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Employment Law/Intellectual Property

Expert: [Margaret M. deMarteleire](#) - 8/14/2011

Question

Ms.deMarteleire,

I hope you can answer my question. I am working for a Home healthcare agency that has low census right now. My employer asked for ideas that could help us increase our patient census. I am a Dementia Practitioner, Instructor. I have put together a proposal for me to train our staff and market our "Dementia Program". I am the only person that can teach this program because I am approved to do so by the National Council of Certified Dementia Practitioners.

Would my program be considered "Intellectual Property"? Could my employer continue the program after I leave my place of employment. If this program is successful, I plan to offer this program to other Home healthcare agencies.

I plan on writing a contract to prevent the agency from using the program after I leave. Is this a good idea, and if so what type of attorney should I look for to write it up? My husband is also telling me to ask for a raise or for the agency to pay me for the program.

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Answer

Sharron - Work of the type you are proposing is almost always the property of the employer on whose time it was developed. That does not mean you cannot use a version of it for your own purposes, just that you cannot prevent the agency from using the materials, too. If they decided to get into the business of providing such training, you might hear from their lawyer that you are not allowed to use the materials, and they probably would win that fight. If they are not interested in doing training as a means of increasing their profits, though, there would be no reason for them to prohibit you from doing so.

You have no legal claim on work done for your employer. It is the employer's property to do with as it chooses. If you want to change that assumption, you could see an intellectual property attorney and ask for help in drafting a document that you could ask your employer to sign. It's even possible your employer would sign it, but they would only be doing so if they had no interest in providing the training themselves. Before spending money on an attorney, have a preliminary discussion with management about the conditions under which you would be willing to develop and market the training. If they are interested enough in the proposal, they might be willing to sign something giving you more than the usual rights of an employee with a work product. This discussion should absolutely take place before you have created the materials. If they are already completed, you have no leverage. Basically, your negotiating position is that you can make some money for the business, but you want something in return, and if you do not get it, you do not create the program. This will call for delicate handling - if

Employment Law

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Margaret M. deMarteleire

Expertise

I can answer most questions about employment law, federal or state. I am an attorney, not an HR professional, so questions about HR careers, coursework, prospects, etc. are not within my scope.

Experience


Attorney for 20 years, currently working exclusively with employment law - FLSA, FMLA, federal contracts, pay, etc.

Education/Credentials

Temple University School of Liberal Arts, BA, Rhetoric & Communication, 1982 Temple University School of Law, JD, 1990 Certificate in HR, Cornell University ILR School, 2006

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your employer tells you to do the work, you cannot really decline. If your husband wants to help, have him practice the discussion with you so that you are prepared for anything.

Good luck with your plans.

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