

THE TOP 10 EMPLOYMENT LAW MISTAKES MOST COMMONLY MADE BY INSULATION CONTRACTORS (AND HOW TO AVOID THEM!)

Insulation Contractors Association of America

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Mistake No. 1: Not Paying for Compensable Travel



Portal-to-Portal Travel

- The Rule
- But . . . stopping along the way
- Carpooling



Overnight Travel



- When it applies
- The driver is always working
- Overnight travel as a passenger is compensable working time when . . .



Mistake No. 2: Not Understanding How to Deal with the Injured Employee or the Employee with a Medical Condition



Addressing Medical Issues at Work

- Generally, talk about medical conditions is off limits
- Performance issues?
- Information becomes known?
- A medical issue is observed



Applicable Laws to Consider



- Consider the Law:
- The Americans with Disabilities Act
- The Family Medical Leave Act



Mistake No. 3: Failing to Publish Accurate Job Descriptions



Job Descriptions



- The ADA necessitates the use of job descriptions
- Assists with defenses to Title VII claims
- May help to defeat claims for overtime



Job Descriptions

- Be sure to include:
 - Attendance standards
 - Lifting requirements
 - Availability to work overtime or weekends
 - Travel requirements
 - Supervisory duties
 - Exempt duties

- Make sure job descriptions are accurate and up to date



Mistake No. 4: Failing to Document Disciplinary Actions and Performance



Avoiding Mistake No. 4

KNOW THE
RULES!



- Publish a disciplinary policy, then follow it!
- Verbal warnings should be in writing
- Identify any prior counseling and failure to correct issues
- State the facts, be objective and avoid opinions
- Allow the employee an opportunity to sign the document, or note the refusal to sign



Mistake No. 5: Failing to Obtain a Release or Severance Agreement from a Terminated Employee



Mistake No. 5



- Consider whether the agreement is worth the risk
 - Is the employee in a protected category?
 - Will there be a replacement? Is the replacement in a difference protected category?
 - Has the employee recently engaged in protected activity?
 - The agreement may leave the employee considering whether they have a legal claim



Avoiding Mistake No. 5



- An enforceable agreement must provide “consideration”
 - The employee must be given something other than what they are already entitled to
- Consult with an attorney to obtain an enforceable release from ADEA claims



Mistake No. 6: Thinking You Have A Strong Misconduct Defense



The Unforeseeable Employee Misconduct Defense

- Work rules
- Training
- Self-Inspections
- Discipline



Avoiding Mistake No. 6



- Maintain safety manuals in all necessary languages
- Keep training documents organized
- Focus training on most common hazards
- Conduct self-inspections and document same
- Administer effective discipline



**Mistake No. 7:
Not Understanding
Controlling
Employer Liability**



The Controlling Employer



- You can be cited as the controlling employer if:
 - You exercise sufficient control over the worksite to prevent or detect and abate a hazardous condition created by a subcontractor
 - You could reasonably be expected to prevent violations due to your supervisory authority and control of the worksite

TOP OSHA
VIOLATIONS

The Controlling Employer



- Liability can be avoided if:
 - You are exercising reasonable care to prevent and detect violations
- Standard of care



