Balancing Full-Time Employment with Side Ventures

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, and my colleague Russell Berger, as attorneys at Offit Kurman. And today we are talking about employees who are performing jobs outside of their main jobs with a company. So it's often called moonlighting. But, might be a job that they have in the evenings after work or on the weekends.

And I think it's something that's obviously become even more prevalent in modern times when people are able to make money in different ways, like being a social media influencer or, different gig economy jobs or different things, driving Uber on the weekends. And there's a lot of different ways that people might be able to fit in other jobs and supplement their income in that way.

So we see a lot more of it these days, and employers are often figuring out how to address it if they know about it. Sometimes they don't know about the side work that employees are doing. But what are some things, just as [00:01:00] a starting point, Russell, that employers should be thinking about as it relates to employees having, side jobs, moonlighting, doing other jobs outside of their maybe 9:00 to 5:00 full-time job with them?

Russell Berger: Yeah. Well, as we often start, we start with the law, and this is a state-specific issue, but different states have different rules about, whether or not someone can be prohibited from moonlighting and who is a covered employee for those purposes, and what the extent of those restrictions are.

So understanding what the restrictions are in the states where you have employees working is an important first step. But assuming, the threshold isn't applicable or you're in a state where it doesn't have a threshold or it's not that impactful on how you would make your decisions in a certain state.

And I think the real starting point here is does it conflict in practice with what we're doing in our organization? Number one, does that involve, competing against us? Does that involve sharing our confidential information? Or, if someone had our [00:02:00] information we wouldn't want them to also work for this company.

Is there a business reason to shut that down? And then there's also the practical. Is this too much for this person? Are they able to focus? We want them here full time and best efforts, but they're spending so much time with somebody else that they're not at their best.

They're not locked in. They're not committing what they're supposed to be committing to our organization. So I think those are the key, questions to ask yourself when it comes to moonlighting in general.

Sarah Sawyer: Yeah, I think that conflict of interest policies are really key here, and actually reminding employees of them regularly- making sure that they are aware of how to bring a conflict to the attention of the company.

So for a lot of my clients and for a lot of companies, they may not really care that someone's driving Uber on the weekend or doing something else outside of their normal business hours, just like they don't really care what they're doing personally in their personal life or those types of things.

They see it the same way. As long as, to your point, Russell, they're getting their work done, and [00:03:00] that can be addressed through performance management verse addressing their outside job. But really the conflict of interest that you highlighted is, I think, often the key concern 'cause, you don't wanna find out after a while that there is some client as it relates to a client that you have or a customer, or that there's something that's not jiving there, that something that's either a legal issue or is a business issue or an appearance issue.

And so having, making sure the employees know what your policy is on these topics, obviously compliant with the law, of course. But then also making sure that they know who to go to if they ever have a perceived conflict. And this is true just in general, right? You want employees to have an avenue to identify what a conflict is and go to someone if they think there might even be a conflict potentially.

And something that a lot of employers don't think about until something happens where it's like all of a sudden they go, "Oh gosh, like, well, this employee should have known better. They should have known that this was an issue." But you [00:04:00] wanna make sure that you're getting ahead of that verse being reactionary.

And that kind of gives you the most flexibility also with someone who's maybe performing really well, really wants to have their Etsy business on the side or their whatever it might be. And again, you may not care about that, but that way you've got yourself covered as it relates to the really big stuff that could be problematic.

Russell Berger: Yeah. Yeah. And there's a big difference between someone maybe who works in professional services and does, their crafting business on Etsy on the side.

Sarah Sawyer: Yeah.

Russell Berger: That feels like a thing most people would say, "Oh, it's pretty innocuous and okay."

Sarah Sawyer: Mm-hmm.

Russell Berger: As long as you're not doing it while you're at work, and, Yeah that's Fine. Big difference from and, I had this situation once where someone worked as a salesperson for my client while also working as a salesperson for their direct competitor in addition to, violating some non-competes and some other restrictive covenants, that moonlighting feels untenable for both sides.

You wanna figure out where any one situation falls on that scale. And, make sure [00:05:00] you manage it appropriately for what it is.

Sarah Sawyer: Yeah, and I don't think either company in that situation's gonna be particularly happy with that individual, and they might find themselves going from having two jobs to no jobs pretty quickly.

Russell Berger: That's right.

Sarah Sawyer: Well, thank you, Russell, and we'll see you next time.

Russell Berger: Thanks, Sarah.