



CMHRA LEGAL YEAR IN REVIEW

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Brann & Isaacson
January 17, 2023

BRANN & ISAACSON
ATTORNEYS AND COUNSELORS AT LAW



OVERVIEW

- NEW LAWS IN 2022
 - Post Me-Two Legislation
 - Federal Law on Pregnant Employees
 - Maine's Vacation Pay-Out Law
 - Respect for Marriage Act
 - The Crown Act
- PAY TRANSPARENCY
- UNIONIZATION & NLRB
 - NLRB Enforcement and Precedent
 - Union Activity
- TWITTER CASE STUDY
 - WARN Act
 - Disability Discrimination
 - Disparate Impact
- RETURN TO WORK CLAIMS & ISSUES
 - Attendance Woes
- NEW DEVELOPMENTS
 - Non-Competes
 - Supreme Court Retaliation Case
 - Cases & Issues to Watch
 - AI in HR



NEW LAWS IN 2022: Post Me-Too Legislation

- Maine Law on Settlement Agreements
- Non-Disclosure – Federal Law
- Limits to Pre-Dispute Agreements Upon Hiring
- What you can put in a separation agreement



Maine Law on Settlement/Separation Agreements

- ° LD 965 “**An Act Concerning Nondisclosure Agreement in Employment**” came into effect on August 8, 2022
- ° This law prohibits employers from mandatory preemployment employment agreements that waive the right to report unlawful employment discrimination.
- ° The law also prohibits settlement agreements or severance agreements from including a provision that limits the reporting of conduct to a federal or state agency or testifying.
- ° If the agreement restricts disclosure of discrimination, there must be separate \$.

Federal Law on Non-Disclosure Agreements

- President Biden signed H.R. 4445, “**Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act**” into law on March 3, 2022.
- This law enables employees to avoid forced arbitration in sexual assault and sexual harassment cases.
- Employees have the option to go directly to Court.
- This law only applies to sexual harassment and sexual assault claims.

Federal “Speak Out Act”

- ° New law effective December 7, 2022
- ° Restricts enforcement of pre-dispute non-disclosure and non-disparagement terms that address sexual assault and sexual harassment disputes.
- ° Not impact post-dispute agreements (i.e. settlement agreements)

Tips for Updating Separation/Severance Agreements

- Review and update protected classes
- Update list of employment laws
- Evaluate non-disclosure language if resolving a discrimination or harassment issue
- Consider an arbitration provision
- Provide for recover of attorney's fees

NEW LAWS IN 2022: Federal Law – Pregnancy Workers Fairness Act

- The PWFA passed in December 2022 and will become effective on June 27, 2023.
- Employers with at least 15 employees will be subject to this law.
- Employers are required to treat qualified employees and job applicants with pregnancy-related restrictions the same as qualified employees with disabilities.
- Must provide reasonable accommodations unless doing so would create an undue hardship.
- Many states already require employers to treat employees with pregnancy related conditions as they would employees with disabilities. Maine amended the Maine Human Rights Act in 2019 laying out essentially the same protections as the PWFA.

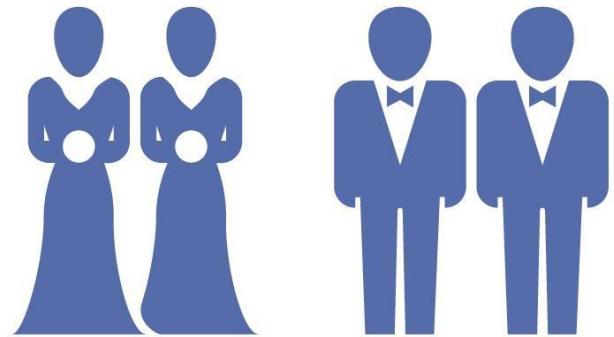
NEW LAWS IN 2022: Maine's Vacation Pay-Out Law

- L.D. 225 was signed on April 7, 2022 and came into effect on January 1, 2023.
- This rule applies to private employers with 11 or more employees working in the State of Maine.
- Must pay employees for all unused, accrued vacation.
- The law does not apply to accrued EPL or PTO policies.
- Collective bargaining agreements supersede the law.
- Employees who do not receive their unused accrued vacation time can sue and seek damages of up to 3x the unpaid amount (unpaid wages).



