

Building and managing a virtual team - Employees (S3E50)

info@awbfirm.com

scribie

Audio Transcription, Perfected

<https://scribie.com/files/d40446ebb5cf41ad9e42d345500613f95e3ebeaa>

[music]

00:06 Autumn Witt Boyd: Welcome to The Legal Road Map podcast for online and e-commerce entrepreneurs. I'm your host, Lawyer Autumn Witt Boyd. I'm an experienced copyright and trademark lawyer. With my team at the AWB firm, I leverage, grow and protect multimillion dollar online businesses. My goal in every episode is to teach you about the sophisticated legal and business strategies to build your own seven or eight-figure business. If you're a new business owner, go back and listen to episodes one through 12. You'll learn the basics to set up a strong legal foundation. The Legal Road Map podcast is sponsored by the AWB firm. You can find show notes for every episode, and learn more about how we help our clients achieve their next level goals at awbfirm.com.

[music]

00:52 AB: Hi, everybody, Lawyer Autumn Witt Boyd here for your weekly Facebook Live and podcast recording. I have a super special guest with me today, Lawyer Michelle Coakley, who works with me on my team here at the AWB firm. I'm going to be interviewing her today. We're doing the second in our series on working with a virtual team. We talked about contractors last week, so if you haven't checked that out, go watch that Facebook Live. It's also Legal Road Map podcast Episode 49, if you'd rather listen than watch. Today is Episode 50, which is crazy, and we're gonna be talking about working with virtual employees.

01:27 AB: Working with contractors, there are some things you need to think about, but working with employees, it's really a whole different ball game. You have a whole slew of now federal, state, and local laws and regulations that you need to be thinking about. It is definitely a big step for any business, when you get to that point where you're working with employees locally, but especially if you're working with employees in another state or location, or another country especially. This is a time when you definitely need to be working with your team of advisors, your CPA, your attorney, and probably others to make sure that you are doing things the right way.

01:58 AB: Michelle and I are gonna go over six things you need to think about, if you are working with virtual employees. But I'm gonna let Michelle give you just a little background on her career, and we are so lucky to have her at the AWB firm because she is an absolute whiz at all things labor and employment. Michelle, please say "hello."

02:15 Michelle Coakley: Hello. Thank you, Autumn, for letting me join you on Facebook Live today. I always love talking about employment law issues, so any time you have any questions, I'm happy to talk through any of that with you. I joined the AWB firm almost a year ago now, and I've been working with Autumn on a host of employment law matters and contract matters. My background is I practiced law for 13 years up in Detroit at a large law firm there, relocated to Chattanooga about seven years ago with my family. We have loved Chattanooga. We have jumped right into this wonderful community and love it here. I really liked meeting all the entrepreneurial creative types here in Chattanooga. I think being in big city makes a perfect [02:52] for the

business that Autumn is doing, and so that's why I was so excited to join her firm, bring that legal expertise and knowledge to these growing businesses in Chattanooga and across the country everywhere, so that way, whatever legal needs you might need in the employment area or otherwise, I could jump in and help you out.

03:09 AB: Yeah. Michelle's background is really working with much larger businesses, so she brings a really deep level of expertise of really complicated issues that a lot of small businesses are not facing today but might face as they grow. And so just knowing what can be on the horizon is so valuable for our clients. We love having Michelle on our team. Yeah. We are gonna start. First thing we're gonna talk about, if you're working with employees, is just to make sure that you are classifying people the right way should your worker... I'm gonna use the word "worker" as kind of a generic term, should it be a contractor or should it be an employee.

03:43 AB: We are not gonna spend a ton of time on this, because there are two podcast episodes where we already dug into this. So, if you haven't already, go listen to Episode 12 with Ashley Cox, of SproutHR, she's an HR consultant. We talked high level about that issue. And then I interviewed Michelle on Episode 37. Those are both really good episodes to go listen if you wanna deep dive. Michelle, if you could just give us a high level quick summary of generally when should someone be a contractor and when should someone be an employee. And we're talking about contractors, sometimes we hear the word "1099" tossed around or "W2" with "employees." If you can just give an overview of that.

