

Labor & Employment Law

Updates Impacting Hawaii Businesses in 2024





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Webinar Overview

1

National Labor Relations Board Decisions

Updates to the scope and applicability of Section 7

2

Pay Transparency Law, Act 203

Effective Jan. 1, 2024

Honorable Mentions:

- **Minimum Wage Increase**
to \$14/hr Jan. 1, 2024
- **Pregnant Workers Fairness Act (PWFA)**
 - Equal Employment Opportunity Commission (EEOC) is issuing final regulations by Dec. 29, 2023

Section 1

2023 NLRB Decisions

National Labor Relations Act Section 7

Employees (regardless of union status) **have a right to engage in “concerted activity” related to wages, hours or working conditions.**

Participating in a concerted refusal to work in unsafe conditions.

Circulating a petition asking for better hours.

Openly talking with co-workers about wages, benefits or other working conditions.

Joining with co-workers to talk to their employer, an agency or the media about problems in the workplace.



NLRB Decision: Miller Plastic Products, Aug. 2023

What this means for employers:

- Broadened definition of concerted activity.
- Weigh employment decisions more carefully, considering any potential concerted activity.
- ProService Partners, if you're unsure, reach out to your HR consultant.

Background:

An employee raised concerns about employer's COVID-19 protocols. Employee was terminated two weeks later for poor attitude, talking, and lack of profit.

Holding:

Employer interfered with employee's Section 7 rights by discharging employee.

Legal Change:

- Overrules precedent setting forth a checklist approach for determining whether an activity is a concerted activity.
- Reinstates totality of circumstances test.

NLRB Decision: Stericycle, Aug. 2023

What this means for employers:

- Review company handbook for overbroad policies.
- To our ProService partners, we've updated our handbooks for you!

Background:

Whether employer's work rules that (a) required workers to keep harassment complaints confidential, and (b) prohibited conduct harmful to the company's reputation or integrity, chilled 'protected, concerted activity' and therefore were unlawful.

Holding:

Administrative Law Judge required to evaluate lawfulness of the employer's work rules under the NLRB's new standard.

Legal Change:

- If an employee could reasonably interpret the work rule to be coercive, the rule presumptively violates the NLRA
- Employers may rebut by showing that:
 - 1) The policy advances a legitimate and substantial business interest, AND
 - 2) that interest cannot be advanced with a more narrowly tailored rule

NLRB Decision: Lion Elastomers II, May 2023

What this means for employers:

- Before taking disciplinary action, consider potential for protected concerted activity.
- Continue to train employees and managers on workplace harassment to promote “best practices.”

Background:

Whether employer violated the NLRA for threatening to discharge an employee for voicing concerns during a safety meeting and later discharging the employee for engaging in union conduct.

Holding:

Employer violated employee’s Section 7 rights.

Legal Change:

- Reinstates 3 setting specific standards to analyze lawfulness of employee discipline:
 - 1) Outbursts to management
 - 2) Social media posts & employee conversations
 - 3) Picket line conduct

Takeaways from NLRB Decisions

- Take a conservative approach to all discipline and employment decisions
- Take advantage of training opportunities through ProService
- Consult ProService on best practices to manage risk

A photograph of two women sitting at a wooden desk in an office setting. The woman on the left has white hair and is wearing a dark blue denim shirt. The woman on the right has dark hair and is wearing glasses and a dark jacket over a turtleneck. They are both looking at a document held by the woman on the right. A laptop is open on the desk in front of them. The background is a blurred office space with large windows and plants.

Section 2

Pay Transparency

Pay Transparency (Act 203)

Effective January 1, 2024



Disclosure Requirement

Employers are required to disclose the hourly rate or salary range in external job postings.

Must “reasonably reflect the actual expected compensation.”

Does not apply to:

- Employers with less than 50 employees
- Internal transfers or promotions
- Public positions when compensation determined by collective bargaining agreement*

Existing Equal Pay Law

Prohibits pay
discrimination
based on **sex**

Requires equal pay for
equal work

Expansion Under New Pay Transparency Law

Prohibits pay
discrimination based on
any protected class

Requires equal pay for
substantially similar work

This expansion of the Equal Pay Law
applies to all employers regardless of size.

1 Determine Pay Ranges

- Identify market rate for the role.
- Decide whether to meet, lead, lag the market for the role.
- Determine range while avoiding wage compression.
- Use compensable factors to differentiate between the lower and higher rates of pay within the determined range.

*Keep in mind: Minimum Wage increase to \$14/hour effective Jan. 1, 2024

2 Calibrate Pay for Existing Employees

- Analyze pay for individuals currently in those role.
- Evaluate individuals whose wages are below the determined edge and correct.

*Keep in mind: Minimum Wage increase to \$14/hour effective Jan. 1, 2024

3

Prepare People Leaders for Difficult Conversations

Pay Transparency is NOT:

- ✗ Paying everyone the exact same amount.
- ✗ Posting the range for every role internally if the position isn't available/being recruited on.
- ✗ Sharing individual compensation amounts for each employee.

Pay Transparency is:

- ✓ Posting reasonable ranges in job postings and advertisements.

However, your employees are free to share amongst themselves.

3

Prepare People Leaders for Difficult Conversations

Anticipate anyone who may be upset by seeing salary ranges posted and consider how to address.

Employee notices they are paid at the **bottom end of the posted salary range** for the same position.

Employee finds out they are paid **less than another employee** for the same position.

Employee notices their position is paid **less than a similar position** at another company.

Q&A



Client Resources

If you're a ProServie client,
proservice.com/training
proservice.com/employer-resources

Helpful Links:

[Pay Transparency Blog Post](#)

[Pay Transparency 1-sheet](#)

[Guide to Employee Compensation](#)

[Pay Transparency ProTip Video](#)