



What's Your "End Game" for 2024: Some Taylor Swift-Inspired New Year's Resolutions for Employers (FP's Version)

Insights

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While we respect Taylor Swift's accomplishments for so many reasons, your #FPSwifties particularly admire Ms. Swift as an employer. From employee appreciation (those legendary tour bonuses sound really nice!) to her commitment to diversity and fierce loyalty she shows to her team, a lot can be emulated from Ms. Swift in the employee relations arena. In honor of her being named Time's Person of the Year, we have put together a list of resolutions so you can bolster your workplace processes and policies going into "New Year's Day."

#1: Are you "... Ready For It?"

Are you a multi-state employer? Then you should be prepared for a number of states that are increasing their minimum wage starting January 1, 2024. Likewise, just like a re-record of an album, the salary threshold for the white-collar exemptions under the federal Fair Labor Standards Act is anticipated to increase in 2024. Think of it like Biden's version of what President Obama initiated in 2016.

#2: "Is It Over Now?"

In 2023, the National Labor Relations Board continued its goal of retooling employment law (NLRB's Version), issuing broad interpretations of the National Labor Relations Act which apply to union and non-union employers alike.

- Earlier this year, the Board found confidentially and non-disparagement clauses in employee severance agreements were an unlawful restraint on employee's rights. You'll want to change your standard severance agreement practices if you haven't already, and consider how to handle existing agreements that may now be considered in violation.
- In August, the Board modified the legal standards used to evaluate handbook and other work rules. The Board now analyzes whether an employee "would reasonably construe" an applicable rule or policy as chilling protected conduct under the NLRA. To avoid a violation, employers must now show that workplace conduct rules are narrowly "Taylor-ed" to special circumstances justifying any infringement on employee rights. We urge you to review and update your handbooks, especially any "workplace civility rules" requiring employees to positively engage with co-workers which are likely to be deemed unlawful. We recommend reviewing at least once

per year, which is less frequent than the time between Ms. Swift publishes her most recent re-records.

- The Board also issued a rule which will greatly expand the concept of “joint employment” under the NLRA, leading to the potential of unfair labor practice charges by employees of your company’s subcontractors claiming “You Belong with Me” if you maintain reserved, unexercised, or indirect control over even a single working condition of the subcontractor’s employees’ employment.
- If you think you’re “Out of the Woods,” think again. The Board has also expedited the union election process and made it easier for unions to attain recognition without the need for a secret ballot election. In 2024, we expect the Board to continue its trend, likely coming after non-competition agreements, providing the union with a right to use employer email and other technology, and prohibiting confidential employer investigations into harassment and workplace misconduct, among other things.

#3: “I Did Something Bad”

Taylor’s concerts in Brazil were marred by the unfortunate death of a fan due to overheating and exhaustion. In response, Taylor immediately postponed the following evening’s concert and put out a statement expressing how “devastated” she was by the incident. Undoubtedly, a number of strings were also being pulled behind the scenes to provide comfort to the young woman’s family.

Amidst this tragic accident there is a lesson learned for employers in how to handle employee complaints. In 2024, you should resolve to review your investigative process and identify any gaps. Do you have an internal reporting system that is working? Are your employees encouraged to report issues, even anonymously? Are you addressing these issues as quickly as possible to show your employees that you value their input? Are you concluding your investigative process by meeting with the complaining employee to notify them of your conclusions (to the extent you can) and reiterate your company’s prohibition against retaliation? If not, you can put together an investigative checklist for you and others to follow to ensure all steps are being followed. You also can meet with your supervisors for a lunch and learn training to show them best notetaking and investigative practices.

#4: “Dancing With Our Hands Tied”

When employers want to lawfully fire a problematic employee, they often find they could be exposed to a discrimination claim if that employee is in a protected category, or perhaps exposed to a retaliation claim if the employee has just returned from a job-protected leave. At that point, the employer needs to understand the risks associated with taking an adverse action against these employees (usually in the form of a lawsuit or administrative charge). To avoid that risk, you may have to feel a little pain in righting that disciplinary ship before making any other decisions about that employee. To avoid this in the future, you could have ongoing HR lunch trainings throughout 2024 to provide tips and tricks for supervisors so they remain engaged with performance management

management.

#5: “Look What You Made Me Do”

Are you a real Swiftie if you haven't seen the video of T-Swift calling out the security officer for harassing a fan in the middle of singing “Bad Blood” at one of the Eras concerts in Philly at least a dozen times? “Hey! Stop!” Ms. Swift admonished security before picking back up flawlessly in her song.

Like Taylor, you, too, should resolve in the New Year to immediately address disciplinary issues instead of allowing them to fester and become even bigger problems. Similarly, you should ensure your supervisors and management team has been trained on documentation best practices. It is our experience some supervisors are skittish to officially document an issue, which creates a bigger problem that can ripple across your workplace.

#6: “Call It What You Want”

You've tried to work with the employee, but the castle is crumbling and now it's time to take the next step and terminate the employment relationship. To ensure you are putting your organization in the best defensible position you must resolve in the New Year to document, document, document.

It is key to document the relevant decisionmakers, the facts considered in the decision, and the ultimate reason for the termination. It is key to list all relevant policy violations and consider what you have done in the past and ensure you are consistently enforcing the company policy. You should consider documenting the discussion with the employee noting the reason for the termination referencing any prior disciplinary actions, facts supporting the decision, and note the policy violation. Many employers elect to have two members of management and/or human resources sit in on the meeting to act as a witness. Also, just as Ms. Swift is keenly aware of always being filmed and/or recorded by paparazzi, you too, must assume that you are being recorded in any disciplinary meeting by your employees.

Conclusion

As you know “All Too Well,” even if you take all the necessary steps as outlined above the situation you may still be the “Anti-Hero” and should be prepared to defend your employment actions. Unfortunately, you cannot avoid all potential liability, but following the recommended resolutions may result in some positive “Karma” in the New Year.

Be sure to sign up for Fisher Phillips' Insight System to ensure you receive practical guidance directly to your inbox throughout 2024. If you have questions, contact your Fisher Phillips attorney or the authors of this Insight.

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