Mistake No. 8: Treating Employees as Independent Contractors



Common Law Test

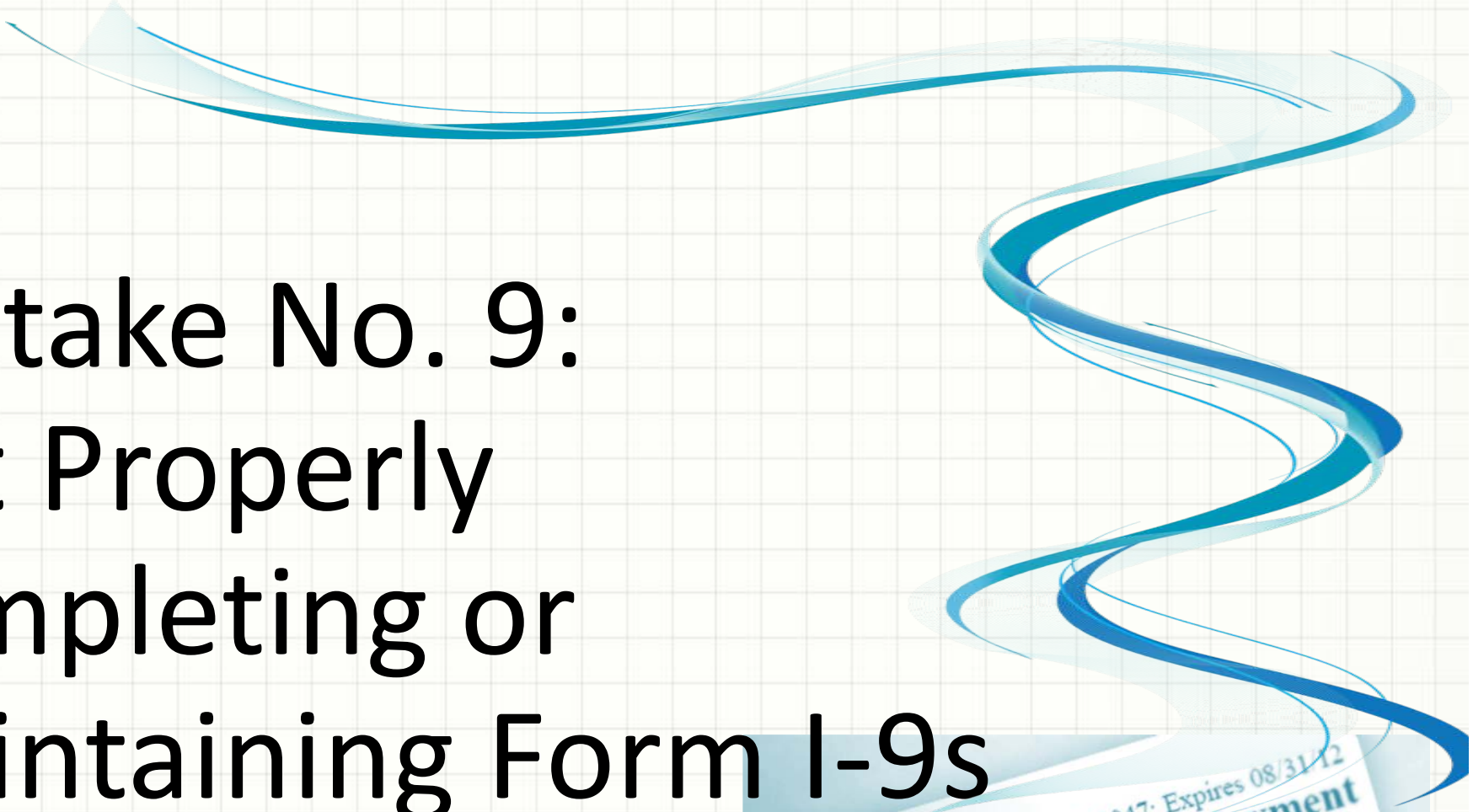
- Seven Factors:
 - the degree of control exercised by the principal over the details of the work
 - which party invests in the facilities used by the worker
 - the opportunity of the worker for profit or loss
 - whether the principal can discharge the worker
 - whether the work is part of the principal's regular business
 - the permanency of the relationship
 - the relationship the parties believed they were creating



Avoiding Mistake No. 8

- Conduct a relationship audit
- Use formal contracts with independent contractors
- Ensure independent contractors maintain their own corporate documents
- Do not repeatedly and continuously engage the same independent contractors





Mistake No. 9: Not Properly Completing or Maintaining Form I-9s



Form I-9

September 2017						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Monday, Sep 18th 2017

- There is a new Form I-9 that became effective on September 18, 2017
- Since September 18, 2017, employers have been required to use the 07/17/2017 N version
- Conduct an annual audit of your Form I-9s
- Know the Form I-9 record retention rules



Mistake No. 10: Not Having A Non- Compete and/or Non- Solicitation Agreement



Mistake No. 10

- Without a Restrictive Covenants Agreement, former employees are free to compete
- Non-Competition Agreements
- Non-Solicitation Agreements
- Non-Solicitation of Employees
- Trade secrets and confidential information





