumption can be overridden);
- Wage, Compensation and Benefits Policy
- Time off Policy
- Absence and tardiness Policy
- Discrimination and Reporting policy (including a reporting process in place with clear procedures as to how to follow)
- Safety Policy and Procedures-(including a reporting process in place with clear procedures as to how to follow and the process for reporting a worker's compensation claim)
- Harassment Reporting Policy -(including a reporting process in place and with clear procedures as to how to follow the policy)
- Property, Computer and Data Ownership Policy
- Drug and Violence at the Workplace policies;
- Special industry type of policies set forth in the agreements such as for the medical and legal industry that requires strict rules regarding sensitive information.
- OSHA, FLSA and Worker's Compensation posters/notices (once again, non-exhaustive depending on your company and industry);
- **Most importantly:** your company should apply all of its policies and procedures equitable and evenly across all employees at all times. Should your company need to deviate from the policies or procedures, why it deviated should be well documented.

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.



# Additional Necessary Agreements For Employers



NON-DISCLOSURE  
AGREEMENTS



NON-COMPETE  
AGREEMENTS



CONFIDENTIALITY  
AGREEMENTS



INDEPENDENT  
CONTRACTOR  
AGREEMENTS

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

# Mitigating Employer Liabilities and Risk

- **Manage Employee risks and liabilities:**

Compliance with local, state and federal laws;

Implementation of proper policies, procedure and agreement in place which includes robust time keeping records, along performing audits every year of your employee's wage classifications and employee policies to ensure they are being properly, consistently and fairly implemented;

Ensuring that all third-party relationships are being properly managed in order to avoid the potential for a classification of your company as a joint employer.



DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

# Mitigating Employer Liabilities and Risk



- **Limit liability based on employee's action**
  - i. Perform background checks.
  - ii. Removal of employee from dangerous duties upon notice or recurrence of risk and/or danger.
  - iii. Properly supervise employees.
- **Very Important:** Know what laws apply to your company. Often employers, particularly those in growth stages of their business, are unaware of the fact that in many cases new laws will apply to the Company based on the number of employees that the company has at any given time.

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.



# Application of Law Based on Number of Employees (A few examples, not exhaustive)

Number of Employees	Covered Employer	Law	Protection
1	Employers covered by the FLSA	Employee Retirement Income and Security Act	Protection of employee benefits
1	Employers with any employee involved in commerce (pretty much every employer)	Fair Labor Standards Act (FLSA)	Protection of payment of proper wages, calculation of wages and payment of minimum wage/overtime
1	Employers covered by the FLSA	Occupational Safety and Health Act (OSHA)	Setting of occupational safety and health rules at job site
1	Employers covered by the FLSA	Equal Pay Act (EPA)	Protection of equal pay rights
15	Any Employers	Title VII of the Civil Rights Act of 1964 and American with Disability Act (ADA)	Protection against discrimination based on race, color, religion, national origin or disability
20	Any Employers	Age Discrimination in Employment Act (ADEA)	age discrimination
50	Any Employers	Family Medical Leave Act (FMLA)	family and medical leave
100	Any Employers	Worker Adjustment and Retraining Notification (WARN)	advance notice of plant closings and mass layoffs

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.



# Compliance with All Local, State and Federal Laws and Insurance Requirements

---

- Each Employer must be familiar with all Local, State and Federal laws.
- Some states, cities and counties have heighten insurance requirements such as those for Workman's compensation. It is important that each Employer know what rules are applicable to each company.
- Other insurance policies that each Employer should consider are: Employer's liability policy, E&O policies and General liability with coverage for employee activity done in their own car

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISE TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

# New Rules and Changes



## **New Min. Salary Thresholds For Exempted employees Started Jan 1, 2020**

The new rule RAISES THE THRESHOLD EXEMPT SALARY 0 from \$455 per week (annualized salary of \$23,660) to \$684 a week (annualized salary of \$35,568).

This change in the final rule also means that employees who make less than \$35,568 per year are now eligible for overtime pay under the DOL's final rule.

The new rule does not change the duties test requirement, only the minimum salary thresholds.

Also changed the total annual compensation requirement for "highly compensated employees" from \$100,000 per year to \$107,432 per year (Note: \$684 per week or the equivalent must still be paid as a minimum salary for).

Employers are also allowed to use up to ten (10%) percent of nondiscretionary bonuses and incentive payments (including commissions) provided paid at least annually, to satisfy the standard salary level threshold.

Finally, the final rule also revises special salary levels for workers in the motion picture industry and in U.S. territories.

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.



# New Rules and Changes

- **CLARIFICATION OF EMPLOYEE VS. INDEPENDENT CONTRACTOR STANDARD UNDER FLSA (EFFECTIVE MARCH 8, 2021, UNLESS OTHERWISE DELAYED)**

The DOL on January 6, 2021 announces its final rule on clarifying the standard for employees vs. independent contractors under the FLSA. The final rule:

- Reaffirms an “economic reality” test to determine whether an individual is in business for him or herself (independent contractor) or is economically dependent on a potential employer for work (FLSA employee).
- Identifies and explains two “core factors” that are most probative to the question of whether a worker is economically dependent on someone else’s business or is in business for him or herself:
  - The nature and degree of control over the work.
  - The worker’s opportunity for profit or loss based on initiative and/or investment.
- Identifies three other factors that may serve as additional guideposts in the analysis, particularly when the two core factors do not point to the same classification. The factors are:
  - The amount of skill required for the work.
  - The degree of permanence of the working relationship between the worker and the potential employer.
  - Whether the work is part of an integrated unit of production.
  - The actual practice of the worker and the potential employer is more relevant than what may be contractually or theoretically possible.

Provides six fact-specific examples applying the factors.

*Source: <https://www.dol.gov/agencies/whd/flsa/2021-independent-contractor>*

- **VARIOUS NEW SAFETY RULES AND AMENDMENTS OF EXISTING RULES FROM OSHA AND OTHER AGENCIES WHICH SHOULD BE REVIEWED (SPECIFICALLY RELATED TO COVID)**

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

## Q & A



# Ask Me

DISCLOSURE: THIS WEBINAR SERVES AS GENERAL INFORMATION TO ITS AUDIENCE AND VIEWERS; IT IS NOT MEANT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE TO ANY ONE VIEWER OR PARTICIPANT. THIS AREA OF LAW IS HIGHLY COMPLEX AND FACT INTENSE, FOR ANY SPECIFIC INFORMATION OR ADVICE, YOU ARE ADVISED TO CONSULT WITH AN ATTORNEY REGARDING YOUR SPECIFIC SITUATION.

# THANK YOU!

Stay Tuned for our Next Webinar!

7 Essential Qualities of Forward-Thinking Companies

Click here to register:

<https://us02web.zoom.us/meeting/register/tZcudO-tqD0oH9colXKrQgGO2v0nl378tx6F>

If you would like to receive our Newsletter, Blogs and Webinars Announcements, Please Text CAMPBELL to 22828



 **The Campbell Law Group**  
P.A.  
Corporate Law • Family Law

# THANKS AGAIN!

## Contact information

Regina M. Campbell, Esq.  
The Campbell Law Group PA  
400 University Drive, Suite 100  
Coral Gables, FL 33134  
Phone: 305.460.0145

Email: [info@thecampbelllawgroup.com](mailto:info@thecampbelllawgroup.com)

## Social Media:



Facebook: @businessattorneymiami

LinkedIn: the-campbell-law-group



Twitter: @Campbelllawgrp

Instagram: @campbelllawgroup



H A P P Y  
*Valentines*  
D A Y

from The Campbell Law Group