

RESOURCEFUL FINANCE PRO

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CFO News Briefs

Stories You Might Have Missed

Which sectors are doing the best? A quick look at the top earning companies

July 12, 2023

News flash: The stock market and financial sector didn't do too well in 2022.

But for the majority of business sectors, profits soared and shareholders got richer last year. The numbers might even surprise you a bit.

Visual Capital showed how the top earning corporations in all sectors fared during the past fiscal year (though January 31, 2023) in a recent infographic. (Data was pulled from *Fortune*.)

Here are the highlights:

LEADING CORPORATION	INDUSTRIAL SECTOR	2022 PROFIT	CHANGE
1. Apple	Technology	\$99.8B	5%
2. ExxonMobil	Energy	\$55.7B	142%
3. JPMorgan Chase	Finance	\$37.7B	-22%
4. Pfizer	Health Care	\$31.3B	42%
5. Verizon	Telecommunications	\$21.3B	-4%
6. Home Depot	Retailers	\$17.1B	4%
7. Visa	Credit services	\$15.0B	21%
8. Procter & Gamble	Household items	\$14.7B	3%
9. Tesla	Motor vehicles	\$12.6B	127%
10. UPS	Transportation	\$11.5B	-10%
11. Coca-Cola	Food/beverages	\$9.5B	-2%
12. Nucor	Materials	\$7.6B	11%
13. John Deere	Equipment	\$7.1B	19%

LEADING CORPORATION	INDUSTRIAL SECTOR	2022 PROFIT	CHANGE
14. McDonald's	Hotels/ restaurants	\$6.2B	-18%
15. Nike	Apparel	\$6.0B	5%
16. DuPont	Chemicals	\$5.9B	-9%
17. D.R. Horton	Engineering/ construction	\$5.9B	40%
18. Lockheed Martin	Aerospace/ defense	\$5.7B	-9%
19. Netflix	Media	\$4.5B	-12%
20. Walgreens	Drug stores	\$4.3B	70%
21. W.W. Grainger	Wholesale	\$1.5B	48%

Apple remains the most profitable company in the world. At least half of its net sales are iPhones.

ExxonMobil (and other giants in the oil & gas sector) racked up a record profit in 2022. Rising oil prices should mean another banner year is in the cards for the energy sector.

It remains to be seen if belt-tightening will improve the bottom lines of JPMorgan Chase and other big players in financial services in 2023.

[Read the story online](#) 

Tax deadlines extended for storm-battered disaster areas: Here's what IRS is allowing

July 19, 2023

The last few months of weather's taken a toll on homes and businesses in many parts of the country. To lighten the load a bit, the IRS granted tax-filing extensions for counties in states like California and Florida.

Taxpayers in areas that were declared disaster areas face pending deadlines. Most have until October 16 while the rest have until August 15. And a handful of remaining counties are looking at a July 31 deadline. The IRS recently reminded taxpayers of the deadlines.

July 31 deadline applies here

Individuals and businesses were impacted by disaster declarations in late March and early April. The areas include:

- Three counties in Arkansas due to severe storms and tornadoes. The disaster area includes Cross, Lonoke and Pulaski counties.
- Thirteen counties in Indiana affected by severe storms, straight-line winds and tornadoes. The area includes Allen, Benton, Brown, Clinton, Grant, Howard, Johnson, Lake, Monroe, Morgan, Owen, Sullivan and White counties.
- Seven counties in Mississippi slammed by severe storms, straight-line winds and tornadoes. Carroll, Humphreys, Monroe, Montgomery, Panola, Sharkey and Washington counties qualify.
- Thirteen counties in Tennessee due to severe storms, straight-line winds and tornadoes. The disaster area includes Cannon, Giles, Hardeman, Hardin, Haywood, Johnson, Lewis, Macon, McNairy, Morgan, Rutherford, Tipton and Wayne counties.

California, Florida counties impacted

Broward County in Florida got hammered by severe storms, tornadoes and flooding the week of April 12. Taxpayers there must file by August 15.

The same goes for Modoc and Shasta counties in California which suffered from the effects of severe winter storms, straight-line winds, flooding, landslides and mudslides in late February.

October 16 deadline covers these areas

- Thirteen counties in Alabama, as a result of severe storms, straight-line winds and tornadoes starting on January 12. The disaster area includes Autauga, Barbour, Chambers, Conecuh, Coosa, Dallas, Elmore, Greene, Hale, Mobile, Morgan, Sumter and Tallapoosa counties.
- Fifty-five of California's 58 counties (except for Lassen, Modoc and Shasta). IRS relief is being granted because of three different Federal Emergency Management Administration disaster declarations in 2023.
- Nine counties in Georgia due to severe storms, straight-line winds and tornadoes starting in January. The disaster area includes Butts, Crisp, Henry, Jasper, Meriwether, Newton, Pike, Spalding and Troup counties.

[Read the story online](#) 

Don't be surprised when a customer that declared bankruptcy once before does it again

July 26, 2023

Corporate bankruptcy rates are at Great Recession levels last seen in 2009-10. The worse news? The year's only a little more than half over.

CEOs, CFOs, credit departments and Sales team members need to be aware of the higher risks when taking on new customers or doing more business with existing ones. Too often companies don't know a customer's about to file or in danger of going under until it's too late to collect. At that point, just collecting a chunk of a debt owed is a win for the lender.

Bankruptcy courts are giving businesses more rope than ever to get their acts together and stay afloat. That's due in part to recent laws giving the debtor the benefit of the doubt.

Case in point: Businesses filing for bankruptcy under Chapter 11, making a go of it, likely borrowing above their means – and then filing for bankruptcy a second time under Chapter 22.

Fact: 23% of accounts receivable (A/R) and collections pros say they've dealt with a customer going into bankruptcy for a second time, according to a survey by the National Association of Credit Management (NACM). Imagine an A/R staffer having to tell his or her boss "they did it to us again!"

High inflation rates, price surges and tightened lending standards are making it especially difficult for small- and mid-sized businesses to secure funding. The NACM's podcast "Extra Credit" warns that all of these factors are contributing to a surge in Chapter 22 bankruptcy filings. Repeat bankruptcy rates are now at 2009 levels, perhaps signaling a recession is in the cards.

To stay ahead of the game, A/R staffers should be alerting decision makers to customers stretching payments or who aren't responding promptly to emails and phone calls. The quicker a finance team jumps into action when a customer's not paying, the more likely it is to avoid getting shut out in a bankruptcy hearing.

Staffers may need to be reminded that often the key to getting paid is asking the customer for payment. Late payers respond to direct asks for payment at a higher rate than customers that don't.