04:19 MC: Sure. Generally speaking, an independent contractor is somebody who works remotely, very independently from your business. It's as if you went out and you hired a vendor or somebody to provide a service or to provide goods to your business that isn't integral necessarily to your business, or where you tell that person what you need and then they provide it, but you're not exerting day-to-day control. The key word when you talk about independent contractors versus employees is "control." An independent contractor is somebody you say, "Here's what I need and here's when I need it by." Whereas an employee is somebody where you say, "I want you to come work in my office, and I want you to be under my control on a daily basis. And I'm going to direct the work that you're doing." And that way, that establishes more control over the work that the employee is doing.

05:08 MC: In an independent contractor situation, the individual has a lot of autonomy over the methods that they use to get their work done, whatever resources, whatever employees they wanna use on their end, the time of day. What you're asking for is product as opposed to somebody to be part of your team. A lot of companies think that you can eliminate all of your employment law problems by just making everybody an independent contractor. However, not that simple. The IRS takes a very... The IRS looks very carefully whether employees are properly classified as independent contractors or not because there's a whole lot of taxable income that gets left behind and this classified employee who has been characterized improperly as an independent contractor. So, you not only have to satisfy both the employee and the employer, but you have to satisfy the government that this really is an independent contractor relationship.

06:00 MC: That's why it's very important that the government has a vested interest in having people be employees, not contractors. So, if you'd like to set up a contractor relationship, you have

to make sure you talk to a lawyer and structure that relationship right so that you meet all of the criteria under the IRS rules and under various state jurisdictions and federal jurisdiction to make sure that the person is properly classified as an independent contractor.

06:24 AB: Yeah. And there's a flip side of it, too. I think a lot of people only think the contractor-employee distinction is for taxes, but you've also got labor regulations under the Department of Labor and it also could be state government. If you could just touch really quickly on that, overtime and hourly, all of those rules definitely change if you are talking about a contractor versus an employee.

06:47 MC: Absolutely. Every state in this country, plus at the federal level, has employment laws that cover employees. Those laws do not cover independent contractors. That includes wage and hour laws. That includes discrimination laws.

07:00 AB: So, that's how many hours can an employee work a week, when do you have to pay them overtime, what kind of rules are there about vacation or sick leave, and all of those kinds of things.

07:07 MC: That's right. And different states have different rules. In certain states, if your employee has worked more than eight or 10 hours in a day, then they're entitled to overtime pay. At the federal level, you have to work more than 40 hours in a week. So, just knowing the federal rule doesn't necessarily help you. You have to understand both the federal and the state rule.

07:24 AB: Yeah. There could be fines and penalties from the Department of Labor, in addition to tax issues. I wanna just impress upon everyone that there's two sides of this coin that you really have to make sure you're looking at both.

07:37 MC: That's right. That is right.

07:38 AB: Okay. Number one thing that we're talking about today is just making sure that you're classifying your workers the right way, should they be employees or should they be contractors. Go listen to our other episodes, if you need more about how to figure that out. And we've got a worksheet on my website, at awbfirm.com/podcast, and then the number 12. Ashley Cox gave us a great worksheet to go through, and look at that. I will note, Michelle, and I have been researching this issue for a client recently, and we learned that California has just changed its rules on contractors. Our worksheet is not updated to reflect that. So, if you are in California, these rules may be a little bit different, and this is an area where the laws are constantly evolving and changing. Again, if you're having contractors in your business and they happen to be in California, that you definitely need to be talking with your lawyer to make sure that you're doing that the right way.

08:26 AB: Number two that we are gonna talk about is complying with employment laws. Let's say you have decided... Today we're talking about employees. So, you have figured out, "Okay, this person, who works on my team, should be an employee." What next? What state law do you even need to look at? Is it your own? Is it where that employee's desk is located? How does that work, Michelle?

08:44 MC: It really depends. [chuckle] And that's the problem, is there is different law in different jurisdiction. It comes down to what you need... The safest course of action always, if you are in one state, and you have a virtual employee working in a different state, 'cause you need to have an understanding of full state law, and then what you really need to do is, the safest course of action is to operate under whichever system grants more protection to the employee. Whichever one is more generous to the employee is the one you have to make sure you're compliant with.

