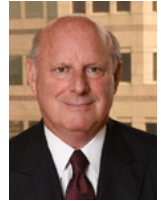


THE “YEAR OF THE WORKER” 2022



By: Bob Dunlevey

From the dramatic expansion of governmental regulations – both pro-employee and pro-union – to the large increases in wages and benefits being accorded by employers to stave off employee job hopping, the trend is clear – **employees are empowered like never before**. Understanding these and other current trends will assist employers in coping.



an employer still may be obligated to offer telework as an accommodation under the Americans with Disabilities Act (ADA) to eligible employees

A Worker unavailability is causing employers to pay more in compensation and benefits and to expect less from employees than in decades past. There are two to three openings for every two unemployed workers. Approximately four million workers have been leaving their jobs monthly. Workforce turnover is at an all-time high giving rise to the term “The Great Resignation.” Almost one-half of the current workforce wants to make a career change this year. **Employers must evaluate how they are treating their employees and devise strategies for retention now.**

Exacerbating the problem, Washington has empowered organized labor through its pro-union/pro-employee agenda which has been widely touted by President Biden. In late 2021, there have been far more strikes, higher union demands, and increased workforce friction – approximately 250 strikes in 2021. The recent Kellogg cereal strike of 11 weeks in December, 2021, culminated in very favorable terms for its workers including a cost of living wage escalator, decreased work schedules, elimination of a two-tiered wage system and a no plant closing pledge. John Deere faced a bitter five-week strike by its 10,000 UAW employees culminating in the union extracting a whopping 20% wage increase over six years (10% in Yr. 1), plus a handsome signing bonus of \$8,500 per employee. The new contract maintained premium free health care and COLA. These are highly publicized settlements which your employees see and things they come to expect. In 2021, negotiated wage increases were averaging 3.8 to 4.8% while non-union employees received 3.9% wage increases – the biggest increases in 20 years. Anticipate higher negotiated settlements and conflicts to secure those settlements. In the non-union sector **anticipate 2022 wage increases to be no less than 4%** driven by 7+% inflation – the highest in four decades.

In addition, union organizing has seen a resurgence with prominent employers such as Google, Amazon and even Starbucks facing demands by their employees to recognize and negotiate with various labor organizations. President Biden even produced a video message to the Amazon

employees supporting their efforts to organize – something no President has done in recent times. He also urged his appointed pro-labor NLRB to become more aggressive in carrying forward his agenda. The head NLRB attorney has pledged to revisit approximately 40 Trump Era pro-employer rulings with an eye to overturning them. A related PPP Program even contained a provision requiring larger employers obtaining loans to stand neutral in the event of a union organizing attempt – not being able to speak of any advantages to union-free management. Recent Union organizing activities dictate that **employers desiring to remain union free must develop an effective avoidance program.**

State and local governments are also enacting pro-employee legislation such as San Francisco's portable paid leave benefits for domestic workers. New York City is requiring employers posting job openings to declare the salary ranges for the job so that everyone knows what to demand in wages. Other states are forbidding employers from inquiring about an applicant's prior criminal record making the selection of a suitable applicant even more challenging. Just knowing employment law developments at the federal level no longer is an option. You need to stay abreast of local and regional regulations controlling your operations.

Job content is changing as well thanks to COVID. Employees are opting to work from home whenever possible and are “re-skilling” to secure different jobs being created. It is estimated that 19% of the workforce will not return to their workplace moving forward and 28% will change occupations by 2030 – 17 million workers. Employee demands for additional paid time off and schedule flexibility have been fueled by the Pandemic. So, **reinventing your workplace is no longer just an option.**

To further empower employees, the Administration has asked the Department of Justice to consider whether employment agreements containing certain covenants not to compete and agreements among employers not to poach employees should be struck down through the use of current anti-trust laws. Civil and criminal liability for the companies

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and their officers is being considered by the DOJ. This could cause employees to be able to demand more in wages and benefits not to job hop and to extract other concessions as well. The currently debated Build Back Better Act includes \$2.1 billion of funding for “labor focused” federal agencies to conduct more vigorous and expansive enforcement activities – \$707 million for OSHA, \$350 million for NLRB and \$405 million for the Wage-Hour Division, to name a few. **Your H.R. department must be postured to deal with these challenges. Your company must care, listen and respond to employee needs.**

By now you can better appreciate how strong and multi-faceted this pro-employee/pro-union movement has become since Inauguration Day 2021. This trend may very well lead to a substantial rise in wages and benefits for almost all workers in the near future and a more flexible and accommodating workplace resulting in decreased efficiencies and decreased productivity. Employers need to have a keen awareness of these labor trends as well as the federal, state and local pro-employee initiatives which can severely impact operations and even threaten the existence of a business. Employers also need to advance their own interests publicly in an effort to strike an equitable balance between labor and management. But for now, the pendulum of power has swung and the “**Year of the Worker**” is here.

Contact **Bob Dunlevey**, Board Certified Specialist in Labor and Employment Law, at rdunlevey@taftlaw.com or (937) 641-1743, to receive his PowerPoint presentation on Workplace and Employment Law Trends 2022, as well as assistance in coping with these trends.

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