[Read the story online](#) 

Clock is ticking for ESG climate rule: Will Biden's SEC follow through or back down?

July 26, 2023

Congress created the Securities and Exchange Commission (SEC) to protect investors from market manipulation following the 1929 stock market crash. And for decades, the SEC focused on enforcing securities laws and punishing wrongdoers.

Fast forward to today: Republicans in Congress are urging the SEC to remember its core mission and ease up – way up – on environmental, social and governance (ESG) rulemaking.

The SEC's proposed rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," is still on track to be finalized in October, according to the commission's regulatory agenda. Changes to the proposed rule are still in the works and a more watered-down version may be what emerges.

"We've still got some work to do," is what SEC chair Gary Gensler told reporters about the timeline for a final regulation. But the rule faces roadblocks from the Republican-led House, and vulnerable Democrat Senators running for reelection in red states, like Joe Manchin of West Virginia, Jon Tester of Montana and Sheldon Whitehouse of Ohio, who could pressure the White House to back off.

The ESG Working Group of the House Financial Services Committee blasted the climate rule in a recent report. Several members of the Financial Services and General Government Subcommittee of the Senate Appropriations Committee criticized the proposed regulation while questioning Gensler earlier this summer. Accusations of "overreach" and "weaponizing the SEC" were heard during the back-and-forth debate.

Recent U.S. Supreme Court rulings against wide-ranging and costly regulations enacted by the Environmental Protection Agency and other federal departments could spell doom for the SEC's climate rule. Litigation is already in the works to kill the climate rule once it's finalized with an effective compliance date for funds.

Federal and state laws clearly state that pension and retirement fund managers are required to maximize returns for their investors. ESG ratings of companies and investors, and funds geared toward ESG, lose money more often than not for investors according to the *Wall Street Journal*.

[Read the story online](#) 

Invoices are bogging down A/R teams across the board: What's the answer?

August 1, 2023

The more invoices a business is sending out, the better the health of the company. After all, a lot of invoices in the pipeline means a company's products or services are in demand. What CFO wouldn't be happy in that situation?

Answer: The CFO who knows his or her accounts receivable (A/R) team is hopelessly behind on processing said invoices. As a result, cash on hand is always shorter than it should be.

Nearly 40% of CFOs revealed their "A/R teams are weeks or months behind and will never catch up on invoices," according to the Versapay/Wakefield report, *The Path to Better Invoicing: How Collaborative Technology Accelerates Cash Flow*. "[Fewer] than a quarter of CFOs (23%) report their A/R teams are completely up to date on invoices."

Three hundred CFOs were surveyed, split 50/50 between chiefs utilizing collaborative payment portals or standard systems, and all from companies that send out a substantial number of invoices on a regular basis.

To the question "How backed up is your A/R team generally?":

- 2% said "we'll never catch up"
- 14% reported "weeks behind"
- 22% said "months behind"
- 38% are "almost caught up," and
- just 23% are "up to date."

Two factors contribute most to delays in processing payments – invoice volume and invoice amount. The median amount of invoices processed per month is 1,800.

Bottom line: Tech spend is the only way to boost cash flow

The good news is, CFOs are well aware of their A/R shortcomings and what can be done to fix it. "[96%] agree their A/R teams would be more productive if they could work more collaboratively with their customer's accounts payable and their own internal teams, with more than half (54%) strongly agreeing."

Upgrading to a collaborative – or automated – system takes time and money. Some companies try convincing their largest customers to make automated payments or accept payments without the help of a software vendor. If A/R is already behind in processing invoices, the time spent on an in-house invoicing overhaul is sure to make the problem worse.

Companies have a variety of software solutions available to speed up payments and processing and eliminate paperwork. Just remember, the best vendors should be able to:

- guarantee an automated system is up and running between 30 to 90 days
- handle almost all of the "heavy lifting," such as customer outreach and syncing bank accounts
- train A/R staff on all the bells and whistles of a new system, and
- demonstrate success stories with similar-sized companies.

[Read the story online](#) 

A/P News Briefs

Stories You Might Have Missed

Nervous about vendor setup and maintenance risks? This finance pro did something about it

July 24, 2023

"It's not right, but it is a reality. ... You don't get a lot of budget attached to (vendor setup and maintenance training and tools in A/P)," said consultant, speaker and trainer Debra Richardson, APM, APPM, CPRS.

Richardson is a former controller and finance director, and the founder of Debra R Richardson LLC, which offers several free and premium-level resources for A/P professionals, including a blog, webinars and the podcast "Putting the AP in Happy."

Sharing the story of how she launched her business in 2018 during an episode of the Women's Leadership Today podcast, Richardson said that it was in a role as A/P senior manager of global vendor setup and maintenance and payments with a Fortune 15 company – which had an A/P department of more than 200 people – when she discovered that she had a knack for the vendor setup and maintenance process.

"I was like, 'I love A/P.' ... My husband was like, 'What? Why do you love A/P?'" she said.

After encountering isolated disruptions from payment fraud incidents throughout her career, Richardson began scouring the internet for A/P best practices for avoiding fraud, regulatory/compliance fines and just plain bad vendor data. But she didn't find much related to vendor setup and maintenance that she considered useful.

"Whenever you hear about A/P or ... A/P automation ... you always think about invoicing and e-invoicing solutions and everything to help the invoice process. But you can't even get to the invoice process until you have a vendor set up," she said.

Sharing vendor setup and maintenance knowledge

Richardson felt the best way to help finance pros who work with vendors navigate what she described as a "new climate" of fraud was to share her on-the-job experience and research. "I like providing those A-to-Z steps for solving some problem," she said.

"That's the type of person I am and that's the type of help that I like: 'Don't just fantasize and talk about what could be and what should be. ... This is what you need to do and here are the steps to do it.'"

And Richardson hasn't run out of things to talk about. For instance, there are 247 episodes of "Putting the AP in Happy" (a variation on something she used to include in her email signature).

She credited SCORE for guiding her to crucial networking opportunities, obtaining business funding, and creating a business plan and a marketing plan.

[Read the story online](#) 

FedNow is live for financial institutions! What does it mean for A/P?

July 28, 2023

On July 20, the Federal Reserve announced the FedNow Service, a 24/7/365, instant payments system, is officially live.

Touted as the biggest upgrade to the U.S. payments system in 50 years, FedNow looks like it's going to be more than just a new rail for B2B and B2C payments. It could potentially transform the way cash flow is managed, speeding transactions through banks without processing delays and enabling real-time access to funds and even faster just-in-time bill payments.

