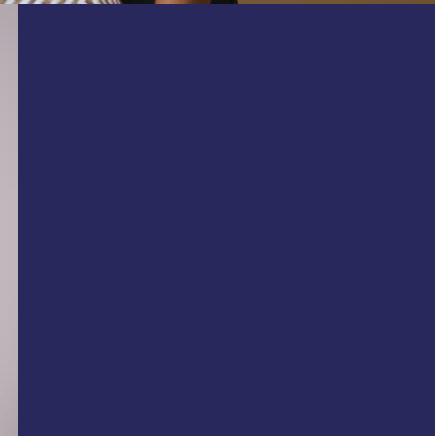
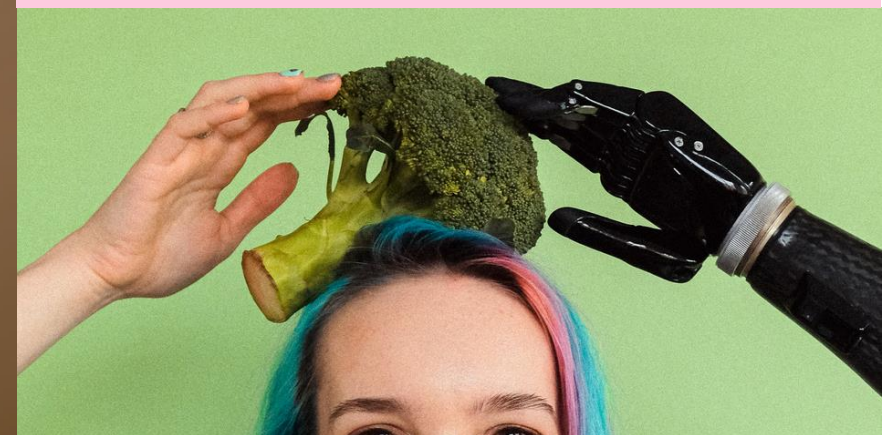


Intellectual Property Protections, Hiring Employees, and Other Considerations for Growing Your Business



Introductions

- **Samantha Wagner, Staff Attorney, Community Economic Development Project**
- **Kevin Brown, Staff Attorney, Community Economic Development Project**



This presentation is for informational purposes only. The materials and information presented will not be legal advice and should not be relied upon or construed as legal advice. Registering for or attending this class does not create an attorney-client relationship with Iowa Legal Aid or any speaker or attendee.



IOWA LEGAL AID'S COMMUNITY ECONOMIC DEVELOPMENT PROJECT

FREE LEGAL SERVICES

We provide free legal services to low-income entrepreneurs and nonprofit organizations.

FOR THE LIFESPAN OF THE BUSINESS

We help businesses from start up to shut down (and everything in between). This includes transactional legal services, business and tax advice, comprehensive guidance and litigation.

STATEWIDE PROJECT

We help businesses all across the state.





