
Hiring to Firing Podcast — Unraveling the Concept of Garden Leave: Insights From Silicon Valley

Hosts: Tracey Diamond and Evan Gibbs

Guests: Dan Sieck

Tracey Diamond:

Hi, Evan.

Evan Gibbs:

Hey Tracy, what are we talking about this week on our episode?

Tracey Diamond:

We're talking about the concept of garden leave and employers putting employees on garden leave, which made me think, given that it's spring, about gardening. Are you a gardener?

Evan Gibbs:

Yeah, no, definitely not. Definitely every single thing that I've ever tried to grow dies. I can never tell, you know, it starts looking bad and I'm like, oh God, I'm underwatering it. And so then I water it and it still dies. I guess I then overwater it, but you know, it's pretty terrible. Definitely not a green thumb.

Tracey Diamond:

A couple of years ago, my daughter and I bought one of those little boxes that, you have to put together and they go on legs almost looks like a table. And so we have this little tabletop tiny little garden. If we're lucky, we get one zucchini and two tomatoes by the end of the year. And even though this was supposed to be this great mother daughter project, I seem to be the only one getting my hands dirty.

But it is kind of fun to watch the flowers grow and then maybe a tiny little vegetable grow. So I recommend it.

Evan Gibbs:

Yeah, so our topic, garden leave, is not unfortunately about how to grow your actual garden and have a bountiful harvest like Tracy has experienced. But instead, we're talking about garden leave, which is typically a period of time in which a departing employee continues to provide services or information to a former employer, as they transition out of the company.

We're going to talk about the details of that, some of the pros and cons, some of the statutory requirements in places like Massachusetts and Illinois and several other topics using the show *Silicon Valley*.

Tracey Diamond:

Thanks for listening and hope you enjoy.

Welcome to *Hiring to Firing*, the podcast. I'm Tracey Diamond, labor and employment attorney at Troutman Pepper, and I'm here with my co-host, Evan Gibbs. Together, we tackle all employment and HR issues from hiring to firing.

Evan Gibbs:

Today, we'd like to welcome our partner, Dan Sieck. Dan, why don't you tell us just a little bit about your practice?

Dan Sieck:

Hey, guys. Yeah, thanks for having me. My name's Dan Sieck. I'm a corporate partner here in Boston. I tend to represent venture funds, venture-backed businesses, and then I do a lot of M&A that comes out of those venture-type deals. My client base is primarily in life science and tech, so pretty steeped in the venture world and everything in it.

Tracey Diamond:

Dan and I have had a chance to work together, and his clients are really interesting in the life sciences world. They're making some very interesting products that hopefully we'll be seeing hoping to really help people.

Today, we're talking about the concept of garden leave. I'd like us to start with some definitions. Evan and Dan, can you please explain what is the difference between – well, what is garden leave, and what is the difference between a non-compete, a customer non-solicitation provision, and this idea of garden leave?

Evan Gibbs:

Sure, I can lead off. I typically think of garden leave as it's a period of time, typically, or I guess, really, I've only seen it at the end of somebody's employment at a company. It's used to help, typically, at least in my experience, is used to help transition someone out of the company. The purpose that I've seen clients use it for is to have someone available, or to have that employee, that person available to provide transition assistance. For example, if you've got a chief marketing officer that's leaving the company, and you want that person to assist the new chief marketing officer, one option is to offer the outgoing CMO, offer them some garden leave, where you pay them some amount, maybe the same salary, or some different amount, and they're available on a limited basis for a limited period of time to provide those types of transition assistance duties.

They're ongoing, whether it's employment, or consultancy, it's limited in time and scope typically, and it's very limited duties and short in time is typically how I've seen it. The difference with a non-compete and non-solicit, you can sign those agreements at the beginning, or at any time during employment, and they prohibit an employee from doing certain things, competing or

soliciting, typically without regard to whether there is any type of paid leave that is given to the employee during the non-solicitation, or non-compete period.

Dan Sieck:

Yeah. The only thing I'd add on there, I mean, I'd never heard of garden leave until a couple years before the pandemic, when Massachusetts adopted some new laws that required it. I sit in Boston. As Evan was saying, I mean, it's the historical practice, at least in the US, has been to have some non-compete, non-solicit series of covenants that you impose on your employees, or service providers. This concept of garden leave, at least in Massachusetts, as I understand it, evolved out of that. A lot of the discussions that were going on at the time about whether that was really unfair to the employees.