09:15 MC: But what I have done, when I have written employee handbooks for multi-state employers, is looked at law from six or seven different jurisdictions and then come up with one overarching policy that covers everything. That way, if you have employees in different places, you make sure you're covered with Maryland law, and Washington State law, and Texas law, and New York law, which are all a little bit different. If you are located in the state of, say, Nebraska, and your employees travel to California to work, for example, let's say if they're gonna go do a week-long project, during the week that they are working in the State of California, they are covered by those laws. So, you need to have an understanding of all of that and make sure that you are compliant. In addition, there are local municipal laws sometimes that relate to things like family leave and sick leave. There are cities across the country that have adapted these sorts of requirements that states have not.

10:09 AB: We're not trying to overwhelm anybody with this, and I also don't want anyone to think we're picking on California. California is just very, very protective of its citizens, and employment relationships. We're just trying to highlight for you, our listeners and watchers, that this is an area that is complex. I think a lot of people think that they can just have a virtual team, and it's very easy and inexpensive because you're not having to have office space in all these places. And maybe you live in a really expensive market, and so you can hire someone who's less expensive in another state, but you need to be really careful with that and make sure that you're looking at this on the front end. And then probably, what would you say, Michelle, like once a year, you probably need to review all of the laws, wherever you have workers?

10:48 MC: Yes.

10:50 AB: Because these things change. They don't just stay the same forever. It's not like you can do this project once and then put it on a shelf and you never have to update it.

10:57 MC: It's a good practice to audit those laws once a year because they're always evolving, they're always changing. Especially paid leave laws are an area that is changing a lot right now. More and more states are looking at adding paid sick leave and paid family time leave. While your policy that didn't grant those things might have been fine two years ago, you might be in a state where now you'll need to require that, or you might have some employees in a place that requires it and other employees not.

11:23 MC: One of the things I find with multi-state employers is, when that happens, where the law changes in one place but not everywhere, it's a good opportunity for employers to sit back and say, "Okay, how do we wanna handle it? Do we just change things as it relates to this particular group of

employees or is it important to us to make sure that all of our employees receive the same benefits or operating under the same sets or rule? So, sometimes a change in one place might motivate you to make a change in other places just for your own business reason, because you want your employees to all be on the same footing.

11:55 AB: Yeah. I could see that could cause a lot of turmoil in a company if you, "Wow, our Georgia citizens get XYZ benefit, but the people in Tennessee don't." That could cause some friction, yeah.

12:08 AB: Number two was just making sure that you're researching what employment laws apply wherever, both where you are and where you have any employees. And if you're in California, be especially careful if you've got people there, even on a short-term project, that can apply. The third thing we wanna talk about is, how do you handle performance reviews, and managing your team and setting expectations and making sure that that is all running like a well-oiled machine?

12:34 MC: In 14 years of practicing employment law, I will say that one of the things that people are so resistant to doing is regular performance reviews, because it's not making any money for your company. It's an administrative task. It isn't fun to sit down with people and talk about how they are or not meeting your expectations. But it's hard to do, and I encourage every employer to do that at least once a year. It's very easy to let that slip to a back burner when your employee...

12:58 AB: It always falls at the bottom of the list.

13:01 MC: Yes, right. Because it's not part of... It's not how you're making money, so it's easy to put that on the back burner. But it's really important, in the long run, for you as an employer because, if you ever do need to part ways with an employee, it's very important that there be some documentary history showing the relationship, showing the way that that employee was doing a great job, that they weren't doing a great job. And it just helps to demonstrate the story in case there is ever a disagreement down the road as to why an employee was let go. For a virtual employee, out of sight is most definitely out of mind when it comes to that kind of a thing. When you're dealing with somebody for whom... They might even be in a different time zone from you, so you might not have face-to-face interaction with them via video conferencing even, that might be something we're also...

13:45 AB: It's a good idea. [laughter] We are a big fan of video conferencing here at the AWB firm.

13:50 MC: We do. But if you don't do that, if your employee is in a time zone a few away, you might just email them work projects and they email them back in, and all of that work happens without you ever putting eyes on one another. And I think the problem with that is, if you don't do a performance review, then the employee doesn't necessarily understand how they are not meeting your expectations or what areas of growth you wanna see. An employment review doesn't have to be negative. It's all about, "Here are the things you're doing great. Here is the next step. Here is the direction I'd love for you to grow in." Or even asking the employee what professional work are you looking for.