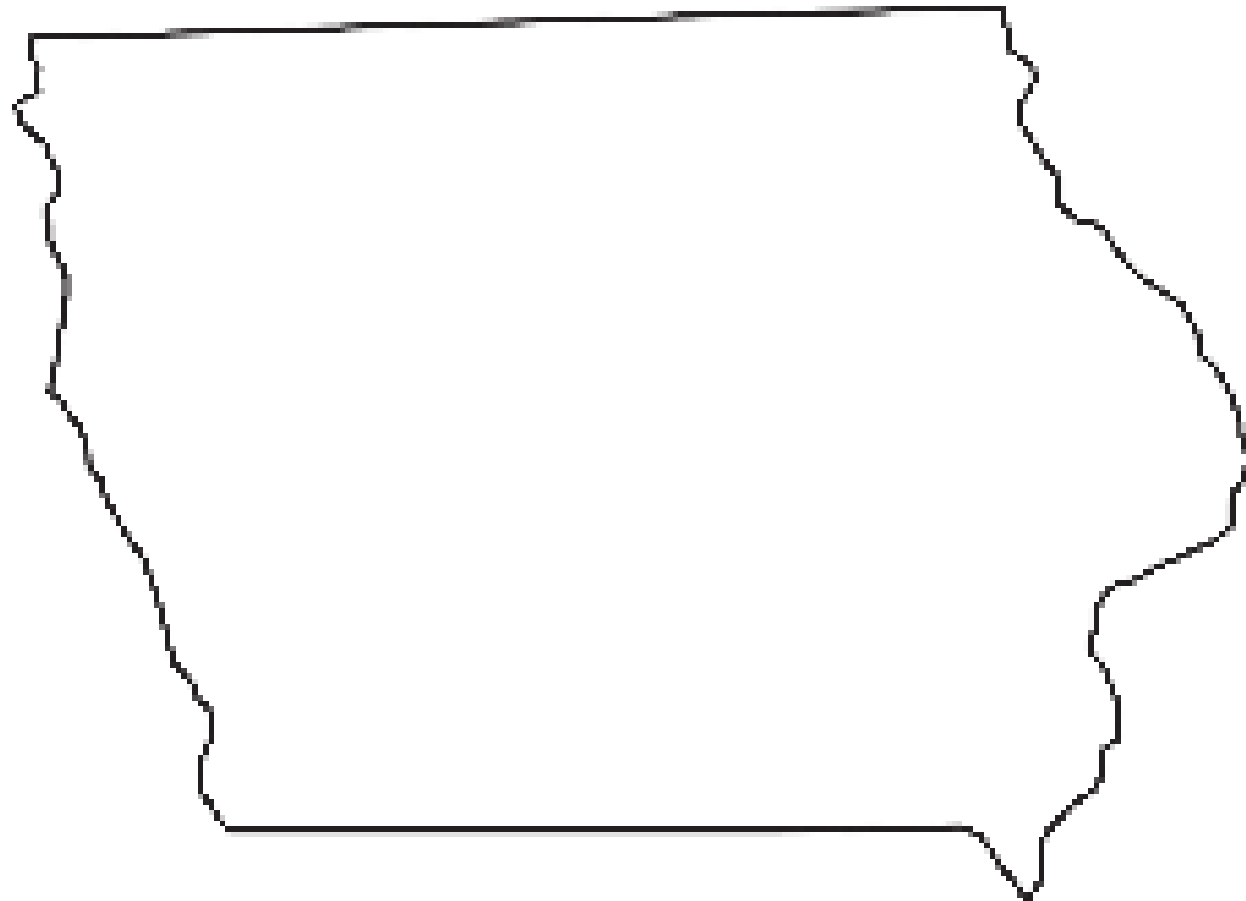
There are three ways to apply:

