



Rania's

Business Roundtable

Luxury Brands May Feel The Economic Pinch

Economic turmoil is prevalent globally.

We are amid two wars, high borrowing rates, inflation and stealth layoffs. While the wealthy have buoyed luxury sales, it is inevitable that luxury brands will need to make personnel cuts.



Rania Sealhorn

Luxury Layoffs

Some of my clients have all but decimated their marketing departments, finding that outsourcing marketing saves substantial amounts of money.

In February of this year, Neiman Marcus Group announced that it would cut 5 percent of its workforce.

Perhaps Neiman Marcus will not need to make further reductions. However, more layoffs across the luxury brands seems inevitable, as the light at the end of the poor economic tunnel is too far to see.

Making the cut

Customarily, when employees are laid off due to an economic downturn or, through no fault of their own, en masse, companies offer a severance payment to help the newly unemployed stabilize while searching for their next job.

Continued on Page 3

NYC EMPLOYER UPDATE: AI BIAS AUDITS

Max Singer

Employers have been employing algorithms and other digital tools to assist with employment decisions for some time, to mixed results. In the wake of revelations that some algorithms were producing disparate, discriminatory results based on historical data, NY legislators took action.

Continued on Page 2

Matthew Scott's Book Club: ONE MINUTE MANAGEMENT

This is the first of a three-part series on The New One Minute Manager by Ken Blanchard, Ph. D and Spencer Johnson, M.D. The second and third articles will appear in our December 2023 and January 2024 newsletters, respectively.

In **The New One Minute Manager**, Ken Blanchard and Spencer Johnson argue that effective management takes less time than we think. They offer three "secrets" to help managers set goals, motivate their team, and provide constructive feedback.

Continued on Page 2

THE WHITE HOUSE REINS IN AI

Alex Aufrichtig

On October 30, 2023, President Joe Biden issued the Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence. The new regulations aim to "support workers' ability to collectively bargain" by requiring the Department of Labor to develop "principles and best practices" regarding job displacement concerns, labor standards, and workplace equity, health, and safety.

For example, one area of the executive order's focus is AI bias. AI bias isn't necessarily the same as human discrimination. AI bias can simply be the culmination of reasonable preferences, introduced to the algorithm, that result in discrimination.

Continued on Page 2

THE WHITE HOUSE REINS IN AI

Continued from Page 1

Alex Aufrichtig

Such preferences can come from many places: they can be baked into the machine learning process by the developer; they can stem from the human beings that choose the data the algorithm uses; and they can stem from the system into which the AI is embedded. As a result, pinpointing what causes an AI's discrimination may be a more complicated factual inquiry than other forms of discrimination because of the vast culmination of preferences from different and potentially unrelated sources.

New York City has already introduced AI bias audit laws to combat inadvertent bias and so as other lawmakers continue to mold AI around pre-existing legal frameworks, it remains to be seen how legal compliance is achieved and who bears the burden of ensuring such compliance: the AI developer? Or those implementing AI into their operations? The executive order calls on HHS to build a plan for AI-enabled healthcare technology tools in order to promote safety, privacy, and security to protect patients' personal information. In the same vein, the executive order recognizes the importance of Americans' data privacy and calls on federal agencies to evaluate "the effectiveness of privacy-preserving techniques." Finally, the executive order calls on Congress to adopt privacy legislation but doesn't necessarily provide a framework to do so. With this in mind, it remains to be seen whether the executive order can impose increased data privacy requirements on AI companies.

ONE MINUTE MANAGEMENT

Matthew Scott's Book Club: Continued from Page 1



The first of those secrets is the "One Minute Goal." Managers should help their team members create goals that clearly outline what needs to be done and by when. The goals should be limited to one or two paragraphs and should focus on the employee's key responsibilities.

Employees should review their goals frequently and determine whether what they're doing matches their goals. If not, the employee must figure out how to get back on track (with the help of a manager, if necessary). By going through this exercise, team members will understand what their goals are and how to achieve them. In addition, employees will begin to manage themselves and eventually will need only periodic check-ins with their managers.

Next month, we'll discuss the second secret: the "One Minute Praising." Please let us know how your One Minute Goal sessions went by emailing us at info@bespokelawfirm.com!

NYC EMPLOYER UPDATE: AI BIAS AUDITS

Continued from Page 1

Max Singer

Who does this affect?

The new law affects jobs located in New York City, without regard for the location of the employer. In the case of remote work, the law will only apply to employees who are attached to an NYC company location.

Any computer-based tool that uses machine learning, statistical modeling, data analytics, or artificial intelligence to substantially assist or replace discretionary decision-making for employment decisions by employers or employment agencies are under NYC scrutiny. These tools are used for screening and interviewing applicants for employment or promotion, as well as for evaluating and scoring their aptitude or skills. Notably, the law clarifies that this only applies to programs which evaluate specific applicants or employees, and does not extend to the technology used for scanning resume databases or otherwise proactively seeking candidates.

What is the employer's obligation?

Under the new NYC law, affected employers must ensure that any technology utilized for the above purposes has been audited for racial and gender bias on an annual basis. The auditor may be the tool's vendor or an impartial third party, and there is currently no formal licensing for this role. Employers must advise candidates that technology will be used, publish a summary of, or link to, the tool's most recent bias audit on the employment section of their website, and must do so at least ten business days before its use.

Are you using machine learning and other technology in your hiring practices?

Luxury Brands May Feel The Economic Pinch

Continued from Page 1

Rania Sedhom



Luxury company employers have enjoyed the ability to include non-disparagement and confidentiality provisions in their severance agreements. However, those provisions are no longer permitted by law and, worse, the mere presence of those provisions subjects the employer to penalties.

In February 2023, the National Labor Relations Board, declared said provisions illegal in the McLaren Macomb decision.

Of importance is that the new restriction is retroactive. In other words, previous severance agreements that have the now impermissible provisions are subject to scrutiny.

So, what can and cannot brands include in severance agreements? Only narrowly tailored clauses are permitted.

For example, a severance agreement cannot include a blanket non-disparagement clause but can include a restriction related to maliciously false statements made with a reckless disregard to their truthfulness or falsity or are made with knowledge of their falsity.

In other words, defamatory statements are illegal, and, therefore, the severance agreement can restrict such declarations.

By the book

Similarly, a blanket confidentiality provision that usually includes the confidentiality of the agreement itself is now prohibited. Instead, luxury employers are limited to maintaining the confidentiality of their trade secrets and proprietary information if the period of the restriction is reasonable, and confidentiality is necessary for the brand.

While supervisors are exempt under the new law, there are instances where they may also be covered. Luxury brands should immediately review their current severance agreement provisions to determine what changes are necessary and should digest recently signed severance agreements to determine whether former employees have standing to sue or renegotiate.

This author anticipates that more employee-friendly laws will be enacted, affecting areas such as non-compete and non-solicitation.

Originally published in American Marketer.



Join your fellow entrepreneurs for a conversation about the issues facing small businesses today, with refreshments and legal advice provided by attorneys Rania Sedhom and Matthew Scott.

Roundtable Live!

In October, we discussed ESG Investments and fiduciary liability. Our conversation covered ESG investments in 401(k) plans and whether or not they should be included, as well as what liability fiduciaries may face when approving or disallowing ESG investments.



Space is limited for our next Roundtable on November 30th!
Email info@bespokelawfirm.com today to reserve your seat!