

HRW CLIENT ALERT

October 28
2024

Beware the Dark Corners of Labor and Employment Law: A Halloween Guide to Recent Developments

As the nights grow longer and shadows creep in, the realm of labor and employment law is haunted by chilling changes and unexpected updates. This Halloween season, beware the lurking specters of pay transparency laws, the shadowy decisions of the NLRB, and the terrifying consequences of non-compliance. It's time to face these legal frights armed with knowledge. Grab your flashlight, and let's explore the developments that might keep you up at night.

Boo! You're in Violation of Pay Transparency Requirements!

Our first adventure treks through the ever-thickening field of pay transparency. The recent wave of pay transparency laws could mean that your job listings aren't compliant with various state regulations. For employers with multi-state operations or remote workers, now is the time to review and ensure your job postings meet the requirements in every jurisdiction where a candidate might reside. For example, in California, employers are covered if the successful candidate *could possibly reside* in the state. In Illinois and New York, the advertisement must conform to state law if the hired employee could reside in or reports to someone in those states. Don't relax just yet, because [Massachusetts](#) is jumping in on the terrifying fun. Beginning on July 31, 2025, employers with 25 or more employees must disclose salary ranges in job postings, provide the pay range of a position to an employee who is offered a promotion or transfer, and on request, provide the pay range to employees who already hold that position or are applying for it. Massachusetts will not be the last to join the growing list of jurisdictions. For instance, New Jersey's legislature has presented Senate Bill 2310 for signature.

Be prepared, and make sure everyone is accounted for before you get lost in the woods!

Attack of the NLRB! Your Separation Agreements Could Be Haunting You!

Just when you thought the coast was clear, the National Labor Relations Board (NLRB) has emerged from the shadows with decisions that could change the game. From treating standard separation agreements as unfair labor practices to empowering employees in organizing efforts, the NLRB is back like a zombie—and it's not holding back.

One of the most alarming rulings? Long a staple for many employers, [non-disparagement and confidentiality provisions may now violate employee rights under Section 7 of the National Labor Relations Act](#). That's right, the call is coming from inside your agreement! Keep your guard up, because this ruling also applies to employers with non-unionized workforces, and may even apply retroactively. Be prepared to clean out those skeletons in your separation agreements closet before they come back with a vengeance.

Curses! You May Have Lost Your Only Affirmative Defense Under the Massachusetts Pay Equity Law!

The Massachusetts Pay Equity Act mandates equal pay for comparable work, but the frights begin with the steep penalties for non-compliance, including double damages for unpaid wages. The law does offer an affirmative defense if you've consulted your legal ghostbusters and conducted a good faith, reasonable self-evaluation of your pay practices within the last three years and before an action is filed. However, if your last self-evaluation was in 2018 when the Act first passed, it might be time to consider conducting another audit to avoid getting caught in a web of pay equity allegations.

Eeek! Your Managers Might Be Mishandling Leave Requests!

A classic, creepy campfire story? The mishandling of leave of absence and accommodation requests. Recent trends show a chilling increase in such cases, particularly when employees aren't explicit about their needs. Remember, under state and federal law, employers are obligated to engage in an interactive process when employees mention a potential need for leave or an accommodation due to health conditions or disabilities.

For instance, if Jack Skellington mentions he's struggling with his job because his bones are rattling, you must follow up. If Dracula confides that he can't work during the day, consider accommodations like a low-light, coffin-accessible workspace. And beware of Massachusetts Paid Family and Medical Leave (PFML) law, which presumes retaliation for up to six months after an employee exercises their leave rights—casting a spooky shadow over potential claims. Avoid tricks and be compliant by taking accommodation and leave requests and issues seriously, training managers, and documenting requests, resolutions, approvals, and the like.

Yikes! Have You Updated Your [Employee Handbook for State-Specific Laws?](#)

With the rise of remote work, many employers' workforces are now scattered across multiple states, each with its own legal landscape. Even Elm Street has rules and regulations! Failing to include state-specific addendums in your employee handbook, overlooking required state-specific posters, or ignoring local nuances can lead to costly mistakes. Make sure your employee handbook and employment contracts are up-to-date and aligned with state laws wherever your employees live or work.

Conclusion: “Don't Look Away. Prepare for the Future.”

Are these labor and employment law issues haunting your nights? In the spirit of Halloween, remember that the scariest thing is not knowing what's lurking in the shadows. Don't let your business become another horror story. Stay informed and stay compliant. If you need a ghostbuster to help you clean out the cobwebs in your compliance, please contact these HRW attorneys or the HRW attorney with whom you normally work.

- Kathleen Berney (kberney@hrwlawyers.com / 617-348-4335);
- Samuel Gates (sgates@hrwlawyers.com / 617-348-4346);
- Samantha Halem (shalem@hrwlawyers.com / 781-235-4878);
- Cathy Reuben (creuben@hrwlawyers.com / 617-348-4316);
- Sarah Ruter (sruter@hrwlawyers.com / 617-348-4334);
- Alicia Ward (award@hrwlawyers.com / 617-348-4357);

- David Wilson (dwilson@hrwlawyers.com / 617-348-4357); or
- Any member of the [HRW Team](#).