A ‘Dramatic’ Gender Wage Gap Awaits In-House Counsel

The Association of Corporate Counsel released its latest in-house trends report, which revealed that a higher percentage of women’s salaries were on the lower end of the salary scale than those of their male counterparts, reports **Above the Law**.

“The survey, based on responses from 1,800 in-house counsel in 53 countries, further stated that while a higher proportion of men existed in six of seven salary bands above and beyond $199,000, only 8 percent of male respondents actually believed that the in-house gender wage gap existed,” according to reporter **Staci Zaretsky**.

The ACC report also found that more than one-third of female respondents have had trouble finding satisfactory after an absence of six months or less. And longer absences hurt even more.

Read the Above the Law article.

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In-House Attorneys See 4.3 Percent Pay Hike

Above the Law reports on a BarkerGilmore in-house counsel compensation report that shows in-house lawyers received average pay increases of 4.3 percent last year.

"That sounds perfectly middling, until you realize every rung of the prevailing Biglaw associate scale bests that – some years by a lot," writes Joe Patrice.

The tech industry led the way with higher salaries, bumping up 4.9 percent, while financial and manufacturing industries tied for the small hikes, just 3.7 percent. But the BarkerGilmore survey found that more respondents felt they were undercompensated compared to their peers.

Read the Above the Law article.

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Confusion With Independent

Contractors v. Employees

By Natalie Lynch
Lynch Law Firm

Businesses may hire independent contractors and employees, and it is important that they understand the differences between these two classifications. Independent contractors do not get the same legal protections as employees do, such as being eligible for unemployment benefits or being protected by labor laws. Independent contractors often do not receive benefits of any type. Due to these distinctions, it is important for businesses to clearly classify independent contractors. Without proper classification, an independent contractor may be able to make claims reserved for employees if a court or governmental agency decides that it was actually an employee instead of an independent contractor. The business may even be held responsible for paying payroll taxes on behalf of the newly-classified employee and face significant monetary penalties.

Right of Control Test

The Internal Revenue Service and other government agencies use the right of control test to determine whether an individual is an independent contractor or employee. If the employer has the right to control how the work is performed then the worker is considered an employee. However, if the business can only accept or reject the final product, then the person is considered an independent contractor. The IRS uses about 20 factors to evaluate who controls the work performed. The more control a company exercises over the work that is performed, the more likely that the worker will be classified as an employee. A worker does not have to meet all of the factors in order to be considered an employee or independent contractor. No one specific factor is dispositive. The IRS also gives different weight to different factors depending on the individual circumstances. Every state has additional tests.

For example, Texas has an excellent chart to help make the evaluation more clear.

Factors
Some of the factors that are considered include:

Level of Instruction
An employee relationship is more likely to be determined when a worker is directed as to how to perform his or her work, when to perform it and where to perform it. Independent contractors generally have more freedom in these regards.

Training
Company-provided training suggests an employee relationship because the business is directing the methods by which the work should be performed.

On-Site Services
An employment relationship is suggested when the employer requires the worker to be at the company site even when the work can be performed somewhere else because this gives the employer more control over the worker.

Sequence of Work
When the employer determines the sequence of work such as which work should be performed first and last, this suggests greater control and an employment relationship.

Schedule
When a worker is required to work full-time hours, this is indicative of an employment relationship because the company has greater control over a majority of the client’s time. Contractors have more flexible schedules while employees have more set hours.

Payment
An important difference between employees and independent contractors is how they are paid. Employment relationships may be based on hourly, weekly or monthly pay schedules. However,

contractors are often paid based on project completion or by commission. Additionally, an employer may pay for business or travel expenses while an independent contractor is usually expected to pay these costs on its own. Likewise, an employer may provide tools and other materials necessary to complete a job for employees while an independent contractor must usually supply his or her own tools and materials.

Business Integration
Workers who perform tasks that are integrated into the business are more likely to be found to be employees rather than independent contractors.

Assignment
Employees are usually expected to perform the work themselves. However, independent contractors are often able to delegate work to another person. Likewise, contractors may be able to hire, pay and supervise people who assist him or her. If the business controls assistants, there is more likely to be an employee relationship than a contractual one.