14:26 MC: It lets you, as an employer, maybe become more of an employer of choice for your employees, that they see your business as a place where they can grow in a direction. Especially if you have a younger employee who has an ultimate career goal, and you can work with them to try to help them stay and grow within your company, then maybe you keep that employee around longer. So, if you do have a virtual workforce, I think it requires an exceptional amount of discipline on the employers to make sure that at least once a year you have a face-to-face with that employee, even through video conference or in person to talk through how it's going.

15:01 AB: Yeah. And I would even say, and this is kind of a best practice that we're working on at our firm because we have a virtual workforce, even though we are mostly local, we work virtually, is having weekly meetings with each team member. I have a little form that I use where I just jot down notes of what did we chat about, what are they working on. If I have a problem or something that I see we need to address, I'll jot it down so I don't forget, so we talk about it. And that also is creating a nice... We are lawyers, we think about evidence. If there ever were a lawsuit, what am I gonna bring in to court to show that this employee was not meeting expectations and that's why I fired them?

15:37 AB: 'Cause what you don't want to happen, and what Michelle and I have both seen happen is you have an employee who's not meeting expectations, but it's easier just for you to make up their work and not talk about it, just kind of cover it up. They have no idea they're not meeting expectations, and then one day it becomes too much and you fire them. And then they bring an age discrimination lawsuit against you, or they bring a gender or race discrimination lawsuit against you, and you have no evidence to show why you fired them, why you had a perfectly good reason to terminate them. And it was not this other prohibitive reason, but it was a valid reason under the law. And that becomes a very hard lawsuit to defend.

16:13 AB: This is just... I hate to be the bearer of bad news and always think of things from the negative, but as an employer, and especially as your business is growing, you do become more of a target for these kinds of lawsuits with a disgruntled employee. And as much as we all love our workers, the chances that some of them are going to move on at some point, for good or bad reasons, and so as you're building a real business that you wanna be profitable and sustainable and long term, this is just something that you've got to get in the habit of doing. I think a lot of us left corporate jobs because we didn't wanna have to do all these administrative headaches, but there's a reason why the big companies do this, and it's because it gives them a lot of protection under the law. And if you are sued, the worst thing that can happen is you just have nothing to show how you were working with this person because it was all done over email.

17:05 AB: Let's move to number four. Did you have anything else...

17:08 MC: No. That's great.

17:09 AB: Performance reviews and setting expectations? I would love to talk about how you can make sure that your data is secure when you're working with virtual employees. And this really is something I could have touched on with contractors. It's a great point. It really doesn't matter whether they're an employee or a contractor. If you're working virtually, you're probably sending

things back and forth, maybe you have a shared drive or some sort of virtual document storage where you're keeping things. What are some things to think about there?

17:33 MC: I think, something that companies need to think about as an initial matter is what type of business are you. Are you in a business where the information about either your own business or your customer's business is confidential. It's obvious to see, for example, if you're a financial planner and your employees are working remotely, and you're sharing your client's financial data, that is obviously something that has to be very, very carefully secured and hopefully you have put all the protections in place for that. The more difficult ones are, okay, you work with a... You have clients where maybe you get some of their proprietary information, like maybe you're working in a service industry where you provide technical support or something to a business, and they share proprietary information with you because you help them put it into a format that then they can use to share with their own customers. When you are holding your customer's proprietary information and you're sharing that with your virtual workforce...

18:26 AB: These are things they do not want disclosed, secrets, things that help them run their business, or a secret technology.

18:32 MC: That's right. You, as an employer, need to think about what protocols you set up. How do your virtual employees access your company data? Are they using an internet connection? If they're using their internet connection, what steps are taken to make sure that that's secure? Do you have a secure website? Do your employees have to use a password? Is it password-protected? If your employees or independent contractors are using their own hard drive, their own laptops... 'Cause I see most virtual employees are using their own equipment, can your employees access that information via their mobile phone? All things that you need to think about...

19:10 AB: And do they have a password on their phone?

19:12 MC: That's right. That's right. Is it password-protected? Does their laptop time out after a certain number of minutes of inactivity? When you have virtual employees, you need to think even further about that. And what I would... A good logical place to start is oftentimes, in your contracts with your client, is there some sort of confidentiality obligation that runs back and forth in the service agreement that you have with your own customers? Oftentimes, there is. It talks about each party's obligation to secure one another's confidential information, and that will often tell you what steps need to be taken, what needs to be secured, and oftentimes it will say that the vendor has to use at least as much protective... The same protective measures that the complainant itself uses.