In a press release from the Fed, chairman Jerome Powell said, "Over time, as more banks choose to use this new tool, the benefits to individuals and businesses will include enabling a person to immediately receive a paycheck, or a company to instantly access funds when an invoice is paid."

FedNow's impact on A/P

FedNow promises to deliver payments in 20 seconds or less via bank channels, dramatically optimizing processes that typically take hours or days.

Also, the service's Request for Payment feature has the capacity to attach rich invoice details, such as highly-specific payment terms and remittance info, along with the payment, ensuring all necessary information is there to support quick reconciliation.

With that kind of speedy billing data transmission available for upload into the payables system for processing, this will spark a lot of CFOs to integrate their A/P and A/R systems and automate the reconciliation of payments, reducing errors and exception item handling and enabling capture of more early payment discounts.

In addition, the payments are settled immediately between financial institutions and there's no risk of a payment failing due to insufficient funds. The payee receives immediate confirmation that payment was accepted.

Will FedNow be right for you?

Let's say your financial institution decides to join the 54 banks, service providers and other entities that have already signed on as participants in the FedNow network to provide instant payment service. There are still several important questions to ask to evaluate whether instant payments are right for your business. Among them:

- How will our bank support the invoice and remittance data flows, as well as the automated uploading of the data into our accounting software?
- Will our current A/P, A/R or treasury management solution software be able to support instant payments? If not, what are our vendor's plans for adding instant payment capability? Will new or updated software provide ROI, for example, from labor-saving and process efficiency standpoints?
- What's the plan for cash flow timing situations where it makes more sense to use a traditional payment method instead of an instant payment to pay suppliers?
- Will enough of our suppliers offer discounts if they receive their payments from us instantly?
- What kind of training will our staff need?
- How will instant payments affect A/P staffing needs?
- How will instant payments affect other process flows?

[Read the story online](#) 

Payroll News Briefs

Stories You Might Have Missed

Electronic filing required for W-2s, 1095s, 1099s: But what about 941s?

July 14, 2023

When IRS reduced the electronic filing threshold, the change impacted a long list of information returns. Now, the list of forms to e-file may get longer.

That's because of a recent recommendation from the Electronic Tax Administration Advisory Committee (ETAAC).

In its *Annual Report to Congress*, released in June 2023, ETAAC pushed for the electronic filing of Form 941 and other forms in the 94X series.

IRS should provide a portal for filers to upload original and amended 94X returns, ETAAC recommended in its report. Furthermore, the portal should be made available by January 1, 2024.

Of course, that's the same time the lower threshold will kick in for many other information returns.

The ETAAC report commended IRS for its regulations which set the new e-filing threshold at 10 returns in aggregate. The regs cover a wide range of forms – from W-2s to 1095s to 1099s.

But not 941s.

IRS has taken some steps toward change, as ETAAC pointed out in its report. IRS *Tax Tip 2023-72* mentions that a mobile-friendly way to file forms 940, 941 and 944 is coming.

Options for electronic filing

In addition to the portal, ETAAC's report presented other ideas related to the electronic filing of Form 941.

One was that IRS could create an option for line-by-line input. The report compares this to a method available for filing Forms W-2 through the Social Security Administration's Business Services Online. With this, authenticating filers using a Transmitter Control Code would be important.

The final idea was that IRS could come up with a way to download and automatically upload a PDF, or other image of a 941, to the IRS system.

[Read the story online](#) 

Avoiding FMLA leave liabilities: What new DOL opinion letter makes clear

July 21, 2023

If employees' Family and Medical Leave Act (FMLA) entitlements are impermissibly reduced, your company may face legal consequences.

But when someone takes intermittent or reduced-schedule FMLA leave, it's tricky for staffers to accurately calculate how much of the 12 weeks of leave has been used, especially during a week when there's a company holiday.

Recently, the Dept. of Labor (DOL) released an opinion letter that provides guidance. We'll recap what DOL said in Opinion Letter FMLA 2023-2-A, so you can share the update with key individuals.

Calculating FMLA leave

Of course, when an employee takes a *full workweek* of FMLA leave during a week with a holiday, you'd count the entire workweek as FMLA leave.

However, if that person takes less than a *full workweek* of FMLA leave, you wouldn't count the holiday as FMLA leave. Note: There's an exception if someone was scheduled and expected to work on a holiday and instead took leave.

The opinion letter zoomed in on intermittent leave and reduced-schedule leave. The question was whether, in a week with a holiday, an employer's calculations should include the employee's:

- usual workweek – i.e., a workweek without a holiday, or
- reduced workweek – i.e., the usual workweek minus one day.

Let's say an employee normally works a five-day workweek – Monday through Friday – and that person takes one day of intermittent leave (on Tuesday) during a week with a holiday (on Wednesday).

According to the DOL guidance, the employee would've used one-fifth of a workweek of FMLA leave. That's one day of leave out of five days (i.e., the usual workweek).

Otherwise, if an employer's calculation was one day of leave out of four days (i.e., the reduced workweek), the employee would've used one-fourth of a workweek of FMLA leave. That'd be a larger amount of FMLA leave than the employee needed, meaning the employee's leave entitlements would be impermissibly reduced.

Of course, in addition to intermittent leave, the same principle would apply to reduced-schedule leave.

Action step: Check whether your payroll and HR systems are calculating FMLA leave usage correctly.

[Read the story online](#) 

Updated IRS form for ensuring tax benefits of these retirement plans

July 28, 2023

IRS has updated Form 5300, and that's good news for sponsors of retirement plans wanting to ensure their plans' tax benefits.

First, in Revenue Procedure 2022-40, released in November 2022, IRS expanded its determination letter program. Prior to that, only sponsors of individually designed plans offered under Internal Revenue Code 401(a) could ask IRS to confirm that a plan met the requirements for being tax-advantaged. That included 401(k) plans, for example, but not 403(b) plans.

The revenue procedure opened the door for individually designed 403(b) plans as well.

Such plans may be offered by:

- certain public schools
- churches, and
- charities.

More recently – in January 2023 – IRS issued Revenue Procedure 2023-4, to provide a general update to the 2022 revenue procedure. One example of what's new: You'll find a sample notice for interested parties. Bear in mind, notices must be provided at least 10 days, and not more than 24 days, prior to the day an application is submitted to IRS.

Finding out about retirement plans

In light of the expansion to the determination letter program, IRS made changes to Form 5300, *Application for Determination for Employee Benefit Plan*. The instructions for the form were revised in June 2023.

Form 5300 is used for initial determination. Sponsors of existing 403(b) retirement plans haven't had the chance to ask for an initial determination until now, so they may be anxious to do so.

But for some sponsors, there will be a wait.