Termination
Employees can often be terminated for any reason or no reason in at-will states. However, contractors often have a contract that must be followed in order to avoid liability for early termination. The contract terms usually govern termination. Likewise, employees can usually quit their jobs for any reason while independent contractors usually cannot terminate the working relationship without ramification.

Carefully evaluating these factors can help businesses avoid possible liability associated with misclassifying employees.

Equity Compensation for Partnerships and LLCs

Practical Law will present a **75-minute webinar** addressing common issues and structures for partnership and LLC equity compensation.

The event will be Wednesday, June 21, 2017, 1-2:15 p.m. EDT.

Partnership and LLC equity compensation programs raise many of the same issues that arise with corporate equity compensation. However, because of the"flow-through" nature of partnership taxation, there are some unique planning opportunities and pitfalls that can arise in the realm of partnership equity compensation.

Topics will include:

- The difference between a "capital interest" and a "profits interest";
- Profits interests subject to vesting restrictions;
- Tax Treatment of partnership and LLC equity awards upon various liquidity events; and
- Collateral tax and employee benefit consequences of partnership and LLC equity awards.

Presenters:

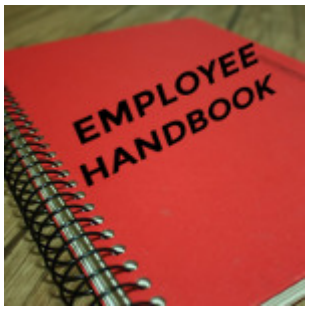
- Michael P. Spiro, Partner, Finn Dixon & Herling LLP
- Adam S. Mendelowitz, Associate, Finn Dixon & Herling LLP

A short Q&A session will follow.

Register for the webinar.

Updating Employee Handbooks

By Natalie Lynch
Lynch Service Company



Employee handbooks contain pivotal information about the business and expectations of employees. Handbooks that contain outdated information may contain illegal provisions or lack best practices. This can expose the business to unnecessary civil liability or a backlash by the public for perceived slights or biases. By reviewing employee handbooks on a regular basis, employers can proactively safeguard their company's interests.

Importance of Employee Handbooks
Employee handbooks contain important information about the business, including general rules, expectations, and protocol. Employee handbooks establish acceptable behavior and defines unacceptable behavior. These important documents often explain the fundamental policies that the business employs. With clear policies in place, it is more likely that they will be followed. If rules are broken, there is a set plan in place to deal with these issues. If the company is sued, the written contents of the employee handbook may protect the business.

Employee handbooks must be carefully constructed, taking into consideration the company's industry and other factors specific to the business. While setting out the expectations of the business, an employee handbook can often be most effective as a defensive tool against potential lawsuits from employees or others because it establishes that a particular

rule or policy was in effect at the time of some specified event that led to the filing of a complaint. If the company followed its own policies and the employee was aware of these policies, there will be less of an argument in favor of the employee.

Importance of Updating Employee Handbooks

Laws are constantly changing and evolving. It is important that employee handbooks are updated periodically to account for these changes in the law. Additionally, employees must be updated about new policies and changes. In addition to providing employees with a copy of the handbook, employees should also sign an acknowledgement indicating that they received the handbook. It is often recommended that employee handbooks be updated at least on an annual basis. Having a professional periodically review relevant laws and regulations can ensure that only the most current information is included in the handbook. Additionally, reviewing the handbook for clarity can help remove ambiguous language. Like with the original receipt of the handbook, employees should be required to sign an acknowledgment indicating that they are aware of the changes and have received a copy of them.

Provisions Included in Employee Handbooks

Handbooks may contain a variety of different provisions based on the particular needs and considerations of the business. However, some common provisions that are incorporated into these handbooks include:

At-Will Statement

By having an employee handbook, the employer will not want to infer in any way that the handbook takes the employment relationship outside of the at-will framework. This provision may state very simply that an employee can be terminated at any point and for any reason. This statement can help shield the business from claims that the employee can only be terminated for cause.

Disciplinary Procedure
The employee handbook should specify a disciplinary policy. This policy may be progressive in nature, such as increasing the severity of discipline as repeated conduct occurs. By following these procedures closely, the business may be able to shield itself from claims of discrimination. Any disciplinary policy should also make it clear that egregious activity will result in immediate termination.

