



General Counsel Employment Law Report

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Startup Workplaces: The Bloom is Off the Rose

Many years ago, on a sunny Sunday at the beach, I lamented to a researcher-friend that I was not ready for work on Monday. "I mean, it is not like I am looking for a cure for AIDS!" was my qualifier. Her response stayed with me: "I *am* looking for a cure for AIDS and I don't want to work all the time either!" So it is with start-ups. What began as exciting, mission driven companies have now been unmasked as just workplaces that ask too much, with digital platforms replacing screaming bosses.

The most recent startup blow up is Away, a luggage company that brands itself as a travel and inclusion brand. Workers were told they were joining a movement. Like many startups, Away organized its workplace around digital communication, using the chat app Slack as the main platform. According to a scathing [article in the Verge](#), Away set clear rules about how, when and even why employees should communicate. *

The rules were said to be for transparency but employees felt intimidated from speaking to each other or speaking out. To make matters worse, the CEO used Slack around the clock, often in a bullying manner. Once she referred to whomever had made a mistake as "brain dead" and another time lamented that no one should use paid time off (PTO) when they had so much work. And they were working like crazy, receiving messages and direction in the wee hours. Vacation and even holiday plans were canceled in the name of "relentless customer satisfaction."

Of course smart readers, you know the end to this tale. The CEO was ousted and the person who rehabbed Lulu Lemon has been brought in. Employees have left. Away is not the sought after startup darling for recent college grads anymore.

The takeaway? No matter how you dress it up, workplace culture is how people are treated everyday. All the talk of empowerment, lifestyle mission and promises for more PTO (to use later) did not lessen the impact on a fearful, overworked workforce. Digital communication does not give permission for abuse in time and content: no one wants to work around the clock or be bullied.

Questions about your workplace? We can help.

*Yes, go to the head of the class if you saw the potential NLRA Sec 7 violation!

Federal Paid Family Leave: A Christmas Miracle?

Congress is close to a deal on a bipartisan bill granting paid family medical leave to federal workers. Over 2.1 million civilian government workers would be eligible for 12 weeks of paid leave to care for a newborn or adopted child or to care for a family member. As you know, the federal government is the largest employer in the country.

The law would not impact Family and Medical Leave Act provisions, which is unpaid and provided to private sector workers. For now, private sector employees will not have paid leave unless working in one of these [eight states and the District of Columbia](#).

How likely is this to become law? After a long and bumpy road, this bill seems ready to become law. The measure is part of the 2020 National Defense Authorization Act, an annual defense bill. It was passed in the House and now the Senate seems amenable, after initially balking. Since the cost of implementing the leave is unclear, there is less political risk in supporting it. Time wise, a vote could be held as early as this week.

When the United States joins the rest of the developed world in providing paid family medical leave, we will let you know.

Bipartisanship: The Christmas Miracle.

The NLRB is Having A Jolly Old Time

Let's face it—the B in NLRB could stand for Boring. Am I right? Then this new Board decides to shake it up with two decisions this week just in time for the holidays. It is not like they were hitting the eggnog hard: the current NLRB intends to undo the Obama era rulings. Here is what happened:

Ban on Discussing Confidential Investigation Upheld: This is a win for employers and more in line with the EEOC guidance protecting victim confidentiality and advances the #Metoo movement.

Overruling *Banner Health*, the NLRB held that investigative confidentiality rules are lawful when they apply for the duration of any investigation. Note that the duration of the confidentiality requirement and the subject matter are the keys here. A ban on discussing a closed investigation—or on union matters—would not pass muster.

Non-business E-mail Ban Allowed: In 2014, the NLRB held that employers must allow unrestricted use of company email to communicate about union issues. This broadened the prior rule that allowed company email for union matters where it was the only "reasonable means for employees to communicate with each other." (*Purple Communications*) Yesterday the NLRB restored an employers right to restrict the use of company email and resources (e.g. Slack). The Board noted that employees have no statutory right to use employer equipment including IT resources as long as the policy restricting use is neutral in language and application.

So What You Ask? Cue the handbook updates. Both of these changes are beneficial to employers in running their business and we recommend implementing language that reflects these changes. We can help.

Happy Holidays!



Wishing you and yours a joyous holiday.

We will be back before the decade wraps up.

Thanks for reading!



General Counsel's Office Hours

Special Member Benefit



All CCHRA members in good standing will have the special benefit of being able to call Attorney Michael E. Foley, in his role as the CCHRA General Counsel, to obtain his guidance on employment law compliance issues and corresponding HR-related risk management during his CCHRA GC Office Hours – **at no cost**.

[Click here](#) for the description of the role of the CCHRA General Counsel. As General Counsel, Mike will be available within his virtual and gratis office hours for all CCHRA members from 2 pm to 3 pm on the first and third Tuesday of each month. The guidance Mike provides during his office hours will cover all issues that arise within the broad spectrum of the employment relationship to help CCHRA members achieve compliance with the extensive regulations that govern their workplace and to better understand best employment practices.

Issues related to the Internal Revenue Code/the Internal Revenue Service or ERISA-related issues will not be covered under this arrangement, nor will the interpretation, editing or drafting of documents. The office hours will be limited to providing guidance on employment law questions and corresponding HR-related risk management that can be answered in one telephone conversation. Mike can be reached during his CCHRA General Counsel Office Hours at 508-548-4888.

Mike Foley has been representing employers, small and large, for-profit and not-for-profit within all industry sectors and in all matters of labor and employment law for over 30 years. He draws on the breadth of his experience to offer employers an uncommon approach and practical solutions. [Click here](#) for Mike's bio.