There's vigorous debate from the state government about this whole non-competes in general. On the one side, there's the employee rights type people who are saying, "Oh, you're stifling competition. You're preventing folks from being able to go and work for a competitor that's not fair." Then on the other side, you've got all the employer side advocates saying, "Well, it's also really unfair to basically allowing folks to come in and learn a lot of knowledge about a company and then leave and take that with them."

My understanding was this idea of garden leave, which we might have pulled from across the pond is a way to strike a balance there. You're going to pay somebody to write out that non-compete, non-solicit period.

Evan Gibbs:

Yeah, that's right. That's a good point about other countries, because it's a lot more common in some other common law countries and some other countries as well that don't follow the common law. It's a fairly common concept outside of the US. But in the US, I mean, it's very uncommon. We were talking, listeners, we were talking before the episode started, we were talking through our experiences with the garden leave. I only deal with this once or twice a year, if that. It just doesn't come up very much.

Tracey Diamond:

Hey, you see it a lot more in the financial services industry. In New York, it's much more common than it is outside of New York. I'd like to dive a little bit into the Massachusetts Non-Competition Agreement Act that Dan was talking about, because it is very unique. Before we do that, let's pull in our TV show. As we always do, we use a TV show or movie to kick off our discussions. For today, a TV show we're going to listen to is *Silicon Valley*. The show is about a computer programmer named Richard Hendricks, who quits his job at a company called Hooli after receiving seed money from a competitor to fund his app called Pied Piper.

In this clip, Richard's friend, Nelson Bighetti, who's referred to as Big Head, who is still working at Hooli, is essentially placed on garden leave when all of his job responsibilities are taken away from him. Let's take a listen.

Male:

Okay, so I have been instructed to remove you from the list of employees assigned to the Nucleus Project. You will no longer receive any new best-related communications, file reports, or attend any nucleus meetings. Any questions?

Nelson Bighetti:

No, that's pretty clear.

Male:

Great.

Nelson Bighetti:

Am I being reassigned as something else?

Male:

Not that I'm aware of at this time. No.

Nelson Bighetti:

Wait, so then am I being fired? Because I have a three-year contract and my stock options –

Male:

Okay, whoa, whoa, whoa. Nobody is being fired, okay? Look, a contract is a contract. You've got a contract and I've got a contract. We all have contracts. Here at Hooli, contracts are honored. Yours and mine, everybody's. Have I made that perfectly clear?

Nelson Bighetti:

Yeah, no, no. That's clear. But when I come in to work tomorrow, what do I do?

Male:

That is unclear at this time.

Tracey Diamond:

One of the things about this clip that I thought was interesting, and it goes to what you said before, Evan, is this idea of, is the employee going to hang around while they're on garden leave, or are you going to exclude them from the workplace and cut them off? In the clip, Big Head, as I like to refer to him, is pretty much hanging around, but not given any job responsibilities. Evan was talking before about this concept of transition time, where employees are available during their garden leave period to answer questions and help transition their

duties to the incoming person that's going to be taking over their job. Do you see any benefits, or pros and cons of allowing someone who's on garden leave to continue to have access?

Evan Gibbs:

I mean, I think so. I mean, when I'm talking through this with companies, you've got to be really careful about the parameters that you put in place, because you don't want, for example, someone who's on garden leave to start working directly for a competitor. I mean, that's something you'd want to be really careful about. You want to, depending on the nature of the circumstances that are at play in any particular given situation, there may be concerns that the person might try to take some data, or documents on the way out the door while they're on this garden leave period, where they're sort of an employee, sort of not. I think you have to be really careful and you have to put clear parameters in place, not just in the contract, but also from a practical perspective.

You got to think through, should the employee continue to have a company computer, for example? Should they continue to have access to all the files and data that they had when they were an employee? You got to think through those practical ramifications when you're –

Tracey Diamond:

Can I email employees still, or are you going to cut them off from their email access?

Evan Gibbs:

Exactly.

Dan Sieck:

That puts you into a strange position, I would think, though, if you don't have those in dish of employment, if you will, but you are still technically an employee. I mean, it's starting to get hard to understand exactly what your status is that the company – what authority do you have. Maybe you have no authority. I think that when I'm thinking about this, and even being in Massachusetts, where there are requirements to at least consider it, I think we still aren't seeing all that much garden leave, in part, perhaps because people just don't fully understand it. I don't know if you guys think that that may be part of the reason why it hasn't been adopted to the same level as it has outside of the US.