NEW LAWS IN 2022: Respect for Marriage Act

- President Biden sign the Respect for Marriage Act on December 13, 2022.
- This Act repeals the federal Defense of Marriage Act.
- Prohibits from denying “full faith and credit” to any marriage between two individuals based on sex, race, ethnicity, or national origin.
- Benefits security for all types of marriages.



PAY TRANSPARENCY

- States, Cities, and Counties are adopting new laws:
 - California – Is leading the way
 - Colorado
 - Connecticut
 - Maryland
 - Nevada
 - Rhode Island
 - Washington
 - NYC and other towns/counties in NY
 - Towns/Cities in Ohio
 - Jersey City, New Jersey

Pay Transparency

Range of Pay Disclosures:

- Upon applicant request in interview
- At the time of the job posting
- During promotion application
- At the time of job offer
- After initial interview

new

Strategic Intelligence Analyst
Western Union 3.9 ★
Denver, CO 80237 (Southeastern Denver area)

\$63,300 - \$104,650 a year Full-time

◦ You will utilize ETL, analysis and data visualization tools to query, integrate, explore and evaluate extremely large volumes (millions of rows) of transaction...

Posted 6 days ago

new

2023 NFL Rotational Program
National Football League 4.4 ★
New York, NY

Estimated \$58.2K - \$73.8K a year Full-time

◦ Flexibility to adapt and thrive in a variety of work environments with various leadership styles and teams.
◦ During each rotation, participants are placed in a...

Posted 2 days ago · More...

MAINE EQUAL PAY LAW

- Mundell v. Acadia Hospital
- Mundell discovered she was being paid about half the hourly wage of her male counterparts.
- The Judge ruled in favor of Mundell - **“The evil redressed by MEPL is decidedly the impact of unequal pay for comparable work, regardless of the employer’s motivation....there is no precedent to suggest that non-payment or under-payment of wages could ever be excused by the employer’s demonstration of a lack of intent to violate the law.”**

DIRECT DEPOSIT SCAM

- Also known as the Payroll Diversion Scam.
- Scammers masquerade as an employee, they email the payroll team requesting to change their direct deposit account details.
- Targets range from company executives to mid-level employees.



UNIONIZATION & THE NLRB

NLRB Unleashes New Damages Against Labor Law Violators

14 December 2022 | Dashboard Insights | Blog

BUSINESS

Starbucks workers plan a 3-day walkout at 100 U.S. stores in a unionization effort

December 16, 2022 · 8:19 AM ET

The National Labor Relations Board is trying to silence employer speech

BY STEVE DELIE, OPINION CONTRIBUTOR - 12/03/22 7:00 AM ET



AMAZON · Published January 12, 2023 1:43am EST

US labor board upholds Amazon workers' union victory

NLRB LANDSCAPE

MICRO-UNITS



CARD CHECK

AUTHORIZATION FOR REPRESENTATION

I authorize a local union of the International Brotherhood of Electrical Workers, to represent me in collective bargaining with my employer.

Name _____ (Please Print) _____ Phone _____
Address _____ City _____ State _____ Zip _____
S.S. # _____

Employer _____ Department _____ Shift: 1st 2nd 3rd
Job Classification _____ Date _____ Signature _____
FORM 141

A scanned image of a standard "Authorization for Representation" form used by the International Brotherhood of Electrical Workers. It includes fields for name, address, city, state, zip, Social Security number, employer, department, shift, job classification, date, and signature. The form also features the official seal of the International Brotherhood of Electrical Workers at the top.

OUTLAW OF CAPTIVE MEETINGS



MAKE WHOLE RELIEF



UNION ORGANIZING: KEY NUMBERS

- College Graduates
 - 70% Pro-Union in 2022
 - 55% in 90's
- Union Election Filings – 57% Increase in 2022

ORGANIZING EMPLOYEES

- Progressive Employers – Non-Profits
- Healthcare
- Cafes
- Retail
- Younger Workforces

ROOT CAUSES

- Covid Safety Fears
- Generational Change
- Job Market

The New York Times

The Revolt of the College-Educated Working Class

Noam Scheiber

April 28, 2022 · 9 min read

LESSONS FROM TWITTER TROUBLE

Twitter Says Disability Bias Played No Part In Layoffs

By **Patrick Hoff**

Former employees suing Twitter over layoffs score an early victory



By Clare Duffy, CNN

Published 12:06 PM EST, Thu December 15, 2022

Latest Twitter lawsuit says company targeted women for layoffs

By **Daniel Weissner**



From: Elon Musk

To: Team [at Twitter]

Subj: A Fork in the Road

Date: Nov. 16, 2022 [time stamp removed]

Going forward, to build a breakthrough Twitter 2.0 and succeed in an increasingly competitive world, we will need to be extremely hardcore. This will mean working long hours at high intensity. Only exceptional performance will constitute a passing grade.

