

# Navigating 2023's Employment Landscape: Legal Compliance and the Perils of Template Reuse

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So far, 2023 has proven to be a particularly active year in the employment space, with federal government agencies weighing in on a variety of issues. Of note, severance agreements have been a specific target of both the National Labor Relations Board (the "NLRB") and the Securities and Exchange Commission (the "SEC"). In the Spring, the NLRB issued guidance restricting the language of non-disparagement and confidentiality clauses and, more recently, the SEC began imposing penalties relating to the scope of "whistleblower" language contained in general releases. These are all provisions that are usually present in standard severance agreements and, as such, most severance agreement templates are impacted by these changes. With oversight coming from so many different directions, staying compliant can become a daunting task. However, compliance should be an essential part of every organization's risk management strategy.

In light of all these changes, the common practice of reusing form documents or templates has become especially dangerous. Recycling old templates that are not continuously updated to reflect changes in the law can become a costly liability to a company. This can be true even if the template is only a few months old. The employment space is heavily regulated on both the federal level and the state level, and changes are always taking place. As a best practice, checking in with employment counsel prior to: (i) using a form document; (ii) recycling or repurposing a document used for another employee, or (iii) using an internally drafted document, is a prudent choice.

A company should never assume that an agreement that was drafted for one employee's separation will provide adequate coverage for another employee's separation. In addition to changes in the law which may impact an existing document, there are several other items to be considered. Several factors can necessitate modifications to a template or another employee's document to ensure legal compliance, including:

- the age of the employee,
- the number of employees employed at the time of termination,
- the content of employment documents previously executed by the employee; and
- the state the employee provides services from can all result in the need for modifications to a template or to a document used for another employee in order to make it legally compliant.

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