Tracey Diamond:

Well, in our second clip, we see a good example of an employee who is still allowed access to the company premises, but he doesn't really know where he fits in the scheme of the company anymore. In this next clip, Big Head wanders up to the roof of the building where he finds other garden leave employees just hanging out, basically drinking coffee and beer, and waiting out their resting period. Let's take a listen to this one.

Employee 1:

I'm in year three of a five-year deal. Matt, you got what, three years left?

Employee 2:

Yeah.

Employee 1

We all got acquired by Hooli. When we didn't work out, none of us got reassigned, because Gavin believes in this Japanese form of management of where not being assigned is the most shameful outcome.

Nelson Bighetti:

Yeah, it does feel uncomfortable.

Employee 2:

No. Give it a week or two, you'll get like numb to it.

Nelson Bighetti:

Well, why are you guys still coming in?

Employee 1:

Rest and vest.

Nelson Bighetti:

Oh, because in order to fully vest your options, you've got to wait until your contracts are up. I get it.

Employee 2:

You catch on slow. You'll fit right in here.

Employee 1:

Lunch? Arby's on El Camino. I'll drive there.

Employee 2:

No, let's walk. I'll take longer. Got to do something to fill the day, right?

Tracey Diamond:

I'd like to talk for a minute about the Massachusetts law, because it is very unique, and it really marries the concept of non-compete with garden leave. Dan, to what you spoke about before, my understanding of the statute is that if you want to put in place a non-compete, you have to offer employees garden leave equal to 50% of their pay during the period of the non-compete, or some other "mutually agreed upon consideration."

I think why we're not seeing too much garden leave is because a lot of employers are relying on that second prong with the alternative of some other mutually agreed upon consideration. There's not a lot of case law out there yet as to what that really means and what would be considered sufficient. Have you seen that in play?

Dan Sieck:

Yeah, absolutely. The other thing that I was just thinking about, though, and question that I'm often asked by – especially early-stage businesses that are confronting the Massachusetts law for the first time if they have employees in Massachusetts, they're often asking me, "Well, why don't I just say that the governing law is another jurisdiction that doesn't have this complicated regime and just use that?" I mean, and I look to you guys for answers there.

Evan Gibbs:

Yeah. I would think, and I'm definitely not a Boston, or a Massachusetts expert, but I would think the problem that you have typically is if your home state has adopted some statute on a particular issue and has taken a strong stance on something like this, then a lot of times what will happen is a court in that state, so a court in Massachusetts, for example, may refuse to honor another state's choice of law provision where another state does not have those same garden leave protections in place. They would basically say, "Hey, we've expressed a fundamental public policy in Massachusetts that people should get garden leave when they're sitting out due to a non-compete. And so, we're not going to enforce."

For example, we'll take the most draconian law, Florida law, and we'll say, "We're not going to enforce a Florida choice of law provision in Massachusetts, because it's against our public policy." The legislature has adopted.

Tracey Diamond:

By draconian, you mean most friendly to the employer who wants to enforce the non-compete, right?

Evan Gibbs:

Correct. Correct.

Tracey Diamond:

Yeah. It always depends. Draconian to you may be freedom to someone else.

Evan Gibbs:

That's right. That's right. I see, there's always a balance. Florida is just, I know this is a bit of a tangent, but it's just so wild, because it says in the statute that the judge shall not consider the hardship on the employee when deciding whether to enforce a non-compete. I just feel like, it's just so mean. It's just like, just club them to death. It's like, oh, my gosh.

Tracey Diamond:

You could be homeless, because you can't find another job. But we don't care.

Evan Gibbs:

That's right.

Tracey Diamond:

We're enforcing that non-compete.

Evan Gibbs:

Do not care about their homelessness, judge. You shall not.

Tracey Diamond:

Well, Evan, your concept of choice of law is absolutely right. I've actually looked at the Massachusetts statute quite a bit and there is language in the statute itself that says that if an employee lives, or works in Massachusetts, you cannot apply another state's law as the choice of law provision to try to make an end run around the Massachusetts statute.

Evan Gibbs:

I need a prize for this then. I think if this was like a quiz show, I'd get –

Tracey Diamond:

Good guess.

Evan Gibbs:

- some kind of – That's right. That's right.

Tracey Diamond:

California is a good, another example, right? Outright ban against non-competes. Very clearly, it has been articulated that you cannot try to apply another state's law, like Florida to a California employee to try to get around that ban.