19:54 MC: And so you need to see this, what the contract was. If you are getting proprietary confidential information from your customers and your agreement with them does not address how information needs to be secure, that's something to think about. Should that be included in your contracts between your business and your clients and customers, is how data is secured? Because in today's world, we all see the headlines, if there's a data breach, [20:17] . Credit card numbers are stolen. They hack into the Home Depot system or they hack into whomever. So, it happens. It's around us, and so we just have to think what can we do, what can every business do to make sure that we're taking the reasonable steps we can to try to secure our customers' data.

20:36 AB: Yeah. That's really smart. And a lot of my small business clients are probably thinking, "Well, I'm not having contracts that are that size," but I see a lot of creative agencies as they grow and they're working with bigger companies. You're not working with other small businesses, now you're working with a big business in town, and those contracts, I've reviewed a lot of them, often have confidentiality provisions and they are gonna hold you to that if something goes wrong. So, it's really important to be aware what are those obligations when you're working with those bigger companies, because they do expect you to take them seriously.

21:10 AB: One recommendation I have that we use in our firm is a password manager. We use one called LastPass. We're not an affiliate or anything, we're not making any money off of them, we just think it's a good service. But we use that with our team because we're all logging in to the same apps and different things that we use to run our remote business, and I think when you do have a virtual business, you end up using a lot of these online services to run your business. I can't even count how many we use now, and we are all needing to access those tools, we all... Some we have shared passwords, some we have our own. But if someone leaves your company, either for a good reason or you need to terminate them, the nice thing about that password manager is it allows you, if you've shared your own passwords with them... In some instances, they can actually see the password, just pops it into their internet browser. So, rather than you aiming to go change all those passwords, you can just cut their access off. And you can with one fell swoop rather than having to change 50 passwords, and having to do that really quickly. If you have an employee leave, and then it's an inconvenience for everyone else, you can just cut that off really quickly and seamlessly, and that just gives you more control again over your own data, which is really important, and customer data, if you're dealing with client information.

22:19 AB: All right. That was number four, making sure that you are handling your own data and customer or client data in a secure way over your virtual team. The fifth thing that I wanted to talk about a little bit is trade secrets. I'm an intellectual property lawyer. This is a kind of intellectual property that we don't talk about as much as we talk about copyrights and trademarks and patents. But trade secrets are a type of intellectual property that most businesses have and may not even know they have. That's kind of the secret sauce of how you run your business.

22:48 AB: It could be your system for handling something that you keep secrets, those proprietary things that Michelle was talking about. It could be... If you are manufacturing a product, it could be your recipes or the way that you put things together. Or if you have vendors that you use that maybe are not really easily publicly available, and that gives you some sort of competitive advantage. If someone else wanted to start a competing business, they'd have to do a lot of research to figure out the way that you do things. All of those things, customer lists, people you're trying to contact or solicit, those are all trade secrets. Especially with a virtual team, where you may have a drive, a shared drive, where, if you were in an office, they... Not everybody would have access to that, but if you have just like a shared DropBox drive, now you may have people who really have no reason to get into that information, but they now have access to it, you protect that information in your own business by keeping it secret. And we do that with what's called a nondisclosure agreement. That's an NDA.

23:47 AB: These are very common. You can use them with contractors or employees, and that is something you are probably going to wanna have them sign before they start working with you or

soon after they start working with you. And it just requires that they keep your company's secrets secret, that they can't take your secret sauce and use it for somebody else. Let's say their brother-in-law wants to start a competing business and they have access to all of your information, and so they take it and give it to their brother-in-law. It prohibits those kinds of things. It says, "You cannot take our secret sauce and use it to benefit someone else." Michelle, I know you have had a lot of experience with NDAs in your past life as a big firm labor and employment lawyer. Tell me, how does that typically play out, just briefly, if you did have that happen, where you have an employee who's maybe violated an NDA, what does that look like?

24:38 MC: Well, typically if you have an employee who's violated an NDA, it often starts immediately with a letter. And it depends where the employee has gone with it. Has the employee gone to a new business with it? Because sometimes you need to then put that in your business unnoticed, but they are complicit in this employee's legal behavior. So, you need to...

24:56 AB: Yeah, that their new employer could be sued.