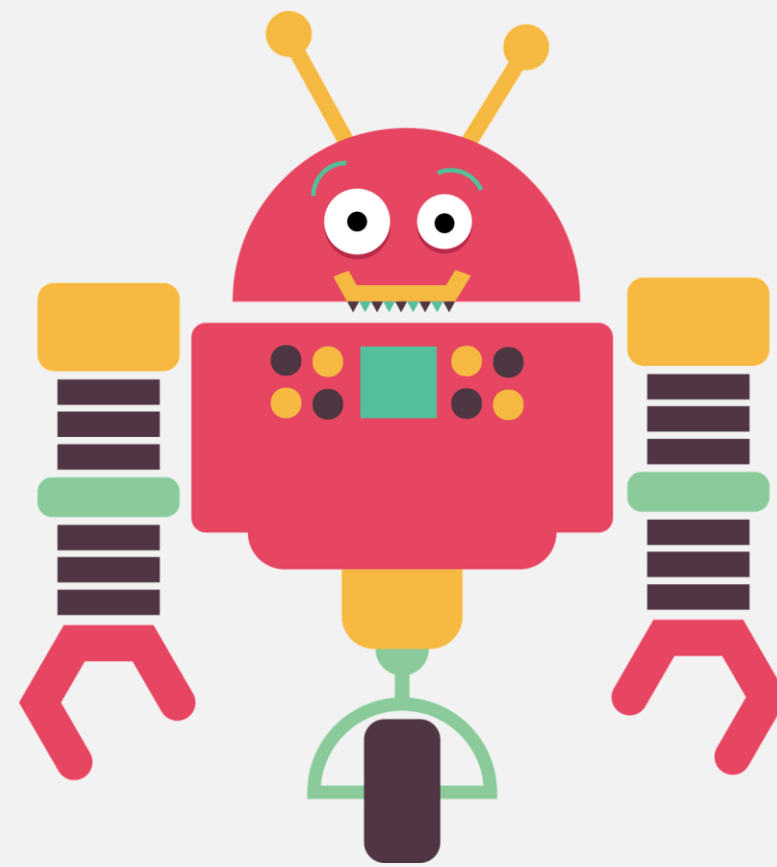
- Call us at 1-800-532-1275, Monday-Friday 9-11 a.m. or 1:30-3:30 p.m.
- Apply Online- Do not apply online if you have deadlines.
<https://www.iowalegalaid.org/resource/applying-for-help-from-iowa-legal-aid>
- Contact me to set up a time to do an intake.
- Samantha Wagner, swagner@iowalaw.org

**HOW CAN I
APPLY?**

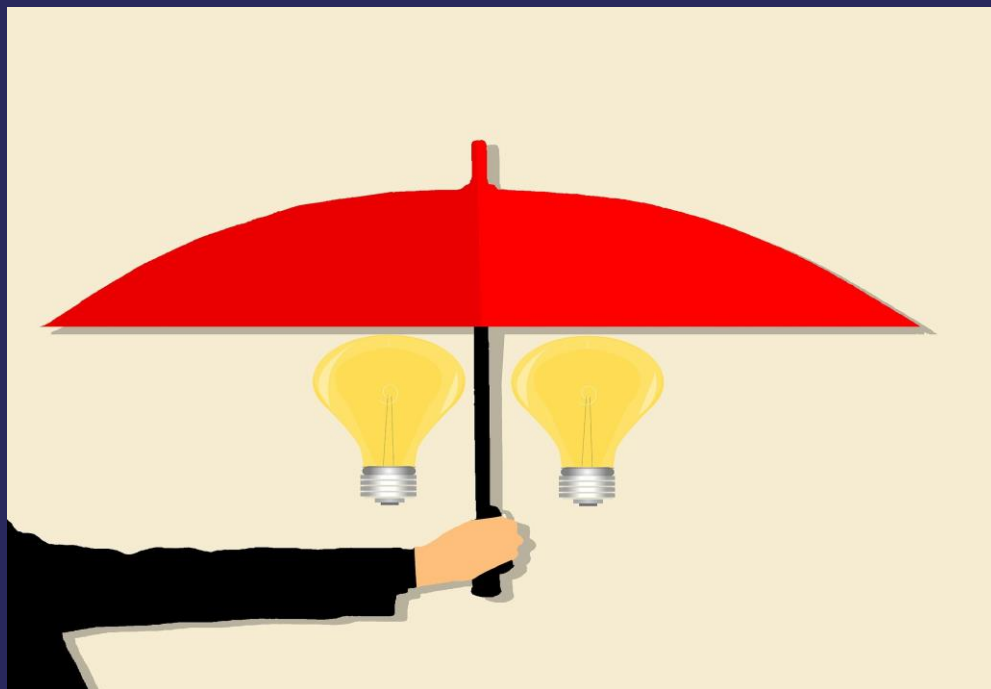


- Iowa State Bar Association's FIND-A-LAWYER Search may be helpful to you.
- Their website is located at www.iowafindalawyer.com.
- Lawyers who participate in this service will consult with you for \$25 for the first 30 minutes.





