With the Great Resignation, Comes Great Employer Responsibility

Megan J. Renslow
612-877-5450 | Megan.Renslow@lawmoss.com
LawMoss.com/people-megan-j-renslow

Megan is a member of our Litigation team. She assists businesses and individuals with commercial litigation disputes.

Approximately 47 million people voluntarily left their jobs in 2021. These numbers have continued into 2022, with an average of 4 million workers quitting their jobs each month. This unprecedented exodus from the workforce, aptly named "the Great Resignation," raises numerous legal obligations for employers.

The Final Paycheck

Employers must promptly pay former employees their last paycheck. In Minnesota, employees who quit or resign from their employment are due all earned and unpaid wages and commissions on the next regularly scheduled payday following the employee's final day of employment.

However, if an employee's last day of employment is within five calendar days of the next regularly scheduled payday, the employer may delay full payment until the second regularly scheduled payday. Importantly, if the employer elects to defer payment past the first regularly scheduled payday, the employee must nevertheless receive full payment within 20 calendar days following the final day of employment. Employers should be mindful of this 20-day window if the second regularly scheduled payday falls outside of it.

My Employee Still Has Company Equipment, Now What?

With more employees working from home, there is a greater likelihood former employees received company laptops, cellphones, or other equipment necessary for remote work. If an employee quits and retains company property, employers should avoid self-help remedies.

For example, an employer may not withhold a former employee's final paycheck due to unreturned equipment. Additionally, unless the employer and employee enter into a written agreement that says otherwise, an employer may not deduct the cost of the equipment from the employee's final paycheck.

In some situations, it may be possible for the employer to pursue the stolen equipment in conciliation court or district court. An employer may also be able to report the employee's actions as theft. Employers should review their handbooks to establish protocols regarding the return of company property after termination or resignation.

Assigning Additional Duties to Remaining Employees

Carrying on with business as usual may prove difficult if a company is suddenly short-staffed. However, when delegating new duties to remaining employees, employers should be mindful of each employee's exempt or non-exempt status.

Exempt employees may lose their exempt status if they spend too much time performing duties normally assigned to non-exempt workers. Courts typically examine the "primary duty" of an employee when determining whether the employee is truly exempt. For example, if an exempt employee performs primarily non-managerial tasks, then a court may determine the employee is more properly classified as non-exempt. If an employee loses her exempt status, this creates additional wage and hour obligations for the employer. For this reason, employers must be careful when assigning non-exempt work to an exempt employee.

Conclusion

With knowledge of the potential legal issues implicated by the Great Resignation, employers can better prepare for this new reality. Please contact your employment law attorney at Moss & Barnett for guidance specific to your workplace.