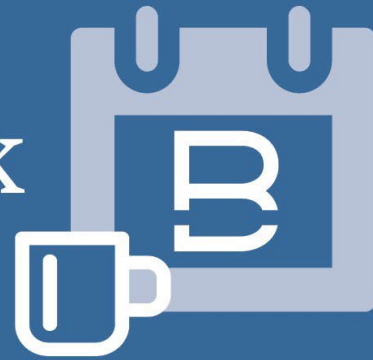


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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When Personnel Contributes to Your Intellectual Property Portfolio: What Every Business Should Know

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Your intellectual property (“IP”) portfolio is a powerful asset—often as valuable as physical capital—and it is the backbone of market positioning and strategic growth. Yet, navigating the world of IP can be daunting, deceptively *easy* at times, and not without risk; understanding the legal landscape that governs your IP is no small feat. In this article, we’ll explore how your team’s creativity plays a pivotal role in building your IP portfolio and the essential considerations you need to make to ensure its appropriate protection. This is a multifaceted topic, and we encourage you to consider this to be just the start of a much deeper conversation.

In today’s competitive landscape, IP is one of the most valuable assets a business can possess. Whether you are in your infancy or are an institutional corporation, IP development is continual, and safeguarding it is crucial to sustaining market advantage and fueling long-term growth. But what is often overlooked is a thorough understanding of what IP consists of for most businesses, and how it can be protected—especially when much of it is created, in whole or in part, by one’s team.

At its core, IP refers to creations of the mind—think of inventions, advertisements, designs, logos, and even trade secrets. For some, it may include a new piece of machinery that makes manufacturing more efficient, or a slogan that went viral as a hashtag on TikTok. For others, it may be software code, creative content and marketing materials, brand colors, internal contact lists, processes, or the “secret sauce” that sets you apart from the rest. While their value may differ, each of these forms of IP plays a role in helping businesses maintain their competitive edge; but, vulnerability flares when businesses mistakenly think

that owning IP is enough—businesses must first ensure that ownership, then actively manage and protect it.

In an exceedingly common assumption, businesses often think that any IP created by employees, contractors, and interns (“personnel”) on company time and that is related to the business automatically belongs to the business and is part of its IP portfolio—but that’s not always the case.

For employees, ownership is typically governed by the work-for-hire doctrine, which states that anything an employee creates in the scope of their employment belongs to the employer. But the devil is in the details, and work-for-hire may not be the catch-all that is needed, depending on the position and tasks of the employee. To avoid any confusion or disputes, businesses should have clear IP ownership clauses in their employment agreements and related documents, which are not a one-size-fits-all contractual provision. In fact, to bolster strength in the event ownership is challenged, the clauses should reflect thoughtful drafting in consideration of the business operations and the employment position—*there may only be a few words that are different, but each of those words matters.*

Independent contractors pose an entirely different challenge when it comes to IP ownership. Since they aren’t covered by the work-for-hire doctrine, contractors typically retain ownership of any IP they create unless a contract specifically states otherwise. Thus, to protect your business, the careful and intentional drafting of clauses governing IP is vital and should be a priority.

Additionally, while interns may seem like a more casual addition to your workforce, their contributions may still create IP. Since interns are often not considered full-time employees, businesses need to take extra steps to ensure that any IP created by them is properly assigned.

Each member of your workforce should be required to sign agreements that clearly outline IP ownership. Without these protections, any one of them could walk away with (or at least assert) rights to the IP they created, in whole or in part, leaving your business vulnerable to lawsuits or, worse, competitors getting their hands on your innovations.

After ownership is established, the focus shifts to proper management of your IP within your workforce. When working with our clients to manage their IP portfolios, we evaluate independent needs; beyond the assets of an IP portfolio differing, businesses vary with their risk tolerance, as does market strategy. With this in mind, and recognizing that implementation of the management framework may differ, here are several steps employers should consider:

- (1) the drafting and implementation of strong workforce agreements, in which IP ownership cannot be left to chance or debate;
- (2) the creation of clear IP policies that address the development of IP, the vetting of licensed IP and the ongoing management of the IP portfolio;
- (3) the implementation of internal processes to monitor for infringement, and when found, a protocol for what actions should be taken, making special note of statutes of limitations; and

(4) the education of your workforce, making sure everyone understands the IP policies and processes.

This may seem daunting, but the potential loss resulting from weak IP management can be catastrophic.

In today's fast-paced and competitive business environment, your IP portfolio isn't just a collection of legal documents—it's a reflection of your company's innovation, creativity, and strategic thinking. Protecting and leveraging this asset requires not only an understanding of the basics but also a proactive approach to ensuring its value grows alongside your business. Some or much of your workforce is uniquely situated to be privy to your IP, which is a sword not to be underestimated.

While we've covered some key elements in this article, there's so much more to the world of IP that can shape your company's future success. At Bassford Remele, we have extensive experience advising employers on new and changing laws, regulations, and ordinances from the federal level to the local level. Please reach out to the [Employment Law](#) practice group, which works intimately with our [Corporate](#) and [Intellectual Property](#) practice groups, for guidance, questions, or further assistance. We are here to help!

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