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Common Pitfalls in Having “Live-In” Employees

In a handful of industries, the concept of having an employee live on-site is an attractive proposition. Such industries include hotels, motels, assisted care facilities, convenience stores, or businesses that cater to or provide extended-hour operation to customers or clients.

Although attractive, arranging an on-site or “live-in” employee comes with complications. In this series of articles, Chris Wilhelmi of Stinar Zendejas and Gaithe, PLLC will briefly discuss common pitfalls businesses may face with “live-in” employees. This article addresses how to avoid unwilfully creating a landlord/tenant relationship between the business and the employee.

In Colorado, to avoid creating a landlord/tenant relationship between a business and its employee, a business must create and effectuate a written contract of employment between itself and the employee that complies with C.R.S. § 8-4-123. By complying with the statute, a business creates a “a license to occupy the premises entered into as part of an employee's compensation” that would then terminate at the end of the employment relationship. Per the statute’s subsection (b):

An agreement made pursuant to this section shall be in writing and shall include the following:

- (I) The names of the employer and employee;*
- (II) A statement that the license to occupy the premises is provided to the employee as part of the employee's compensation and is subject to termination at any time after the employment relationship ceases;*
- (III) The address of the premises; and*
- (IV) The signature of both the employer and the employee.*

Once a compliant contract of employment is entered into, “a license to occupy the premises,” rather than a traditional tenancy is created. The benefits of creating a compliant contract are numerous and in particular allow an employer to avoid having to bring a Forcible Entry and Detainer (“FED”) action to evict a current/former employee who refuses to vacate his/her employer-provided dwelling. The statute provides that with a compliant contract in hand and a properly issued receipt of the notice of termination, an employer may go directly to the county sheriff to have the employee removed from the premises. Essentially, a compliant contract will act in lieu of an order of a court that would otherwise be necessary to forcibly evict – thus saving a business significant time, expense, and headache in effectuating the vacancy of an employee from his or her employer-provided dwelling.

This relatively simple guideline (like many statutes) is unfortunately not always complied with by businesses and creates wholly avoidable issues, expense, and frustration. Please look forward to additional articles from Stinar Zendejas and Gaithe, PLLC related to employment and business issues.

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