25:00 MC: That's right. The new employer or the new company that the employee has taken your trade secret to. Usually about trade secrets is these NDAs do protect the employer, and it's great for you to have because it will often define what the protected information is. And you can build things like liquidated damages into these, that says if the employee takes your information, then they agree to damages in a certain amount that is certainly a deterrent to that employee.

25:24 AB: Yeah. So, you could put in there, "Employee A agrees that if they take XYZ information, they will pay \$100,000 in damages." And so now you have a set amount, "We have agreed this information is worth that amount," and that gives you a lever that you can push when you're negotiating.

25:41 MC: Yes. NDAs are very effective. And so if you're doing employment agreement, I would certainly encourage you to do it. Even if you don't write an employment agreement with employees, some states have statutes that do protect trade secrets. There is some statutory protection. An agreement is always better, because an agreement you craft yourself. The agreement is where you set up the definitions and you're not reliant on how courts have interpreted information or whether that's...

26:06 AB: Is it helpful to you or not, yes.

26:08 MC: Yes, yes. And so, if you write the NDA, then you're crafting that yourself, you have taken control of it. Yes, if you are working in a business where you have information that you really don't want your employees to take and use elsewhere, you should definitely think about having them sign an NDA. And they are very widely honored in courts across the country, because courts understand that there is protected information. It's much easier to have an NDA enforced than even a non-competition agreement or other things like that. So, the reality is...

26:39 AB: Even in California.

[laughter]

26:41 MC: In answering your question, Autumn, that they're... It's often they start with a letter, but it will often involve a lawsuit where you will run into court pretty quickly.

26:50 AB: And that's a big investment, so it has to be something where it would really be damaging to your business.

26:55 MC: That's right. You're gonna run in and ask for an injunction to prevent the employee from using that. And those kinds of laws... The expense of that kind of a lawsuit is pretty extreme, because it does ramp up very, very quickly. However, the better your NDA is worded, then the stronger your footing is. If you think you might find you're not in that position, I would strongly encourage you to put a non-disclosure agreement in place with your employee.

27:16 AB: Yeah. I think a lot of people don't realize that things like the recipe for Coca-Cola or the recipe for KFC's secret spices that those are trade secrets. Those are not protected by a patent, or a copyright, or a trademark. And the way that they have kept those secret is through NDAs and by keeping them under lock and key. So, this goes hand in hand with you keeping your data secure. You may wanna limit different people's access to your really sensitive business information. That's one way to avoid it, or walking out the door, as to limit it.

27:47 AB: All right. That was trade secrets and non-disclosure agreements. That was our number five. And then number six, I just wanna touch on with the caveat that this is different in every state, so this is definitely an area you're gonna wanna research, is non-competition agreements. And this is another area that really crosses over employees and contractors. You could require one of either that your considerations are gonna be a little bit different. Michelle, can you just go over what is a non-compete? We hear this a lot and some people say, "Oh, that's never gonna stand up." And other people really worry, "Oh, I signed a non-compete, I can't go do this thing I wanna do because I'm stuck with it."

28:21 MC: Sure. I'm happy to talk about it in a very broad sense because, as Autumn said at the beginning, this is so specific. I'm gonna give you just a general rule that applies in a lot of places, but please understand that your particular jurisdiction might be a little different. But the way courts generally see non-compete agreement is, in a lot of places, we don't have a list, but in a lot of places courts will enforce a non-competition agreement if it's reasonable in scope, geography and duration. A non-competition agreement means that the employee signs a contract and says, "Within one year or two years after I leave your employment for any reason, whether I leave voluntarily or involuntarily, I will not compete in a different business." The three things I mentioned, geography, scope and duration, those are the three things you need to think about whenever you're writing a non-competition agreement.

29:12 MC: Geography. Do you run a small bakery, where what you need that person to do is not set up a bakery within 20 miles of your place? Do you run an internet business, where you need your employee to not set up another place of business anywhere in the world? How narrow... Is it, "I don't want my employee to set up another bakery," or, "I don't want them to set up another food

service organization of any kind"? Think about that, so that the geography and the scope... And then the duration, how long? There are places where some courts just will not enforce them longer than two years, one year, sometimes even less.

29:49 MC: There was a particular judge in the state, I used to practice in Michigan, who would not enforce a non-compete for longer than six months because that would mess the amount of time that you could get unemployment compensation. So, as far as that judge was concerned, no non-compete that lasted longer than six months was ever reasonable. I would say that that was sort of an anomaly, but instead there are... Some judges will agree to it for a year. Some states allow judges to modify agreements, if they think that they were written too broadly. Other states do not allow judges to modify it, so either it's reasonable and it passes muster or it's not reasonable and the whole thing disappears.