Attendance Policy
The handbook should also specify the attendance policy. The handbook may state that excessive absences may result in termination. At the same time, the handbook should take care to differentiate between regular absences and absences due to medical purposes to avoid violating any federal or state laws.

Overtime Policy
A policy regarding overtime may also be included in the employee handbook. Any policy should take care to comply with the Fair Labor Standards Act. There may be a requirement for managers to approve before overtime work is performed. To avoid legal liability, the time may be paid, but the employee may be disciplined.

Anti-Discrimination Policy
An anti-discrimination policy is an important component to an employee handbook. The employer may state that it has a zero-tolerance policy for harassment. This policy should outline the process that an employee should follow to report complaints of harassment. The policy may provide examples of harassment and outline the potential disciplinary measures that will be followed in the event of non-compliance.

Walmart's Plan to Use Employees to Deliver Online Orders Raises Legal Issues

In a new effort to compete with Amazon's delivery system, Walmart says it plans to have store employees on their way home from work deliver online orders to customers. While it may make business sense, it also raises a host of legal questions, says **Justin Markel**, a Houston labor and employment lawyer with **Roberts Markel Weinberg Butler Hailey PC**.

Markel's comments on the matter were posted on the website of **Androvett Legal Media & Marketing**:

> *First is determining how much to pay the employees for this extra work. The deliveries will be considered non-exempt under the Fair Labor Standards Act, so the employees will be entitled to overtime if this extra drive time puts them over 40 hours in a workweek. But how can Walmart be sure as to how long the deliveries actually take? If employees are required to electronically check in when deliveries are made, that may create an incentive to take the scenic route to the customer's home. If, on the other hand, Walmart requires them to have GPS trackers, state law privacy concerns might arise. What about the extra gas and maintenance costs? Walmart should consider paying employees extra to ensure that these out-of-pocket expenses don't cause them to fall below minimum wage.*
>
> *Then there are public safety issues. Walmart should look into the employees' driving histories before asking them to make deliveries. According to news reports, Walmart will conduct*

background checks. That should be a comprehensive review. Criminal histories that might have been less relevant for certain non-interpersonal store jobs might be more relevant if an employee is sent to customers' homes.

Even with safe drivers on the road, accidents will be all but inevitable. If an employee is in an accident on the way to a customer's house, the employee will likely be considered acting in the scope of employment. That will likely lead to vicarious liability on Walmart's part. To protect against risk of claims from injured victims, it would be advisable for Walmart to discuss its non-owned auto insurance coverages with its insurance brokers.

As Walmart tests this program, it will have to carefully navigate many legal issues. Time will tell whether the cost savings and efficiencies will outweigh the legal risks.

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Uber Fires 20 Employees After Harassment Probe

Uber Technologies Inc. said it fired 20 employees and was improving management training following an investigation by a law firm into sexual harassment allegations and other claims at the ride-hailing company, according to a **Reuters report**.

The firings came after a report by law firm Perkins Coie,

which Uber hired to look into claims of harassment, discrimination, bullying and other employee concerns, report **Joseph Menn** and **Heather Somerville**.

Perkins Coie investigated 215 staff complaints, taking action in 58 cases and no action on 100 more. Uber said 54 were related to discrimination, 47 related to sexual harassment, 45 to unprofessional behavior, 33 to bullying and 36 to other types of claims, according to the Reuters story.

Read the Reuters article.

The Difficulty With Texting Employees During a Workplace Investigation

Workplace investigations may be initiated after the employer is accused of wrongful conduct, such as permitting unlawful harassment or discrimination. While an employer may want to reach out to various employees including the alleged victim, doing so can negatively impact the ongoing workplace investigations, warns Natalie Lynch of Lynch Service Company.

Understanding the importance of objectivity while workplace investigations are underway may help the employer shield against potential liability, she advises.

In **a post** on the company's website, she discusses the need for clear policies to be in place before any workplace investigation begins, how to respond to alleged misconduct, and the unique concerns that arise with text messages in the context of an investigation.

Read the article.

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ERISA Litigation Partner Michael Graham Joins Michael Best Chicago Office

Michael Best announces that **Michael T. Graham** has joined its Chicago office as a partner in the firm's Labor & Employment Relations Group, where Graham will chair the firm's growing ERISA Litigation Practice. This addition comes on the heels of several recent lateral hires in the Chicago office, including Mircea Tipescu and Peter Huh.