Dan Sieck:

Yeah. I've seen a lot of companies trying to get around this by using non-solicits and confidentiality clauses that might pick up things like trade secret. I don't know. Are you guys still seeing that as a viable alternative to just get around the whole non-compete issue altogether?

Tracey Diamond:

It can sometimes get around the non-compete issue. In Massachusetts, a non-solicit is expressly outside the restrictions of the act, but not in every state. Illinois is a good example. In

Illinois, there's a Freedom to Work Act. It applies a salary threshold not only to non-competes, but a lower but still a salary threshold to whether or not you can apply a non-solicit of customers provision as well.

Although, the Illinois Act, interestingly, expressly excludes garden leave from the definition of a covenant not to compete. That's another state where I'm surprised we haven't seen it yet. I think we will start to see it more and more where the concept of garden leave would be applied for companies that are really concerned about keeping employees on, or recently former employees on the sidelines for a period of time to avoid the competition.

Evan Gibbs:

Yeah. I'm just curious. We've talked a lot about the garden leave. We talked about some of the specifics, but what do y'all see as really, the pros and cons? When a client asks about garden leave, what do y'all tell them about the pros and the cons?

Tracey Diamond:

Well, one of the cons is it's expensive. You're paying for the employee to sit on the sidelines, right? You're paying for a Big Head to hang out on the roof and drink a beer.

Evan Gibbs:

Rest and vest. Rest and vest.

Tracey Diamond:

Rest and vest, yes.

Evan Gibbs:

That's right.

Tracey Diamond:

You're also probably bringing in someone new to do that job, so you're probably double paying for the same job to get done, as opposed to a non-compete, particularly in a state where you don't have to pay for the non-compete. You're just tying the employee's hands for a period of time after they leave employment.

Evan Gibbs:

Yeah. I think the pros are, in my opinion, especially I really see this a lot. If you got somebody who hasn't been there, been at a company for a long time, to me it's not necessarily as valuable, unless they're just in a really, really critical role, like an R&D department or something. But having the employee there, especially somebody who's got a bunch of historical organizational knowledge can be really helpful. Having them around for the transition is what I've seen in the past. Somebody's been at a company for 10, 15, 20 years and they're leaving. I

mean, they can really leave a void, just a big knowledge gap if there wasn't legacy planning in place, which is often the case.

I found that a lot of clients, that's what drives this decision, is having somebody around to help with that. Be available for that knowledge. Because, of course, once an employee leaves, if they're not contractually obligated in some way to cooperate, I mean, you call them up and ask them questions, they could tell you to pound sand and say, "I don't work for you anymore, buddy. There's no way I'm sharing all this with you." It can really help in certain situations.

Tracey Diamond:

I can see that being an issue with the cooperation clause, too, right? If you have a company that's in litigation, or being investigated by a government agency and that employee has all that knowledge, having them on garden leave, or some form of transition period where they're required to cooperate with you and still have the duty of loyalty of a current employee could be really important.

Dan Sieck:

Yeah. I think from the board's perspective as well, you want somebody to stick around your employees. If you're not terminating them for cause, it's not a bad lever type situation, and you want them to stick around. I think it allows folks to save face, maybe on both sides, but to say, "Hey. Well, we're not terminating you, and we're asking you to stick around." That's on the employee side. Then on the company side, the board side, we're not just going to accelerate all of the vesting of your options. We're still going to require you to do something, even if that something is minimal. I think that's an easier pill to swallow if you're in a situation where the person's being let go, not necessarily because they did a bad job, but because, I don't know, the company's changed direction, or it's a light termination, if that makes sense. I think there can be some value there.

Evan Gibbs:

I like that phrase. I'm going to use that. This is a light termination. This is not a heavy termination.

Tracey Diamond:

You're lightly losing your job. Yeah. I've actually seen sort of an informal garden leave type situation where the employees basically said, "Hey, look. Your future gear is finite. We don't really see this going forward, this relationship, but we really want to give you time to find another job. We want to give you sufficient runway here. It's now April. You have till the end of the year. Start actively looking for a job. We're going to take away most of your job responsibility, so we can free you up to start looking for another job. You're still employed here, but understand the employment's not going to just continue indefinitely."

It's another tool in the employer's toolbox to end things in an amicable way, where to Dan's point, the employee safe space and actually isn't leaving until they've hopefully found another job in all that period of time. It's letting the employee know that their job here is not secure forever. A lot of trust needs to be involved there, right? That the employee is not going to go

crazy on you and create a toxic situation. I can only see that working in certain situations where there's a real amicable relationship.