That's because IRS is phasing in its acceptance of the form based on employer identification number (EIN).

- IRS started accepting applications from 403(b) plan sponsors with EINs ending in 1, 2 or 3 on June 1, 2023.
- For EINs with a last digit of 4, 5, 6 or 7, the start date is June 1, 2024.
- Finally, EINs that end in 8, 9 or 0 will be accepted beginning June 1, 2025.

You don't have to worry about any cut-off dates.

Another form included in the determination letter program for individually designed retirement plans is Form 5310, *Application for Determination Upon Termination*. The instructions for this form were revised in May 2023.

Both the 5300 and 5310 must be submitted electronically. That's done through www.pay.gov, IRS reminded plan sponsors in its 2023 revenue procedure.

[Read the story online](#) 

CFO Cost Control

Where's the best place to do business in the U.S.? Latest rankings rankle some state leaders



by Scott Ball



High taxes, crumbling infrastructure, a weak economy, crime ... all of these factor into where a business decides to do business or avoid.

We predict companies of all sizes and across a range of industries will continue to relocate and/or shrink their footprint. COVID restrictions, for example, opened business leaders' eyes to the cost-savings possible by embracing remote work and virtual meetings. Owners and execs can afford to be choosy where they build or rent as each of the 50 states offers at least one perk.

The annual "America's Top States for Business" rankings by CNBC are no more of a final word than other Top 10 lists, but they're a good starting point. CNBC irked some Texas elected officials by ranking the Lone

Star State as the 2nd worst state to live in, but as the 5th best to do business in.

Right or wrong as CNBC may be, it might be worth checking out how your home base(s) compare to other locales.

Southern states come up tops in key categories

For a startup, the talent pool living in a state matters a lot. And it's pretty critical for a business on the move since not all of its employees will be willing to pull up stakes.

For quality of workforce availability, the top 3 states (in order) are North Carolina, Arizona and Texas.

Maybe robust infrastructure is a must? If so, then Georgia,

Illinois and Tennessee look like the best bets.

When it comes to technology and innovation, the top opportunities are on the coasts. Topping the list for tech are Massachusetts, California and Washington, not coincidentally home to MIT, Cal Tech and the aerospace industry.

Access to capital is never far from an owner or CFO's mind. Two states tie for No. 1 in that category – California and Texas.

Whose economies are booming the most?

CNBC's rankings of states boasting the best economies mirrors net migration patterns since March 2020. The top 3 states are Florida, Texas and North Carolina.

Last but not least, topping the "best overall" rankings are:

1. North Carolina
2. Virginia
3. Tennessee

CNBC ranked states using 86 metrics in 10 categories. Each category was "weighted based on how frequently states use them as a selling point in economic development marketing materials."

[Read this Story Online](#)

Catch-up contributions soon taxable if wages exceed \$145K: Planning for this change



by Jennifer Weiss

Employees with wages exceeding \$145,000 in 2023 may hesitate to make catch-up contributions next year. They'll be impacted by tax changes, as will employers.

To complicate matters, there are still many unanswered questions about the tax changes, which the Secure 2.0 Act of 2022 put in place.

Needless to say, this won't make planning for 2024 any easier for Finance pros. For example, you may offer an employer match for employees' contributions and even their catch-up contributions to retirement plans. Consider this: Next year, will the amount your company can deduct on its federal income tax return for employer contributions change significantly?

Pre-tax deductions from wages

Here's a closer look at Section 603 of the Secure 2.0 Act.

According to Section 603, if employees have wages that exceed \$145,000 in one year, any retirement plan catch-up contributions they make in the following year will need to be made to Roth accounts. In other words, Payroll will set up pre-tax deductions from their wages for this.

High-wage earners will pay federal income tax on the full amount of their catch-up contributions.

Some industry groups are anxiously awaiting IRS guidance and have asked for relief regarding Section 603 of the law.



HOW
RETIREMENT
PLAN LAW
IMPACTS
WORKERS AGE
50 AND OLDER

Here are two examples:

First, in a June 7, 2023, letter, the American Benefits Council sought a delay in the effective date of the Roth catch-up requirement and asked IRS to take action over the summer.

For one thing, employers need time to update their payroll systems so they function in sync with their retirement plans. Plus, some companies may not currently offer a Roth option, and either that would need to be added to their plans or all their catch-up contributions would need to be dropped, the council stated.

Second, the ERISA Industry Committee (ERIC) sent a letter to IRS on June 8, 2023. ERIC raised questions such as how midyear new hires should be handled and whether plan sponsors could require that all contributions be made to Roth accounts.

Given the significant operational challenges brought about by Section 603, IRS should prioritize transition relief as well as guidance, ERIC relayed.

Higher limits

In 2023, employees age 50 or older can make \$7,500 in catch-up contributions to the following plans:

- 401(k) – other than a SIMPLE 401(k)
- 403(b)
- SARSEP, and
- governmental 457(b).

Section 109 of the Secure 2.0 Act contained some good news about catch-up contribution limits, namely for employees who are age 60, 61, 62 and 63. Starting in 2025, employees who are these ages will be able to set aside more of their money from their wages – although those who are high-wage earners would be doing so on a pre-tax basis.

The new limit for employees in that age range making catch-up contributions will be the greater of:

- \$10,000, or
- a 50% increase over the annual catch-up contribution limit as announced by IRS.

[Read this Story Online](#)

Could obscure retaliation reg end up costing employer much more than expected?

CFO Bill Keeper was treating his business owner friend Ben Hackett to dinner because Ben had received some devastating news.

“Bill, I’m worried about possibly being on the hook for over a million dollars just because we fired someone after she filed a racial discrimination complaint,” Ben said.

“I keep telling you timing is everything,” Bill replied. “If somebody complains about discrimination of any kind, and they’re fired, or there’s a pay cut, a demotion or a transfer they don’t like, you can expect a retaliation suit.”

Retaliation damages

“Doesn’t the Civil Rights Act put a cap on how much people can sue for?” Ben asked. “My lawyer said something about Section 1981 – which I’ve never heard of. Something about retaliation and contracts.”

“I think you’re right about there being a limit on Title VII retaliation claims,” said Bill. “Try to find out more about that Section 1981.”

“Your lawyer needs to make a strong case that the employee was fired for poor performance, and not because of her race,” he continued. “But just remember, it is possible for an employee to lose a discrimination case, but win based on what happened next.”

The lawsuit against Ben’s company went before a jury. Did the court determine

there was discrimination based on race or retaliation for formally complaining?

The decision

The employer won the discrimination case, but lost the retaliation case because it looked like the company fired the employee to get back at her for coming forward about race discrimination at work.

