

WILSON SONSINI

U.S. Expansion and Fundraising

Top 10 U.S. Employment Considerations

1. **Direct employment vs. EORs:** Both have pros and cons, depending on the business's circumstances and growth stage
2. **At-will employment:** Provides flexibility, but significant risks arise under discrimination, wage and other laws
3. **Employment documents:** Terms and structure should align with U.S. laws and market practice (e.g., offer letters)
4. **Classifying workers as employees or consultants/contractors:** Depends on a legal test that focuses on the factual circumstances of the relationship
5. **Overtime pay:** Employees are entitled to overtime pay unless a legal exemption applies
6. **State law requirements:** Employment documents, policies and practices should reflect state law requirements
7. **Restrictive covenants:** Non-competes are enforceable in some (but not all) states, but only if certain conditions are satisfied
8. **Bonuses, severance and other compensation:** Greater risk of disputes if drafting is not clear; must also be structured to avoid certain tax penalties
9. **Immigration:** Employers must verify employees are authorized to work in the U.S.
10. **Tax:** Activities of employees and contractors might create U.S. tax exposure for a foreign business