"We fully expect Michael to hit the ground running as he will be in great demand," said Amy Schmidt Jones, Chair of the Labor & Employment Relations Practice Group. "With profound changes taking place in the employment sector, the two decades of experience Michael brings with him will help strengthen our practice and provide extraordinary counsel to our clients."

Graham joins Michael Best from McDermott Will & Emery, and brings nearly 20 years of experience in Employee Retirement Income Security Act (ERISA) Litigation and employee benefits controversy matters on behalf of Fortune 500 employers, employee stock ownership plan (ESOP) trustees, plan administrators, and plan sponsors. He focuses his practice on employee benefits matters, including counseling plan administrators, fiduciaries and employers on proper statutory and regulatory compliance as well as administrative benefit claims and appeals procedures. He also counsels clients on preventive measures to avoid litigation and assists in developing defense plans in the event that litigation arises, the firm said in a news release.

“We’re thrilled that Michael has joined our Chicago office,” said Kerryann Haase Minton, Michael Best’s Chicago Office Managing Partner. “We’re always searching for talented and sophisticated attorneys and the experience Michael brings in employment benefits litigation will be a great addition to our team.”

Graham frequently litigates fiduciary breaches, ESOP issues, and medical and pension benefit denial claims in front of federal and state courts, and in front of the U.S. Department of Labor. He also dedicates a part of his practice to counseling plan administrators, fiduciaries and sponsors on Pension Benefit Guaranty Corporation (PBGC) requirements and liabilities.

“There is a significant amount of ambiguity currently in the employment sector,” said Graham. “With a number of regulations and requirements set to come down, I expect employers to be very active in the near term and I believe Michael Best has positioned itself well to address their client’s needs in the employee benefits, ERISA litigation and labor and employment areas.”

Graham received his J.D., magna cum laude, from Valparaiso

University School of Law, and his A.B. from the University of Illinois at Urbana-Champaign.

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National Survey on Restrictive Covenants

Fox Rothschild's Labor and Employment and Securities Industry practice groups have updated the firm's **quick reference** on restrictive covenants for in-house counsel and human resource professionals.

"The law in this area not only varies considerably from state to state and changes frequently, but its application is fact-specific," the firm says in its introduction to the updated guide.

The guide breaks down the use of restrictive covenants for each state. It gives details about each state's factors on the topics of non-competes, non-solicitation, non-hire/"raiding," and confidential information.

Read the guide.

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Are Restrictive Covenants Enforceable When Employee Converts to 'At-Will' Employment?

On their firm's website, Gaetan J. Alfano and Joseph L. Gordon of Pietragallo Gordon Alfano Bosick & Raspanti discuss a recent case that dealt with the question of what happens to the restrictive covenants in an employment contract when an employee converts to at-will status.

In *Metalico Pittsburgh Inc. v. Douglas Newman, et al.,* an employer had three-year contracts with two high-level executives. After the three-year period ended, they continued to work as at-will employees. A year later, the employees joined a competitor and solicited Metalico's customers and solicited Metalico employees to join the new employer.Metalico sought a preliminary injunction to enforce the restrictive covenants.

"According to the Superior Court, because the employment agreements contained express language indicating that the employees agreed to be bound to the covenants for the duration of their employment, their status as at-will employees was irrelevant.," the authors write.

Read the article.

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Biglaw Firm Lays Off Associates, Staff and Partners

Labor and employment law firm Seyfarth Shaw has conducted a round of layoffs that affect both attorneys and staff, according to reports from **Above the Law** and **Bloomberg Law**.

"One source who was briefed on the layoffs said the downsizing affects 40 lawyers, including associates and counsel, as well as 27 staff members," reports Bloomberg's **Casey Sullivan**. "The cuts at least affect the firm's New York City and Washington, D.C. office, according to the source."

A Bloomberg source attributed the downsizing to a slow real estate practice, and said layoffs were mainly for "low billable associates," but noted that some counsel and senior counsel were laid off in the firm's employee benefits department.

Read the Above the Law article.

Read the Bloomberg article.

Congressman Targets Assistant General Counsel Over Political Activism

The assistant general counsel of a New Jersey-based bank company says she found herself in a touchy situation after a U.S. Congressman complained to her employer about her activism that targeted the lawmaker.