And as the employer feared, the damages were jaw-dropping. The jury awarded the plaintiff \$366 million.

The ex-employee’s lawyer invoked Section 1981 – part of the lesser-known Civil Rights Act of 1866 – which prohibits race discrimination and retaliation in contracts (including employment contracts). Unlike claims under Title VII of the Civil Rights Act of 1964, which have a \$300,000 cap, Section 1981 has no limit on the damages that can be claimed.

The employer is expected to appeal.

Protect your organization

This case goes to show that to ensure that situations like this don’t happen in the first place, all managers need to be adequately trained to follow federal laws that prohibit discrimination and retaliation for telling someone about it.

Retaliation is considered anything that would dissuade a reasonable employee from coming forward with



Could obscure retaliation reg end up costing employer much more than expected?

a discrimination or harassment complaint. Employees don't necessarily have to prove they experienced discrimination – they just have to prove they were punished for complaining.

And there could be expensive unintended consequences that arise out of workplace discrimination and retaliation disputes. Creative

employment lawyers could start tacking Section 1981 claims on to discrimination claims, which could cost a lot more than expected to defend.

Based on Harris v. FedEx Corp., No. 4:21-CV-01651, U.S. D.C. S.D. Texas, 8/31/22. Dramatized for effect.

[Read more You Be The Judge in your Membership Dashboard](#)



Case Study

Found a broker who shared our health insurance coverage, cost control priorities

Next to compensation, health insurance and benefits were what prospective employees most often asked us about. Something they particularly wanted to know about was how much it was going to cost them.

I could relate to that. Health insurance is the company's biggest expense besides payroll. On one hand, we need to offer a quality health plan to stay competitive with other employers in our industry and our market for attracting top talent. On the other hand, we need to keep costs under control. Our health plan can't be tying up more of the budget than what's necessary.

But the problem we'd run into finding insurance at a fair price is HR doesn't have the time or resources to do enough comparative research on health plans in time for the start of the budgeting process in October.

We also have to be diligent about ensuring our plan is compliant with the Affordable Care Act (ACA), Health Insurance Portability and Accountability Act (HIPAA), Employee Retirement Income Security Act (ERISA) and state law. Government scrutiny, and the threat of penalties, is a headache we don't need.

Is an insurance broker worth it?

Working with a benefits broker to negotiate on our behalf for the best rate, and design an affordable program that provides the right coverage, started to make the most sense.

There's a lot to think about when choosing a benefits broker, though. These were the boxes that we decided needed to be checked:



Found a broker who shared our health insurance coverage, cost control priorities

- Up-to-date qualifications for selling health insurance in our state (If they're not diligent with that seemingly small detail, they probably can't be trusted with following federal legal requirements)
- Knowledgeable about the ACA, HIPAA and ERISA
- Serves other companies in our size and industry so they can provide competitive benchmarking
- Willingness to ask our diverse employee base about their wide-ranging needs (Young employees may be more interested in a plan with a higher deductible and lower premium)
- Understands our goals and is invested in the company's future
- Willingness to be like a personal shopper who'll show us a mix of choices, and not just plans from one insurer or advocate only for self-funding
- Good year-round support, and not just at open enrollment, and
- Able to clearly explain things to our workers in detail, so they understand what's being offered and know how to maximize their coverage.
- A base health insurance plan with an option to pay more to upgrade to a plan with greater coverage
- Raising co-payments for costly services like emergency room visits
- Encouraging employees 65 and older to enroll in Medicare to lower the average age of our group
- Eliminating coverage to employees' spouses or imposing a surcharge for spouses who are able to obtain coverage through their own employer
- Encouraging employees to consider higher deductibles, coupled with an HSA, HRA or limited network plan, which lowers the employer portion of health insurance
- Encouraging employees to use generic drugs whenever possible, and making sure they're using providers in our health plan's network
- A company wellness program to prevent costly health conditions before they start and encourage employees to exercise, eat healthier and more effectively manage stress, and
- Incentives for employees to keep up with preventive health care (e.g., lower deductibles for keeping up with annual checkups and screenings).

Benefits cost control ideas

Not only did the broker we chose take a big administrative burden off of HR, allowing them to focus on more valuable, strategic tasks, but they suggested some additional things to reduce costs that we hadn't thought of.

Here's some of what we're considering:

(Cary Boss, Controller, The Salem Group, Oakbrook Terrace, IL)

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CFO Staff Management

Executive succession planning: Do you know who's next in line to lead the company?



by Brian Bingaman



Board of Directors, CEO, CHRO all need to be involved

As talented as your C-suite team is, that lineup won't stay intact forever. If your organization hasn't addressed its future with an executive succession plan, or an update of the existing plan, now's the time.

It's inevitable – there will be management team departures due to retirement, promotion or something else. PwC's 2018 Strategy & CEO Success study found that turnover among just CEOs at the world's largest 2,500 companies reached nearly 18% – that was before COVID.

Having an extended vacancy in any executive role can become a major

risk, especially if a crisis suddenly strikes your business.

Not properly planning for executive succession can lead to turnover, disrupted business partnerships, halted initiatives, a decline in financial performance and loss of revenue.

Despite the cautionary tales of what happened at Microsoft in 2013 and at Disney in 2016, many companies still aren't dedicating enough time, energy and resources to leadership development and executive succession mapping. In fact, Harvard Business Review proclaimed that "the amount of market value wiped out by badly-managed CEO and C-suite

transitions in the S&P 1500 is close to \$1 trillion a year."

On the other hand, getting executive succession right:

- boosts investor confidence
- promotes strategic corporate vision
- provides depth and continuity at the top
- solidifies employee confidence, bolstering morale and encouraging advancement, and
- builds the reputation of a leadership brand in your market that attracts and retains top talent.

Bringing executive succession into focus

One way to get started on executive succession planning is creating a "nine box" matrix – a 3x3 grid, with gradient qualities listed in each of the nine sections.

The leadership team or board of directors uses it to plot possible successors for a departing executive. Those who make it to the top right of the matrix are the top candidates for the position.

Another approach is having all executive team members make a "short list" for HR of the people they'd trust to be their successors, either from within the company or from other organizations. The list is consulted when the exec is about to depart.

To eliminate human bias, which can cause promising candidates for executive succession to get overlooked, it's worth researching the AI-enabled job intelligence software solutions on the market that use algorithms to objectively evaluate relevant skills, experience and attributes among the people within your organization.