Intellectual Property



**Works or
inventions that
are the result of
creativity.**

Types of Intellectual Property

Patents

- ☐ Inventions

Copyrights

- ☐ Tangible expressions of an idea



Trade Secrets

- ☐ Secret information with commercial value



Trademarks

- ☐ Identify source of products or services (service marks)

PATENTS

- ❑ Limited right to exclude others from using, making, selling an invention
- ❑ 20 years of protection, generally
- ❑ Requires full and specific disclosure to the public
- ❑ What can be patented? Anything new, useful, and non-obvious.



TRADE SECRETS

What is a trade secret?

- Any secret information with commercial value
- That has been guarded with a reasonable degree of protection



Trade Secrets

- Available for as long as the information remains confidential
- Can be reverse engineered or independently discovered
- Protected with NDAs, computer security, employment agreements, etc.

Patents

- Generally limited monopoly lasts 20 years
- Information disclosed in Patent Application
- Protected by the patent application with the USPTO

TRADEMARKS

- ❑ A trademark allows a business to have an exclusive right to mark its products and services
- ❑ No one is allowed to use that symbol, name, or slogan in a particular region or nationally.



Trademarks

- Any word, name, symbol, design, sound, color, touch, and even smell
- Purpose: identify and distinguish a product or service
- Easy test: trademarks are adjectives
- Trade name versus trademark
- What can be protected? It's a spectrum.



Trademarks

- **Federal Registration: ®**
- **Common Law Rights: TM or SM**
- **Could be indefinite so long as trademark does not become generic**
- **Advantages of Federal Registration**
 - **Evidence of validity and ownership**
 - **Nationwide**
 - **Right to sue in federal court**
 - **Incontestable after 5 years continuous use**
 - **Damages for infringement**



Copyrights

- ❑ **Protect original works of authorship**
 - **Literary**
 - **Musical**
 - **Artistic**
- ❑ **Originality: independently created**
- ❑ **Only minimal creativity required**
- ❑ **Exists upon fixation of work in tangible medium**
 - **No registration required**



- Reproduce
- Derivative works
- Distribute copies



Only protects expression, not idea of underlying work.

What can you do with a copyright?



- Perform publicly
- Display publicly



Copyrights Continued

- ❑ Duration: Generally, life of author plus 70 years
- ❑ Works made for hire: 95 years from publication or 120 years from creation, whichever comes first
- ❑ Copyright Registration
 - Required to bring suit for infringement
 - Statutory damages and attorney fees
 - Actual or constructive notice

Overlapping Protections

- Commonly more than one form of IP is used to protect a product
- For example, Coca-Cola
 - Utility patent on bottle shape
 - Utility patent on method of fortifying drink with vitamins
 - Trademark on bottle shape and Coca-Cola name
 - Copyright on advertising and promotion images
 - Trade Secret on the formula

Changing Entity Type

- Sole proprietorship → LLC or Corporation
- LLC/Corporation → S Corp.
Election (\$100K+)
- Consider: tax benefits, risk management, growth, insurance

Start off on the right foot.



**Ideally, consult with legal
counsel.**



Independent Contractors

- In business for themselves (market and take other projects)
- Determine the best way to do the job
- Often provide their own tools, carry their own insurance, do their own taxes

Employees

- Not in business for themselves
- You provide high degree of direction and control over how to do the job, tools used, when and where job performed

Job Description: Do you really need one?

- No requirement for written description.
- Possible Americans with Disabilities Act (ADA) issues
 - Goal: Specific enough to describe job without excluding people with disabilities, e.g.
- Think about whether educational “requirements” are really necessary
→ impacts people of color and people with disabilities



Job Application and Interviews

- Let Equal Employment Opportunity (EEO) principles guide you
- DON'T ask/proceed with extreme caution: race, age, marital status, family, pregnancy, gender identity, relationships, national origin, criminal history, finance or credit report, sexual orientation, past worker's compensation claims . . .



Successful Interviewing Guide

IOWA
WORKFORCE
DEVELOPMENT
Smart. Results.



