



DELAWARE

EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

Lauren Russell, Scott A. Holt, William W. Bowser,
and Molly DiBianca
Young Conaway Stargatt & Taylor, LLP

Vol. 21, No. 2
February 2016

COMPENSATION

With my mind on my money and my money on my mind: Employee wage issues are increasing

by Lauren E.M. Russell

Wages are a tricky issue for employers. Good wages are important for attracting and retaining the best employees, but nothing sows the seeds of discontent like gossip about pay rates. Historically, employers simply prohibited employees from talking about their wages, but those prohibitions are no longer legal. This article provides a bit of guidance on pay and peace in the workplace.

Minimum wage woes

Like many states, Delaware is considering a minimum wage hike. The minimum wage was already raised in 2015. New legislation would increase the minimum wage to \$15.05 by 2023. Senate Bill 39 is still before the General Assembly and has not yet been passed by either house. With another minimum wage increase possible,

employees are more likely than ever to focus on their pay rate and compare what they earn to other workers' wages.

You can't keep employees quiet

While employees have money on their minds, employers' ability to prevent gossip has been taken away. Employee discussions about wages are considered "concerted activity" protected by the provisions of the National Labor Relations Act (NLRA). As a result, an employer that terminates an employee for stirring up discontent over wages can face serious penalties from the National Labor Relations Board (NLRB). If you have a policy that prohibits employees from discussing their compensation, remove it from your handbook.

The transparency movement

On the other end of the spectrum, there is a new movement among large businesses (Whole Foods is leading the way) to be completely transparent about employees' wages and publish pay information internally to permit easy access. In theory, pay transparency is designed to encourage conversations about an important topic and spur better performance, leading to bigger pay increases. But it may not work for all employers.

The real world

Most businesses sit somewhere between outright prohibitions on wage discussions and complete transparency. In a select few workplaces, disclosing compensation will not lead to resentment by lower-paid employees. So how do you manage these pressures without running afoul of the NLRA? Generally, the answer is providing open communication, not throwing the doors open to compensation information. Employees will occasionally be unhappy with their compensation. That is a reality of business. Ideally, they will have enough confidence in their value to the company to bring their concerns forward. That allows the company to determine whether employees' concerns are valid and gives the company the opportunity to match any outside offer they receive. Without open communication, employers run the risk of losing

high-quality workers who are too afraid to report that they feel undervalued.

Bottom line

Money causes strife, which is why you don't discuss it with family over Thanksgiving dinner. In the business world, money is an unavoidable topic. Instead of firing employees who talk about their salaries or throwing open the books for all to see, the best approach is having an open door and being willing to discuss employees' concerns about their compensation. Not all workers will receive a raise when they think they deserve one, but at least your company will know if its most valuable assets are unhappy and are considering leaving.

The author can be reached at lrussell@ycst.com.

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