Plan of action

Strategic moves to make from there include:

1. Encouraging your board of directors to take ownership of executive succession by forming a search and selection committee. The committee should have defined roles and responsibilities for everyone, and must collaborate with your CEO and CHRO to design and implement an executive succession plan.
2. Naming a chairperson for the committee who's disciplined, objective and a discussion

facilitator. If interpersonal dynamics get tense, and emotions threaten to bubble to the surface, the chairperson's the point person who will commission final independent candidate assessments, possibly meet one-on-one with each committee member and your CEO to get a better sense of their views, and develop succession scenario analyses for each candidate – addressing the perspectives of key stakeholders, benefits and risks, what the executive lineup will be, their roles and how well these people will mesh.

3. Setting a meeting schedule for the committee – twice a year, for example – so executive development review is a natural part of your management practices.
4. Defining your executive search process. What's the profile of the person your organization needs in a CEO, CHRO, COO, CMO, CIO, etc.? Who are candidates for leadership development? What interview questions will you ask to determine if candidates are ready to meet your company's future challenges? What will your reference check procedures be? How will the final decision be reached? What's supposed to happen during the transition period? Clearly outline best-fit practices, ongoing assessment criteria, and HR-integrated talent development methods and resources.
5. Taking a fresh skills inventory of your existing talent. Get to know your in-house high-potential prospects and advise the committee of who they are. Because they might not be the "no-brainer" choices from the short lists,

consideration needs to be given across the organization. Comb through performance reviews and self-assessments, conduct interviews and group evaluations and consider a possible stress test like making a presentation at a board meeting.

What about the office of the CFO?

Thinking about your own successor may be the hardest part of this process. But this question must have an answer: Who takes over if you suddenly had to take a temporary or permanent leave of absence?

Because CFOs hold a critical office across the enterprise, there's a duty of care to identify, recruit, coach and mentor possible successors within the organization – even if there's a tendency to hire external candidates for executive roles. Who's on the payroll that's already equipped with the essential technical, leadership and strategic skills? Who could do a good job if they just had a little training? And are these people interested in being groomed for the role?

Your search and selection committee will need the names of those viable internal candidates. That's the time to ask for their views specific to CFO succession.

When you're comfortable with doing so, start sharing your institutional knowledge with your possible successors and delegate more responsibilities to these high performers. Don't think of it as easing yourself out of the job; think of it as ensuring that the business stays sustainable.

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Creating Excel workbook templates to avoid writing over data that needs to be saved

No doubt there are certain Excel spreadsheets that you consistently refer to on an ongoing basis – income statements, for example. But what if a staffer calls up spreadsheet data from a previous month, and instead of saving a separate copy accidentally types this month's data over it?

To protect the data integrity of frequently-used spreadsheets, Atlanta-based CPA David Ringstrom strongly recommends creating master workbook templates.

To prevent write-over disasters like the one previously mentioned, create a fresh copy of the spreadsheet by highlighting all cells with numbers, then clicking Find & Select in the Editing menu in the ribbon. In the Find & Select menu, choose Constants.

“Constants in Excel are any values that we've typed in a worksheet cell that are not a formula. So it can be text or numbers. ... If I've only chosen cells that have numbers, then that's going to leave my formulas intact,” Ringstrom said in a *LearnExcelNow* on-demand workshop.

If the selected cells are static values, press the Delete key or 0 and press Ctrl and Enter to reset the cells to blank or 0. Click on cell A1 to deselect the cells, then File/Save As your template, give it a name, then select “Excel Template (*.xltx)” in the file type drop-down menu (the default file type is Excel Workbook/xlsx) and click the Save button. You now have a pristine

template that can be used, for example, each month.

To create copies from the master, click File, New, the Personal tab and double-click on the template. By default, the file name of the copy will have a 1 at the end until it gets re-titled with a Save As.

If the master template ever needs to be edited, click File, Open, then the Browse folder icon. You can then navigate to Documents and your Custom Office Templates to open the xltx file.

Getting creative with your Excel templates

Excel has dozens of built-in templates that are useful to finance pros. From the File menu, select New, and in the “Search for online templates” bar type what kind of spreadsheet template you're making (e.g., cash budget, balance sheet, inventory list, etc.). After double-clicking on a template that you like, click on the green Create button, then start exploring the template and customizing it to suit your needs.

Ringstrom added that you can explore an even more comprehensive set of downloadable Excel-compatible templates, all of which have been vetted as safe by Microsoft, at templates.office.com.

[Read more Excel Tips in your Membership Dashboard](#) 

The Fed weighs capital requirements for banks: Would changes boost transparency?

 by Scott Ball

The collapse of Silicon Valley Bank (SVB) earlier this year could bring major changes to capital requirements for large banks. Federal Reserve vice chairman for supervision Michael Barr put the banking industry on notice during a speech to the Bipartisan Policy Center in Washington DC this week.

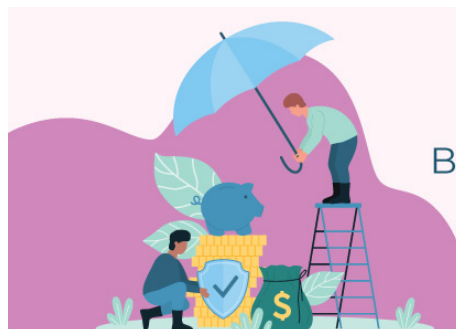
Barr made the case for a handful of changes needed to boost transparency of banks' balance sheets. While technically the Fed doesn't regulate banks (other than the 12 Fed banks and 24 branches under them), it's responsible for supervising large banks with assets of \$100 billion or more.

Barr painted with broad strokes during his remarks but gave enough detail for us to predict what's likely to become reality for the big boys like Chase and Wells Fargo (the capital requirements would only apply to \$100B or bigger banks).

Time to put an end to 'creative' credit risk estimates

Perhaps the biggest change Barr championed – and one that could be easier said than done to accomplish – is putting an end to banks' rose-colored credit risk estimates. It's what allowed SVB to keep depositors on board until word spread quickly how badly the bank was overleveraged.

Barr proposes the Fed should "end the practice of relying on banks' own individual estimates



**BANKS WITH
\$100 BILLION MAY
BE FOLLOWING NEW
RULES SOON**

of their own risk and instead use a more transparent and consistent approach. Currently large banks use their own internal models to estimate certain types of credit risk." All of which leaves depositors, investors and the market as a whole in the dark regarding a bank's financial health.

The third Basel Accord Principles (finalized in 2017), which sets international standards for bank capital adequacy, stress testing, and liquidity requirements, also called for transparency in how banks measure risk. Barr stressed the need for U.S. banks to catch up to the most current Basel framework.