Evan Gibbs:

Yeah, that's right. I think that's a really big component to whether or not this is appropriate. It's a huge part. Have either of you dealt with a situation where someone was placed on garden leave and they were a commission-based employee? If you have, I'm just curious how you dealt with the commission part. I know a lot of that's going to be driven by, if you've got a comp plan in place that says, the certain definitions that you have to comply with, I could see the contract could drive that, or if they have an employment agreement that has that spelled out, you may have to follow that. I'm just curious if you've ever had that come up.

Tracey Diamond:

Yeah. I'm not sure how you'd calculate commissions when someone's on garden leave, if they have to actually be affirmatively out there selling in order to be eligible for commissions. I would imagine that's probably a negotiation point of how much are you going to pay this employee to be on the sidelines and not be out there earning commissions. They're not getting their full pay, then I could see where that could really lead to problems.

Dan Sieck:

Yeah. Yeah, I can't say I dealt with it. But as a practical matter, it feels like it'd be a challenge outside of a one-off negotiation.

Tracey Diamond:

Do you think there are any legal issues with the concept of garden leave?

Evan Gibbs:

I mean, I think there are some issues that certainly come up that can be a little tricky. For example, when you have the person sign their release, right? Because of course, if you're doing this with an employee, you're absolutely going to want to get a release of claims from the individual. You've got two points at which you would probably want to do so. You've got, at the end of their – and again, it depends on the type of relationship they're going to have going forward. But if they're ending their employment with the company, they're going to become a consultant, for example, if you structure it that way, a consultancy relationship, then you'd want to have for sure a release at the point where their employment ends, so that you capture all those claims and then have another one, perhaps, at the end of the consultancy, or at the end of the employment period, so to speak.

That's how I've done it in the past is have two separate releases. One, at the beginning of the garden leave and then another at the end, so that you make sure you capture all of the possible claims that they could have. That's one thing you have to think through, because of course, if something happens – or just because you place somebody on garden leave, it doesn't insulate the company from claims that could occur during that period, right? I mean, the person can still claim a breach of contract. If they continue to be an employee, they've got those various

employment claims out there that are available to them, everything from wage hour to disability claims. I mean, there can be various types of risks that continue, even though you've got this contract that provides for garden leave.

Tracey Diamond:

Yeah, that's a super important point. I do it the same way where there's two releases, one at the end of the active employment relationship and the other on the actual separation date, but it's a little messy. It's a little more complex than just a single release.

Dan Sieck:

I always get a little nervous on the second release, what the consideration is going to be, and whether it's meaningful.

Tracey Diamond:

Absolutely.

Dan Sieck:

That's a practical issue that I get nervous with when we're talking about the two-step process. I don't know what you guys think.

Evan Gibbs:

Yeah. What I've done, I can tell you on that point, I've had the same concern. One thing that I've done is clients have given basically, a garden leave completion bonus at the end. It's like, basically, "Hey, at the last day of this consulting agreement, you'll get a \$5,000 bonus if you sign the release."

Dan Sieck:

After we're done paying you to do nothing, we'll pay you more to go away.

Evan Gibbs:

Exactly.

Tracey Diamond:

I've actually seen it done and I've done it this way where it's not two releases, but just a transition letter agreement at the end of the act of employment period and the beginning before the transition period starts, where it's laid out the carrot and the stick of, if you stay available to us and transition your duties, then at the end of the transition period, you'll then be eligible for X amount of severance in exchange for a release of claims. One way to do it.

Evan Gibbs:

That's right.

Tracey Diamond:

What about benefits issues? I know we're not benefits lawyers and we don't want to dive too deeply here, but do you see any potential benefits issues with this concept of garden leave?

Evan Gibbs:

Man, the benefit stuff is scary to me, I'll just tell you. Benefit stuff comes up by calling the benefits lawyers. If they mentioned 409A, I'm like, "No. Nope. I don't know. I have no idea. I don't know what that means. I don't know these." There's what? 281G. I don't know. I don't even know what that means. I would assume that there's plan issues. I mean, I think you'd have to talk to your benefits counsel and understand exactly how this is going to impact health insurance and any of the other benefits options, all that stuff. What have you seen, Dan? Have you had those types of benefits issues?

Dan Sieck:

Yeah. I mean, I know enough to be dangerous with respect to equity compensation. Typically, I can't really speak to the way the benefit plans work, but I agree with you that there's some stickiness there. In the equity comp side, you ought to be able to continue to vest during either a garden leave, where the person remains an employee, or even if they continue to remain with the company in a consulting relationship.