Twitter will also be much more engineering-driven. Design and product management will still be very important and report to me, but those writing great code will constitute the majority of our team and have the greatest sway.

At its heart, Twitter is a software and servers company, so I think this makes sense.

If you are sure that you want to be part of the new Twitter, please click yes on the link below:

[Link removed]

Anyone who has not done so by 5pm ET tomorrow (Thursday) will receive three months of severance.

Whatever decision you make, thank you for your efforts to make Twitter successful.

Elon



The road ahead is arduous and will require intense work to succeed. We are also changing Twitter policy such that remote work is no longer allowed, unless you have a specific exception. Managers will send the exceptions lists to me for review and approval.

Starting tomorrow (Thursday), everyone is required to be in the office for a minimum of 40 hours per week. Obviously, if you are physically unable to travel to an office or have a critical personal obligation, then your absence is understandable.

I look forward to working with you to take Twitter to a whole new level. The potential is truly incredible!

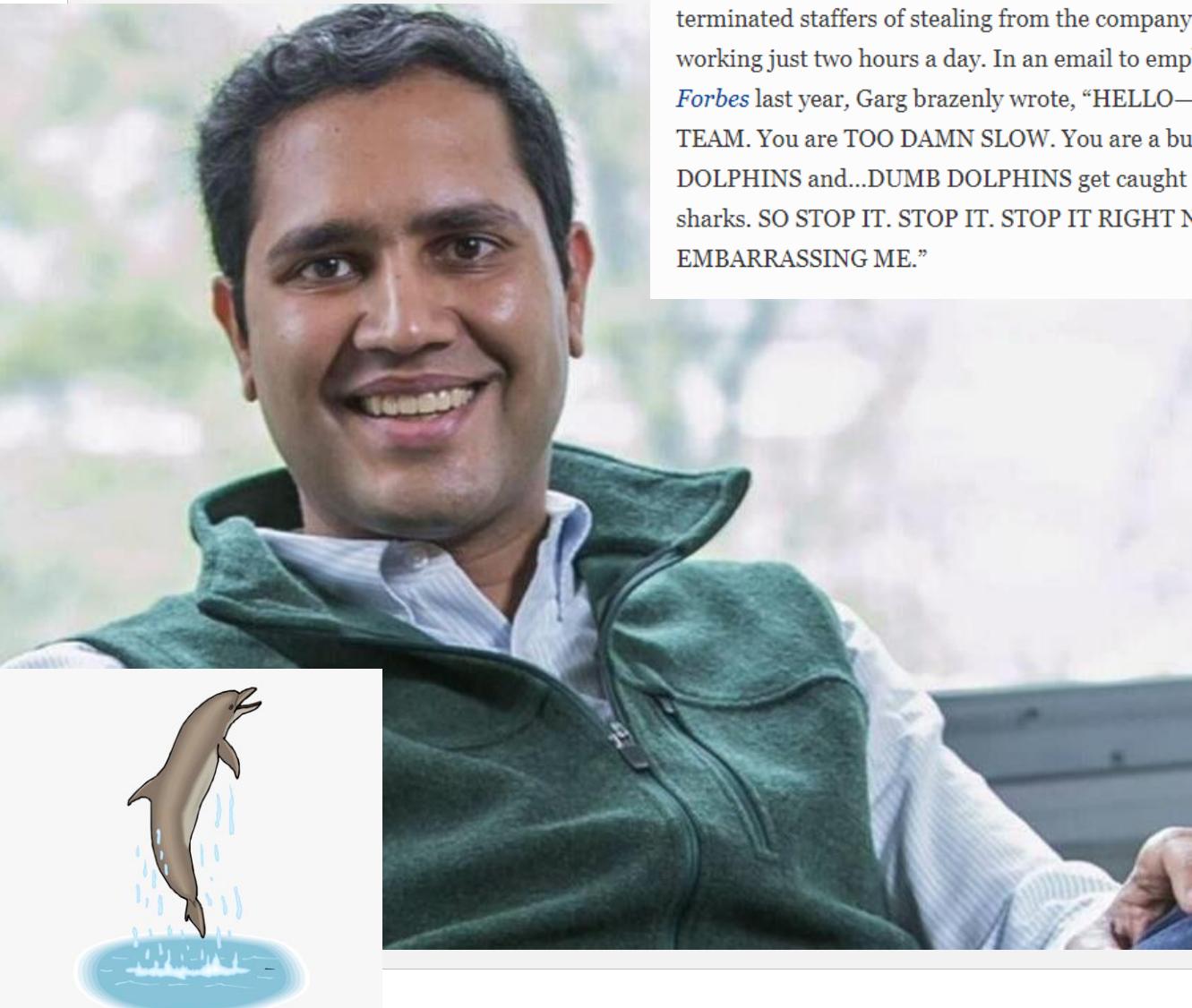
Thanks,
Elon

LAY-OFFS

- WARN Act
- Disability discrimination
- Disparate impact on females



TERMINATION TALES



Fortune reported that the embattled CEO accused “at least 250” terminated staffers of stealing from the company and customers by working just two hours a day. In an email to employees obtained by *Forbes* last year, Garg brazenly wrote, “HELLO—WAKE UP BETTER TEAM. You are TOO DAMN SLOW. You are a bunch of DUMB DOLPHINS and...DUMB DOLPHINS get caught in nets and eaten by sharks. SO STOP IT. STOP IT. STOP IT RIGHT NOW. YOU ARE EMBARRASSING ME.”

YOU CAN’T
MAKE THIS
STUFF UP!

The CEO of Unicorn Mortgage bluntly fired 900 employees via Zoom...and called them “Dumb Dolphins”

RETURN TO WORK CLAIMS

Trevor Thompson v. McDermott, Will, & Emery, LLP

- McDermott demanded Thompson return to work in-person despite his multiple sclerosis
- McDermott fired Thompson after her refused to return to the office
- McDermott failed to provide Thompson with reasonable accommodations
- Thompson successfully worked remote for two years during the pandemic



WHERE WE WORK NOW AND IN THE FUTURE





REMOTE WORK COMPLIANCE ISSUES