"Standardized credit risk approaches, meaning we apply the same requirements to each bank and not let each bank develop their own requirements" must be part of new Fed capital requirements, says Barr. "[B]anks tend to underestimate their credit risk because they have a strong incentive to lower their capital requirements."

What it means for businesses: Banks are liable to dole out fewer loans and limit their risk. Businesses with the best credit ratings seeking loans will do better than others.

Some banks won't be able to make the cut

Barr and the Fed are proposing other requirements to boost transparency and make big banks all play by the same rules, such as:

- **holding an extra 2 percentage points of capital (at least \$2 more for every \$100 of assets).** "Most banks already have enough capital today to meet the [proposed] requirements," says Barr. "For the banks that would need to build capital to meet the requirements ... [most] would be able to build the requisite capital through retained earnings in less than two years, even while maintaining their dividends," and
- **a mandatory long-term debt requirement to backstop the Federal Deposit Insurance Corporation (FDIC).** "[This measure would] provide the FDIC with additional options for restructuring, selling or winding down a failed bank."

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CFO Forecasting

Are high interest rates here to stay? The Fed is leaning in that direction

 by Scott Ball



The latest interest rate hike by the Federal Reserve should've come as no surprise to anyone. The Fed's made its intentions clear since it began ratcheting up the federal funds target rate in March 2022. And the media leaks in the days leading up to Fed meetings have proven right almost every time (give or take a wrong guess on 25 basis points here and there).

One thing's remained the same – Fed chairman Jerome Powell is determined to keep rates high until inflation drops to a more manageable 2%. What is changing is Powell and board members' timeline for when that may happen.

For example, as recently as 2022, Powell talked about only needing to raise rates a few times before prices cooled off. That's certainly changed.

Powell just recently admitted it may take until 2025 to bring inflation near 2%. And that's nothing more than a hopeful guess even from a bright guy like Powell.

Brace for the 'new normal'

Everyone you talk to who's in the market for a home, eyeing a big-ticket item or contemplating a loan is optimistic rates can only come down. "They've got to cut rates at some point! Early next year. Right?"

Maybe – or maybe that's wishful thinking. Keep in mind the topic of cutting rates isn't on the lips of Fed rate-setters whether they're going on the record with a reporter or speaking anonymously.

Fed members were in near unison that the rate would need to go as

high as 5%. The Fed's delivered on its promise after just raising the rate range by 25 bps to 5.25%-5.50%. Seems hard to believe we were still at near-zero rates as recently as January 2022.

Years and years of low to near-zero interest rates lulled businesses into believing capital would always be easy to get. Those times may not be coming back at least as long as Powell is in charge and inflation hovers at 5%.

Bottom line: Adjusting expectations for the next two years at a bare minimum may be necessary for some businesses.

Here's a historical look back at the Fed's rate hikes:

July 26, 2023	+25	5.25% to 5.50%
May 3, 2023	+25	5.00% to 5.25%
March 22, 2023	+25	4.75% to 5.00%
Feb 1, 2023	+25	4.50% to 4.75%
Dec 14, 2022	+50	4.25% to 4.50%
Nov 2, 2022	+75	3.75% to 4.00%
Sept 21, 2022	+75	3.00% to 3.25%
July 27, 2022	+75	2.25% to 2.50%
June 16, 2022	+75	1.50% to 1.75%
May 5, 2022	+50	0.75% to 1.00%
March 17, 2022	+25	0.25% to 0.50%

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Will we have to report our cybersecurity practices to the SEC?

Q: Is the Securities and Exchange Commission (SEC) really proposing a rule to require publicly traded companies to disclose detailed cybersecurity risk oversight policies and procedures, and to report cyber incidents within four business days? I'm concerned about this triggering new costs and enforcement risks.

A: For now, it's still a proposed rule. The public comment period has ended and it could be finalized sometime this summer.

Cybersecurity details and risk assessment reporting would be done on Forms 10-K and 10-Q. Meanwhile, Form 8-K may be getting amended to require disclosure about any "material" cybersecurity incidents.

Bess Hinson, a privacy and cybersecurity attorney based out of law firm Holland & Knight's Atlanta office, advised public companies to prepare for the rule going final in an episode of Holland & Knight's "Counsel That Cares" podcast.

"Now is the time to really think carefully about what budget is needed going into the next year. So that to the extent you are not in compliance, you are ready to really kick off that process in January, if you can't do so sooner," she said.

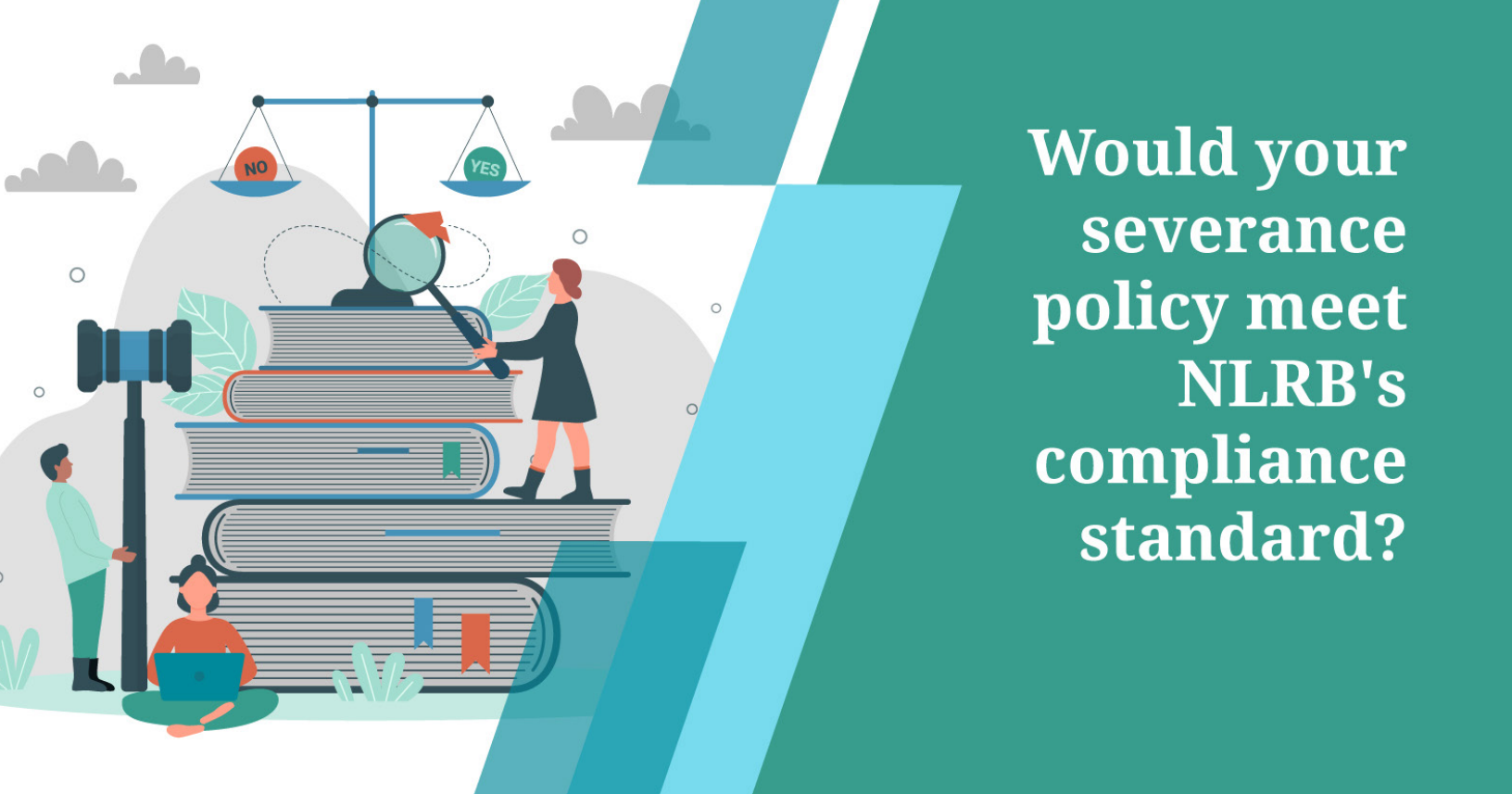
"I think it's important to review, if you haven't done so already, your current