Whether you actually go that way, or whether you just accelerate the vesting to give them what they would receive is a case-by-case basis, perhaps to form part of the consideration for one of the releases you need. I know that that's – in my world, when we're talking about especially tech companies where a big part of the comp may be tied to equity, that's meaningful. That's real appealing on the employee side.

Tracey Diamond:

You mentioned consulting agreements, and I think it's worth a little discussion here, because that is an adjacent type of relationship that could be created at the end of an employment relationship sometimes, if it's structured properly to provide some extra transition time to individuals, both in terms of giving them some money and also, getting their expertise. Have you used that tool and do you see any risks, or benefits to using a consulting agreement after the end of an employment relationship?

Dan Sieck:

Yes, I've used it. I probably should flip this to Evan, but, I mean, the thing that makes me nervous in that structure is whether the person who was an employee yesterday is that consultant tomorrow, whether we're walking into a wage an hour type claim, or whether they are actually an employee. That always makes me nervous enough to call one of you guys. I don't know how you actually thread that needle.

Evan Gibbs:

Yeah. I mean, and there are certainly some rules you've got to be mindful of when you structure this arrangement, including – it's the same analysis that we would, I think, go through for any type of independent contractor that the company was going to hire. We'd go through the factors of how much control we're going to have, how we're going to control the employment, how are they being paid? Is it hourly? Is it flat fee? I mean, you just walk through those things and figure out exactly what you want to do.

Again, it's really going to be – this arrangement is going to be a creature of contract. I think, you've just got to think through it when you structure the contract and make sure that you're considering those issues when you're doing that. I know I mentioned earlier, deciding whether they're going to have access to company systems, whether they're going to need their own equipment. If they're doing it, if it's more of a consulting type of arrangement, I would lean towards the person using their own computer, using their own phone, things like that to make it more of a true independent contractor relationship.

Sometimes the reality is sometimes it's just not that practical. I think, especially for limited consulting arrangements that are really short in time, like if you've got, let's say, a two to four-week consulting period, the wage an hour issues, even if it's not perfect, the analysis isn't perfect, the risk of a claim is it's pretty low and any damages associated with that type of claim will be pretty low. You just have to carefully think through how you structure and what the risk profile looks like. Those are certainly issues to be mindful of when you're putting together the agreement.

Tracey Diamond:

Yeah. I would agree with you that the shorter the arrangement, the less risk there is. Keeping the arrangement short is important. Then the only other thing I would add is that there are – just like with the Massachusetts Non-Compete Act, there are statutes and certain jurisdictions that govern the independent contractor relationship and may make it more difficult to structure. Massachusetts is one of them. You are in highly regulated state, Dan. Massachusetts has an independent contractor statute that requires in order for the person to be properly classified as an independent contractor. I'm fudging the words here. I don't have it in front of me, but the basic gist is that they have to be in their own established business and they also have to be not performing the work of the business.

If you're making widgets, you cannot in Massachusetts have an independent contractor making the widgets for you, or you'd be violating the statute. It's called the ABC prong. Really be mindful of those statutes when you're structuring the relationship.

Evan Gibbs:

Yeah. That's something we didn't really touch on really, I think, clearly, as the length of the relationship. It's hard for me to envision a scenario where I would recommend to a client that this lasts more than a month, or two tops, right? I mean, it can get messy and complicated if this lasts for very long. Typically, to me, the sweet spot is two to four weeks. You've got a plan to use them, how you're going to use them. You get what you need from them, but then, you ultimately have that permanent parting of ways after not too long, because you just don't want to get in this weird gray area and this is things dragging out.

Tracey Diamond:

Yeah. I would say, I typically see more of a range of three months to a year, so a little longer out than what you're seeing, Evan. I really just –

Evan Gibbs:

Interesting.

Tracey Diamond:

- think it's a question of risk tolerance and also, where is the person doing the work, and are there any statutory restrictions?

Evan Gibbs:

Very interesting.

Tracey Diamond:

All right. Well, this has been a super interesting discussion. Thank you, guys, so much for joining. Thank you to our listeners. Please subscribe to our podcast, as well as our [HiringToFiring.Law](#) blog. Shoot us an email. We'd love to hear about topic ideas, TV shows that you want us to talk about, movies, and speak soon. Listen in. Bye-bye.

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