30:26 AB: Yeah. It's like it never happened.

30:26 MC: It's like it never happened. And so that's why you have to be careful, you have to understand what the parameters are in your jurisdiction.

30:32 AB: And the jurisdiction where the employee is sitting or your contractor is sitting, 'cause it could be both.

30:39 MC: That's exactly right. And that's a scenario, too, where you might have... If you've got employees in different places and you want non-compete by all of them, you need to understand what every different state tells about non-compete, and then you need to think about does it make sense to have different agreements with different employees, or, "Do I need one universal agreement that everybody can live with?" So, important considerations as you think about non-compete. As you think about it, think about those three things, geography, scope... By scope, I mean the business in which you really can't have them competing with you... And how long, reasonably how long would they have to stay out of the workforce.

31:13 AB: Yeah. That's a great overview. And I realize, as you were saying that, that I forgot to give my standard disclaimer, which is that Michelle and I are both lawyers. We are both licensed to practice law. I'm licensed in Tennessee. Michelle is licensed in Michigan and Tennessee. But we are not your lawyers, so everything we have talked about in this podcast and Facebook Live recording is general information. And I hope you've been able to tell, by what we've been talking about, that your mileage may vary, this is definitely an area where every business is going to be different and have different facts and circumstances. So, if any of these things that we've been talking about have had a light bulb moment go off in your head, this is definitely an area where you are gonna need to check with a lawyer either in your state, in the state where the employee is located, or a lawyer who's experienced in this area can do the research to make sure that you get the right advice for your own business.

31:58 AB: All right. Well, we are going to wrap up. Thank you so much for joining us today, Michelle.

32:02 MC: I love it. It was my pleasure, thank you.

32:04 AB: Yeah, this was really fun. We love to nerd out about helping people build their teams, and especially work remotely, and telecommute and all the virtual fun that we get to have now with online businesses. If you have questions about this area for your business, definitely check out our Facebook group. It's the Legal Road Map Facebook group. You do have to ask to be admitted, but as long as you are not clearly a spam account, we will pretty much let you in. We have other business owners in there. I pop in from time to time to answer questions, but it's really a support group where different people share their experiences. It is also not legal advice, but we answer a lot of questions and talk a lot about business in there, so definitely check out the Legal Road Map Facebook group.

32:42 AB: We'll have show notes for this episode. Listening resources and everything we've talked about, those are on our website at awbfirm.com/podcast. And if you haven't been on our website lately, I will mention we just got a little facelift, so definitely go check that out. We got some new photos, including new headshots. Michelle and I both have new headshots. Definitely go take a look at that. And we will see you next week. We are gonna be continuing this series, talking about building a virtual team.

33:08 AB: Next week, we will be talking about employee benefits. When or why or how might you do a 401k, or insurance? We'll talk a little bit about time off, all those things. When do you maybe need an employee handbook? Michelle will not be joining me, but don't worry, I'm going to be picking her brain about all these topics before we dig into them, since she has the expertise with this. But especially, as your business grows and you wanna recruit the best employees, that's definitely going to be something you might wanna start thinking about, and it's not as scary as you may think. Please join us next time. Thanks.

33:46 MC: Thank you.

[music]

33:52 AB: Did you know that you could be making more money from your copyrights and trademarks? Intellectual property is probably the most valuable asset in your creative business, but most entrepreneurs don't know how to identify it. And you can't monetize what you can't find. Download my free five-minute IP audit worksheet at awbfirm.com/podcast. You'll find out what parts of your brand, logo, images, website, courses, digital downloads, or other content could be protected by intellectual property laws. And you'll create an inventory of your most valuable trademarks, copyrights, patents or trade secrets, so you'll know what's worth protecting as you build a more profitable and sustainable business. Get your five-minute IP audit worksheet now at awbfirm.com/podcast.

Thank You for choosing Scribie.com

Cross-check this transcript against the audio quickly and efficiently using our online Integrated Editor. Please visit the following link and click the Check & Download button to start.

<https://scribie.com/files/d40446ebb5cf41ad9e42d345500613f95e3ebeaa>