Background Checks

- Depends on nature of business as to how in-depth or necessary they are.
- Need due diligence to avoid “negligent hiring and supervision.”
- Consider what the job requires
- To the extent using 3rd party background screeners, may have duty to give FCRA notice.



Background Checks

- Balance due diligence with concerns about discrimination and disparate impact
- Less related to job and more remove in time → less defensible to use conviction for hiring
- Reference checks are good; use 2-3 if doing references



**Iowa Civil Rights
Act = 4 EEs**

****Exceptions for
family members**

**What
employment
laws apply?**

**Most federal
laws = 15-20
EEs**





Summary of the Major Laws of the Department of Labor

On This Page

- [Wages and Hours](#)
- [Workplace Safety and Health](#)
- [Workers' Compensation](#)
- [Employee Benefits](#)
- [Unions and Their Members](#)
- [Employee Protection](#)
- [Uniformed Services Employment and Reemployment Rights Act](#)
- [Employee Polygraph Protection Act](#)
- [Garnishment of Wages](#)
- [Family and Medical Leave Act](#)
- [Veterans' Preference](#)
- [Government Contracts, Grants, or Financial Aid](#)
- [Migrant and Seasonal Agricultural Workers](#)
- [Mine Safety and Health](#)

The U.S. Department of Labor (DOL) administers and enforces more than 180 federal laws. These mandates and the regulations that implement them cover many workplace activities for about 150 million workers and 10 million workplaces.

Following is a brief description of many of [DOL's principal statutes](#) most commonly applicable to businesses, job seekers, workers, retirees, contractors and grantees. This brief summary is intended to acquaint you with the major labor laws and not to offer a detailed exposition. For authoritative information and references to fuller descriptions on these laws, you should consult the statutes and regulations themselves.

[Rulemaking and Regulations](#) provides brief descriptions of and links to various sources of information on DOL's rulemaking activities and regulations.

Wages and Hours

The [Fair Labor Standards Act \(FLSA\)](#) prescribes standards for wages and overtime pay, which affect most private and public employment. The act is administered by the [Wage and Hour Division](#). It requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half-times the regular rate of pay. For nonagricultural operations, it restricts the hours that children under age 16 can work and forbids the employment of children under age 18 in certain jobs

Required Signage

- Department of Labor website has guidance for when required and provides signs

EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

FEDERAL MINIMUM WAGE

\$7.25 PER HOUR

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

OVERTIME PAY At least 1½ times the regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs with certain work hours restrictions. Different rules apply in agricultural employment.

TIP CREDIT Employers of “tipped employees” who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee’s tips combined with the employer’s cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference.

NURSING MOTHERS The FLSA requires employers to provide reasonable break time for a nursing mother employee who is subject to the FLSA’s overtime requirements in order for the employee to express breast milk for her nursing child for one year after the child’s birth each time such employee has a need to express breast milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public. which may be

Tax Matters for ERs

- If EEs, need Federal Employee Identification Number (EIN)
- Don't forget = ER matches withholding for Social Security and Medicare
- Federal W-4 for each EE
- Iowa W-4 and Centralized Employee Registry (top portion of the Iowa W-4) for each EE
- Federal Unemployment Tax (FUTA) – ERs report and pay FUTA separately from other federal taxes
- Year-end W-2 Wage and Tax Statement
- Register with Iowa Workforce Development

Employee Policies

- **Keep it simple**
- **Probably want written policy about at-will employment, EEO, and prohibition about harassment (defensive tools)**
- **Understand that internal policies are a risk to your company**

Legal Compliance = Consistency

TRAIN.
ENFORCE.
RE-TRAIN.
EVALUATE.
REVISE.
REPEAT.



Miscellaneous Considerations

- Insurance (coverage for acts of EEs under policies)
- Workers' Compensation Insurance
- Premises liability insurance

Contracts

- Consider how the services you provide have evolved and whether your contract needs to be updated (e.g., services provided, mileage charges, late fees)



Got
questions?