STATE-SPECIFIC EMPLOYMENT LAWS

- Reimbursement for home office
- Trainings
- Leaves
- Hiring Requirements
- Restrictive Laws

MISCELLANEOUS – Working From Home

◦ Impairment

High on the job? Third of corporate workers admit using weed on the clock, survey finds

BY MARIAH RUSH

UPDATED APRIL 20, 2022 7:56 PM



◦ Child-Care

Child Care Complicates Return to Work

Employers still offering flexibility, but for how long?



By [Nancy Cleeland](#)
June 26, 2020

◦ Less Opportunities

CASE STUDY TIME!

Max works for Mercedes Engineering as a designer. Pre-pandemic he would commute to the office.

For 2 years he's worked from home. Boss Toto has ordered everyone back in the office. Max has a Labradoodle named Sebastian. He asks Boss Toto if he can continue to work from home but Toto is unmoved.

Max visits Dr. Horner and get's a doctor's note: "Max suffers from general anxiety disorder, and I recommend that he works from home."

NEW LAWS IN 2023

- **FTC Ban on Non-Competes**
- **The Supreme Court and Retaliation**
- **Cases and issues to watch in 2023**
- **Paid Family Leave**

Ban on Non-Competes

FTC Floats Blanket Ban On Employee Noncompete Language

By **Bryan Koenig**

- The FTC would ban essentially all non-compete agreements
- The rule would deem any non-compete clauses to be an unfair method of competition

“Noncompetes block workers from freely switching jobs, depriving them of higher wages and better working conditions...FTC’s proposed rule would promote greater dynamism, innovation, and healthy competition.”

“...it would have a profound impact on all US businesses...particularly those businesses that utilize non-compete agreements to protect their trade secrets and confidential business information.”



BREAKOUT TIME

GROUP A:

- 5 reasons for banning non-competes

GROUP B:

- 5 reasons to keep non-competes

The Supreme Court & Retaliation

High Court Wants Feds' Input On Workplace Bias Law's Scope

By **Vin Gurrieri**

- ° Could job actions like lateral transfers and paid suspensions be the basis for a discrimination suit?
- ° Plaintiff must prove an “adverse employment action”

CASES & ISSUES TO WATCH IN 2023

- **AI in HR**
- **Affirmative Action – May change how employers handle their diversity initiatives**
 - Harvard University
 - University of North Carolina at Chapel Hill



Thank You



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