WNYC describes what happened:

> The most powerful congressman in New Jersey, Rep. Rodney Frelinghuysen, wrote a fundraising letter in March to a board member of a local bank, warning him that a member of an activist group opposing the Republican worked at his bank.
>
> The employee was questioned and criticized for her involvement in NJ 11th for Change, a group that formed after the election of Donald Trump and has been pressuring Frelinghuysen to meet with constituents in his district and oppose the Trump agenda.
>
> "Needless to say, that did cause some issues at work that were difficult to overcome," said Saily Avelenda of West Caldwell, New Jersey, who was a senior vice president and assistant general counsel at the bank before she resigned.

She says the pressure she received over her political involvement was one of several reasons she decided to leave.

Read the WNYC article.

Fear of Career Damage Led Woman to Sue Proskauer Anonymously

Bloomberg Law **is reporting** that Proskauer Rose has become the latest Big Law firm to be hit with a gender discrimination lawsuit by a female partner.

The plaintiff brought the case against her employer under a pseudonym.

"According to the redacted complaint filed Friday, the plaintiff, an unnamed partner in Proskauer's Washington, D.C. office, was objectified by male partners who made inappropriate comments about her physical appearance, paid less than male partners who were similarly or less productive than she was, and excluded from projects and client development activities once she began complaining," writes reporter **Stephanie Russell-Kraft**.

The defendant responded by saying the suit is "groundless" and "meritless."

Read the Bloomberg article.

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Speaking Out About Employer's Personal Views Results in Termination

Unhappy with his boss and former friend's close association with the Trump administration, David Magerman aired his concerns about Renaissance Technologies President Robert Mercer in a February interview with the *Wall Street Journal*, according to a post on the website of **Androvett Legal Media**.

Although the hedge fund's legal department had assured the research scientist that his interview would not violate company policy, Magerman was fired shortly after publication of the article, which labeled Mercer a racist.

The former partner is now fighting back with a wrongful termination lawsuit, which should serve as a cautionary tale for all companies, says Dallas labor and employment attorney **Leiza Dolghih** of Godwin Bowman & Martinez.

> *"It is important for a company to establish and enforce clear rules on media interaction, particularly in situations such as this where you have high profile leadership or there is a potential for controversy. Here you had an employee who claimed that the Chief Compliance Officer orally told him that his interview was authorized," she says. "No matter how respected he may have been at the firm, Magerman was known to*

have divergent views that were likely to be explored during the course of the interview. Even in instances where an employee is allowed to talk with the media, you cannot give them blanket assurances about repercussions."

Littler Survey Reveals Employers Caught in a Tangled Web of Federal, State and Local Laws

The **Littler** law firm has released the results of its sixth annual survey, completed by 1,229 in-house counsel, human resources professionals and C-suite executives. **The Littler Annual Employer Survey, 2017** reveals that the change occurring in Washington, D.C., and in local governments – combined with technological advances and shifts in how work is performed – is creating an unprecedented level of uncertainty in the workplace.

A release from the firm continues:

A Complex Patchwork of State and Local Laws, Deep Uncertainty at Federal Level

The vast majority of employers expect the Trump administration to prioritize reforming healthcare and employee benefits law (89 percent) and immigration policies (85 percent) in 2017. However, for most regulatory issues, the percentage of

respondents who anticipate an impact on their workplace over the next year remains relatively unchanged from last year's survey. That includes the Affordable Care Act (85 percent in 2016 to 83 percent in 2017) and enforcement by the Equal Employment Opportunity Commission (78 percent to 76 percent), National Labor Relations Board (56 percent to 55 percent) and Department of Labor (82 percent to 81 percent). Immigration reform was the exception as 63 percent said they expect an impact in 2017, up from 40 percent in 2016.

"With the profound changes in Washington, D.C., it may be initially surprising that respondents do not anticipate more of a near-term impact on their businesses," said Michael Lotito, co-chair of Littler's Workplace Policy Institute. "However, given the general climate of uncertainty and delays in appointments to government agencies, employers likely expect it to take time before they start to see how the president's agenda is carried out and personally feel an impact in their workplaces."