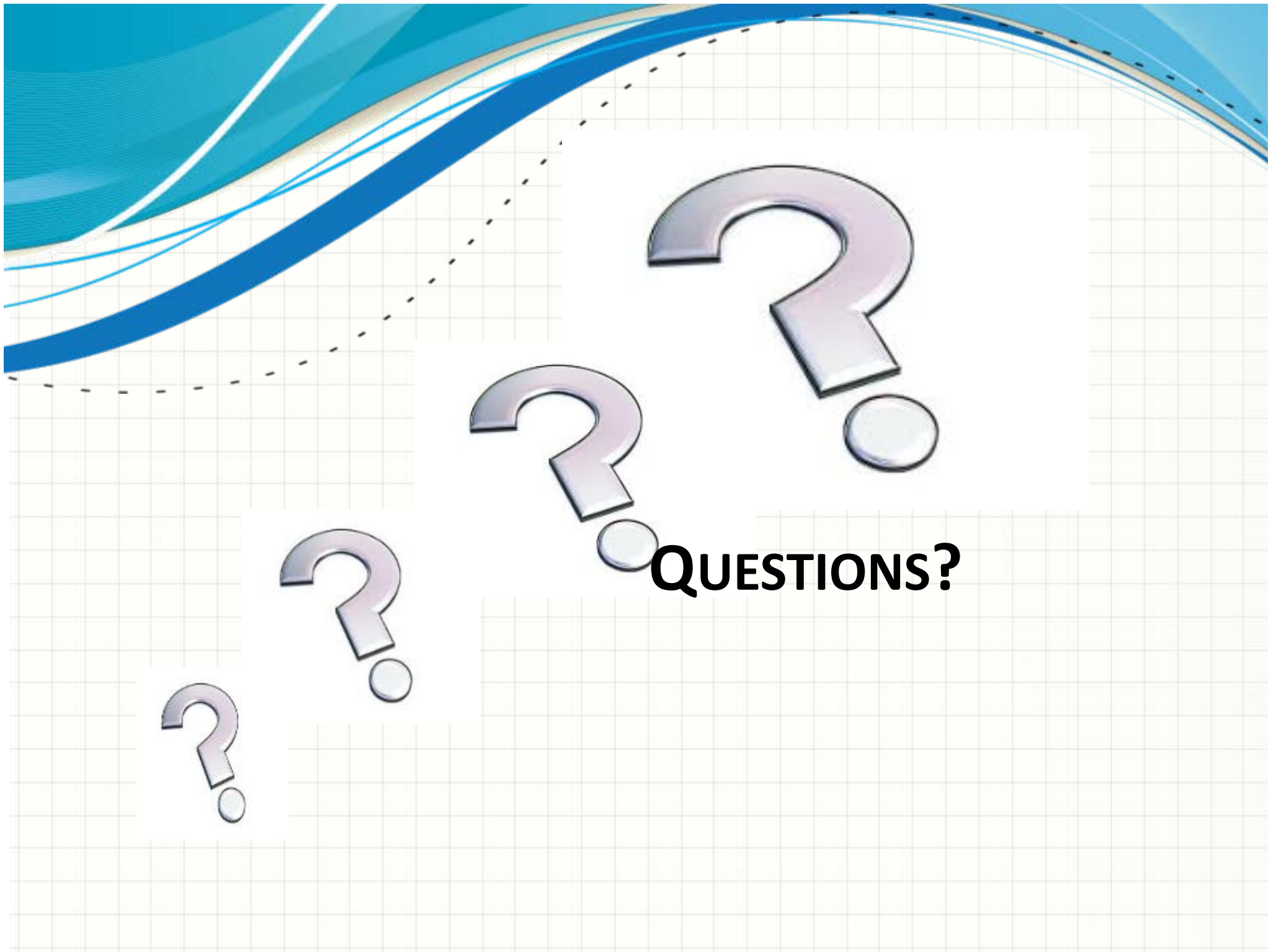
Mistake No. 11:
Failing to publish a
harassment or
discrimination policy



Avoiding Mistake No. 11

- Publish a policy
- Address complaint procedure and retaliation
- Follow the policy . . . And document it!





QUESTIONS?

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