information security preparedness and any cybersecurity assessments that have been conducted recently – whether those assessments are against the IOS (International Organization for Standardization) standard or the NIST (National Institute of Standards and Technology) standard – and see what gaps exist. What medium risk gaps exist, or high-level risk gaps exist, where can you put those risks and gaps on your roadmap so that you can remediate those issues sooner rather than later?"

This is also a good time to review and test your written cybersecurity incident response plan, make sure everyone knows what to do and to map out a decision-making process on whether or not a Form 8-K needs to be filed. If there's a reportable incident, do you have a press release template?

"If you are not operational tomorrow because all of your devices and systems are locked up due to a ransomware attack, how long is it going to take you for your teams to restore all of those systems, recover your data backups and be back to business? Because every day that your systems are locked up, you're not doing business, you're losing money," Hinson said.

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Would your severance policy meet NLRB's compliance standard?

CFO Employment Law

Twitter severance agreement suit a wake-up call to re-evaluate your termination procedures



by Brian Bingaman

Could it be time for a review of your employee severance agreements? Right now Twitter's experiencing major pitfalls from having them, thanks to a class action lawsuit accusing it of violating its own severance policy. Laid-off workers are claiming the company's severance agreement plan is a benefit protected under the Employee Retirement Income Security Act.

The complaint, filed by Twitter's former employee benefits program coordinator, says the social media giant failed to pay at least \$500 million in promised severance pay to thousands of ex-employees, who were laid off after Elon Musk bought the company last year.

Twitter says it paid the former employees in full. But according to the lawsuit, those workers have been paid anywhere from \$0 to one month of severance pay.

The severance agreement plan that the company had in place since 2019 stipulates that most workers receive two months' base pay, plus one week of pay for each full year of service, if they are laid off, the lawsuit said.

Also, the lawsuit alleges that the company gave employees no notice of any pending changes to the severance agreement and that Musk told those affected by mass layoffs that they would continue to receive benefits under the plan.

Some senior Twitter employees who were let go are also claiming they're owed bonuses, a cash contribution for health insurance and three to six months of outplacement services.

Regardless of the decision on this case, it sounds like it'll be one expensive legal battle.

NLRB's stance on severance agreements

Any agreement that involves providing a benefit to an employee in exchange for releasing an employer from future litigation liability should be read over by someone well-versed in employment law, especially after

Twitter severance agreement suit a wake-up call to re-evaluate your termination procedures

the National Labor Relations Board (NLRB) ruled that non-disparagement and confidentiality provisions in severance agreements can be a violation of employees' rights.

While severance agreements have proven to be effective for preventing harmful public remarks by former employees, as well as protecting proprietary and trade secret information, they must be worded carefully.

After reportedly fielding numerous questions about the February 21 decision – which retroactively applies even to already-signed severance agreements – NLRB General Counsel Jennifer Abruzzo issued a memorandum which states that a severance agreement is in violation of Section 7 of the National Labor Relations Act (NLRA) if it:

- has an “overly broad” non-disparagement clause or provision
- has an “overly broad” confidentiality clause
- requires an employee to waive the right to file an unfair labor practices complaint, help others to file an unfair labor practices complaint or assist the NLRB with an investigation, or
- limits an employee's right to communicate with the NLRB, their union, judicial or legislative forums, the media or “other third parties” regarding employment terms and conditions.

How NLRA compliant are you?

When it comes to tailoring confidentiality and non-disparagement clauses

in a severance agreement, you'll need to assess, on a case-by-case basis, whether individuals are covered under the NLRA. It's important to keep in mind that the NLRB memo takes the position that NLRA protections may also apply to managers or supervisors in some circumstances (such as being fired for refusing to commit an unfair labor practice).

And because of how vague the definition of “overly broad” is, now may be the time to run any employee severance agreement that you have in place by your legal team to read it over and address any potential NLRA compliance risks.

For example, a confidentiality clause that restricts the sharing of trade secrets for a reasonable period of time (e.g., not forever) based on legitimate business justifications that can be proven in court is OK, but a clause that forbids discharged employees from talking about wages, hours, terms or condition of employment, or the terms of a severance agreement is illegal.

Also, the only non-disparagement clause that's considered legal is one that restricts “unlawfully defamatory” statements by the employee about the employer (it's a good idea to clarify what that means).

All severance agreements should include a statement that nothing in them is an attempt to stop the employee from engaging in activities protected by the NLRA.

If anything in your employee severance agreements needs to be revised, don't forget to update your employee handbook. It's also important to ensure that the revised procedures are carried out, so you don't have a Twitter-like mess on your hands.

Meanwhile, there's a possibility the board's decision will be scrutinized by federal courts down the line.

Are there state or local laws to consider?

Severance agreements also need to be written with potentially applicable state and/or local laws in mind, which could impact the termination process more broadly.

For example, there are various state laws regarding an employer's deadline for delivering a final paycheck to an employee. State law considerations may also come into play with waivers of claims for workers' compensation and unemployment benefits.

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