The host of new or amended labor and employment requirements at the state and local levels is creating compliance challenges for the majority of respondents (79 percent). In an effort to keep up, employers are updating their policies, handbooks and HR procedures (85 percent); providing additional employee training (54 percent); and conducting internal audits (50 percent).

"As states and municipalities continue to propose and enact a dizzying array of rules and regulations, it is no wonder employers are struggling with the increasingly fragmented landscape," said Lotito. "With the Trump administration working to reduce federal regulations, employers can expect a growing patchwork of employment regulations as states and municipalities look to fill a perceived void at the federal level."

Of the array of changes at the state and local levels,

respondents have been most impacted by paid leave mandates (59 percent), background check restrictions (48 percent) and minimum wage increases (47 percent).

Uncertainty Surrounding Healthcare Reform

Even though survey responses were collected before Republicans withdrew the American Health Care Act in late March, more than a quarter (27 percent) were already uncertain about the impact of repealing the ACA's employer mandate. And another 28 percent said they did not anticipate an impact at all.

"Employers face even more questions about the future of the ACA, as well as the extent to which the administrative process can and will be used to change aspects of the law, than when they responded to our survey," said Ilyse Schuman, co-chair of Littler's Workplace Policy Institute. "In this environment, employers can continue to expect a certain level of uncertainty surrounding employer-sponsored health coverage in the months ahead."

Only 4 percent of respondents anticipate dropping coverage for some full-time employees if they are relieved of the ACA's employer mandate, but 18 percent said they would allow more employees to work more than 30 hours a week.

"The responses indicate that employers are committed to providing health insurance for their full-time employees," said Steven Friedman, co-chair of Littler's Employee Benefits Practice. "However, they also suggest that a repeal of the mandate would give employers more flexibility to set work schedules based on the needs of their businesses, without fear of triggering a requirement to provide health insurance."

EEOC Expected to Prioritize Hiring Practices, LGBTQ Rights and Pay Equity

Hiring practices – including the consideration of criminal or credit histories in the hiring process and pre-employment

testing or screening practices – was the area where most respondents (51 percent) expected an increase in EEOC workplace discrimination claims over the next year, closely followed by LGBTQ rights (46 percent) and equal pay (46 percent).

“The transitions in Washington, D.C., appear to have curtailed employers’ expectations for EEOC enforcement activity around LGBTQ rights and equal pay, which rose sharply in the 2016 survey, when 74 percent and 61 percent of respondents, respectively, expected increased enforcement around those issues,” said Barry Hartstein, co-chair of Littler’s EEO & Diversity Practice. “Nonetheless employers continue to expect substantial enforcement over the next year as pay equity and discrimination based on sexual orientation remain priorities not only for the EEOC, but for the courts, state and local governments, the plaintiffs’ bar and the general public.”

FMLA Leave Presents Headaches

Among the employee requests that are most difficult to accommodate, leaves of absences under the Family and Medical Leave Act emerged as the presenting the greatest challenges. The majority of respondents indicated difficulty with managing intermittent FMLA leave (65 percent) and leaves that extend beyond FMLA requirements (55 percent), followed by remote or work-from-home arrangements (37 percent) and modified or reduced schedules (36 percent).

“Nothing is more disruptive to the operation of a business than unpredictability. When employees are repeatedly and unexpectedly off work, employers have to scramble to cover their responsibilities and manage potential resentment from employees who are inevitably asked to do more,” said Hartstein. “The increasingly common practice of requesting flexible work arrangements is also creating a whole new layer of legal and practical challenges for employers.”

Data Privacy and Breach Prevention Top of Mind

As the volume of data breaches originating with employees continues to grow, 63 percent of respondents said their HR and IT departments are collaborating on information security policies. Just over half (51 percent) said they were providing additional training to employees, and a smaller percentage said they were utilizing cyber-incident response plans (29 percent) and updating employee contracts to cover confidentiality obligations (23 percent).

"It is encouraging to see HR collaborating with IT to reduce the risk of data breaches that originate with employees. Information security policies prepared only by IT often focus on technical safeguards, whereas involving HR in the process helps to address the human elements of information security," said Philip Gordon, co-chair of Littler's Privacy and Background Checks Practice. "However, our results suggest that employers can take additional steps to guard against and prepare for employee-initiated data breaches, including ensuring all employees are trained on policies and know how to recognize and then report a security incident."

