



Eye On The Law

SOME IDEAS TO ATTRACT TALENT (AND KEEP IT)

IMPORTANT LEGISLATION

SIGNS OF LIFE FROM THE LABOR MOVEMENT – A VICTORY OVER AMAZON

[THOUGHTS ON ATTRACTING AND KEEPING TALENTED WORKERS](#)

In our last two issues of Eye on the Law we discussed labor shortages in Connecticut and New England (excluding NYC and Boston). Several other factors are noteworthy:

1. The birth rate is declining;
2. The rate of employee turnover is reported to be **25%**; and
3. Approximately **40 %** of the work force is at least passively looking for other jobs.

[SHRM](#), the Society for Human Resource Management has published numerous articles on the labor shortage and what is trending in terms of employee desires and demands.

Given these issues and our labor shortage, what should employers focus on in attracting and keeping talent? Below are some thoughts and links to more information. We will continue to discuss these and other ideas in the future since many experts, including SHRM's talented CEO Johnny C. Taylor, Jr., are reporting that human capital has become the primary issue for US companies. Three important and immediate considerations are:

- **Higher Pay** – It is clear at this time that the number one factor to attract talented employees is more pay. They are less interested in benefits such as paid time off, which was reported to be important two years ago. Talented employees hear their friends talking

about larger salaries, signing bonuses and year-end bonuses. They realize that this is a unique labor market that presents unique opportunities.

- **Consider co-opting or co-sourcing employees** – Many of our clients are already using this method to fill or partially fill positions that require special licensing and degrees. Because of inflation and the potential for individual development, many workers are willing to consider part-time hybrid work models. We have seen some clients enjoy success with co-opting employees, particularly in the public sector. For more information, click on this [co-sourcing link](#).
- **Quality training and development with top managers** – talented employees are becoming more desirous of real training and real access to company leaders. They want the opportunity to learn from the best that you have and can offer in the area of management training. They want to hear the war stories and learn from them. For more, click this link from [SHRM](#) about additional opportunities employees want.

IMPORTANT LEGISLATION – STATE AND FEDERAL

- **March 3, 2022 Biden signs new law amending the Federal Arbitration Act (“FAA”).**
 - The legislation bans compelled arbitration of sexual harassment and sexual assault cases in employment. The new law has some retroactive effect - it bans the enforcement of prior employment arbitration agreements that forced employees into arbitration on these issues. While the amendment does not affect other discrimination claims, the Biden administration has made it clear that it intends to end forced arbitration for all employees regarding all types of employment discrimination claims. The Amendment gives employees **the option to invalidate arbitration agreements and class action waivers on the issues of sexual assault and sexual harassment claims.**
- **State of Washington passes legislation banning non-disclosure clauses and agreements.**
 - Effective June 9, 2022, it shall be unlawful for Washington employers to require or even ask employees to sign workplace confidentiality agreements. In addition, the legislation bans non-disclosure agreements in settlement agreements and even certain types of non-disparagement provisions if they restrict an individual’s right to discuss discrimination, wage issues and other employment issues, including alleged violation(s) of public policy.
 - In a remote work or even hybrid form of reporting to work world this law effects many employers throughout the US. Multi-state employers are again forced to decide on whether they will choose uniformity in their policies or simply take advantage of whatever laws help them on a state-to-state basis.
 - The number of states with legislated limitations for non-disclosure agreements now stands at 12. They are:

- California, Washington, Illinois, New Jersey, Oregon, Hawaii, Louisiana, New Mexico, Nevada, Tennessee, Maryland and Vermont. (Maine is considering legislation at this time);
- Surprisingly, New York still allows for non-disclosure clauses in pre-employment agreements and certain severance agreements.
- ***STAY TUNED FOR MORE UPDATES SINCE THE GROUPS AND MOVEMENTS SUPPORTING THIS LAW ARE PUSHING FOR SIMILAR LEGISLATION IN OTHER STATES AND FEDERALLY.***

AMAZON FACILITY IN STATEN ISLAND LOSES UNION ELECTION

- **Independent Union JFK8 slays giant Amazon using new age messaging and old school campaigning methods.**
 - JFK8, an independent non-AFL-CIO affiliated Union, recently won a Union election at an Amazon facility in New York. JFK8 organizers were successful in large part due to the following:
 - A nationwide NLRB settlement in December 2021 with Amazon eliminated an Amazon work rule which forced all employees to leave Amazon facilities at the end of their shift.
 - This NLRB settlement allowed employees who were JFK8 leaders and supporters to engage in more face-to-face campaigning with co-workers in break rooms and parking lots.
 - JFK8 leaders also used the NLRB information disclosure rules to gain access to voters at their residences in order to campaign using door-to-door approaches. In some cases, they waited to speak to co-workers at bus stops.
 - Messaging included actual work issues as well as themes of inequality, racial issues and global warming. JFK8 is aiming high - essentially broadcasting that all Amazon workers should be organized. Post-election (NLRB) they have also mentioned Apple and Google.
 - We're sure that a union handout or two must have had pictures of Amazon's Bezos vacationing on his super-sized yacht.
 - ***WE WILL CONTINUE TO MONITOR JFK8 AND OTHER UNION DEVELOPMENTS (STARBUCKS) AND KEEP YOU INFORMED.***

If you have concerns about these or any other workplace or litigation issues, please contact David Ryan at david.ryan@ryan-ryan.net or by telephone at 860.460.7139 (mobile) or 203.752.9794 (office).

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