Among respondents from large-cap organizations, the majority (56 percent) said global data privacy was a key area of concern in doing business outside of the U.S. "This concern likely stems from the significant restrictions on sharing personal data of employees in Europe and in the many countries that impose stricter rules than the U.S.," noted Philip Berkowitz, U.S. co-chair of Littler's International Employment Law Practice.

The survey results were released at Littler's 34th annual Executive Employer Conference held May 10-12, 2017, in Phoenix, Arizona, and attended by many of the employers who completed the survey.

Click here for The Littler® Annual Employer Survey 2017 Report

Click here to view the survey infographic

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The Burden Of Keeping In-House Secrets

In-house lawyers often are brought into a myriad of issues they may wish they had been left out of, points out **Stephen R. Williams** in a post on **Above the Law**.

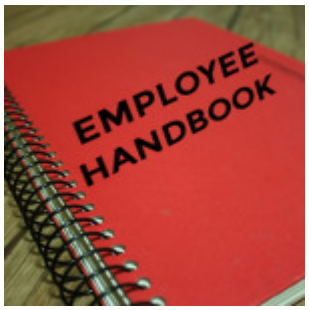
He illustrates his point by describing a case he encountered in his role as in-house counsel with a multi-facility hospital network. An executive approached him and revealed that a well-known and well-liked employee was about to be fired.

"After asking a couple rather high-level and routine HR questions, I blessed the dismissal and took my leave only to bump into the employee in question a few steps down the hallway," writes Williams. "While I was not bound by any form of attorney-client privilege at that point, I knew there was absolutely no way I could tell that employee they had better reconsider their summer vacation plans."

He tells how he dealt with the situation during the next three weeks. He also discusses dealing with standard office gossip in an HR context.

Read the Above the Law article.

How Policies Can Defeat a Breach of Contract Claim



Employees often seek to use an employer's handbook, code of conduct, or policies as the basis for a breach of contract claim, writes John J. Buckley in a blog on the site of Norris McLaughlin & Marcus.

He describes a recent case in which a company was sued after an employee discovered he had been the victim of identify theft. It was suspected that the compromise came after another employee gave away some of the de-commissioned company computers.

The plaintiff claimed that the company breached its contract to secure the personal information that he submitted in his job application. But the federal district court. The court found that no contractual promise was made in the company's policies because those policies "existed for the purpose of protecting the company from harm," not to benefit employees.

Read the article.

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Creating Material Wealth for Business Owners & Labor with ESOPs

Bloomberg BNA, PKF O'Connor Davies LLP, Prairie Capital Advisors, and Sadis & Goldberg LLP will present an **exclusive live event** on using employee stock ownership plans (ESOPs) to support growth and ownership transition strategies.

The event will be Thursday, June 1, 2017, 3-5:15 p.m., with a reception to follow. The location will be at Bloomberg LP, 120 Park Ave., New York, NY 10017.

On its website, Bloomberg says this program will explore all of the ways in which a business can utilize ESOPs to create favorable conditions for financing, allow for acquisitions, attract top talent, and generate wealth for both owners and employees.

ESOPs are commonly used by an owner seeking to retire, however, in today's business market of successful start-ups, there's an opportunity to consider them earlier in the lifecycle of the company. ESOPs, when done properly, may position the company for financing, allow for acquisitions, help attract and retain top talent in a competitive environment, and create wealth for owners and employees.

Register for the event.

House Republicans Just Voted to Change Overtime Rules for Workers

Image by NY Photographic

The U.S. House of Representatives voted to pass a bill that Republicans have promoted since the Newt Gingrich era, one that would allow private-sector employees to exchange overtime pay for "compensatory time" off, electing to accrue extra hours off rather than extra pay in their wallets, ***The Washington Post*** reports. The bill passed 229 to 197, largely along party lines.

"Under the proposed changes, eligible employees – if their employer decides to offer the option – would be able to voluntarily choose to receive comp time they can bank and use at a future date in lieu of immediate overtime pay in

their paychecks," reporter **Jena McGregor** explains. "If they change their minds and want the pay after all, employees would have the option of 'cashing out,' with the employer required to pay the overtime within 30 days.

Some opponents of the legislation say they worry that employers will feel pressured to choose comp time.

Read the *Washington Post* article.

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