

Media Mention: Grant Osborne Discusses Employment Issues with 'Architect' Magazine

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As the COVID-19 pandemic continues, many industries across different sectors are being forced to make some tough decisions to stay afloat.

Architect magazine, the official journal of the American Institute of Architects, recently published an online article for employers and employees now facing pay cuts,

furloughs, or layoffs. Labor and employment attorney Grant Osborne was asked to share his legal insights with the publication to address some of these issues caused by the ongoing crisis.

This article highlights a few key takeaways, but we strongly recommend reading the full article [here](#).

Communication and Documentation

“Many employers are ambiguous and careless when communicating with and conveying expectations to employees,” says Grant Osborne, an Asheville, N.C.-based attorney at the law firm Ward and Smith. “Poor communication or miscommunication can account for an awful lot of legal disputes. Clear communication can avoid an awful lot of legal disputes.”

Less Work, Less Pay

However, the law in many states does not require an employer to explain why they’re implementing pay cuts, Osborne says. The employer can also change the terms, conditions, and compensation of any at-will employee prospectively. An at-will employee is someone who is “employed at the will and pleasure of the employer,” Osborne explains, and “has been provided with no promise of employment for a definite term.” Also key is the word “prospectively,” meaning “with respect to work done from now forward as opposed to work done in the past,” Osborne continues. Employers attempting to retroactively lower their workers’ pay for work already performed had better check beforehand what the law says in their jurisdiction: That is, it’s probably illegal.

Two exceptions can restrict an employer’s ability to single-handedly change an employee’s pay. First, when the employer and employee have a contract that “prescribes compensation that limits the right of the employer to change compensation,” Osborne says. Second, when “a written personnel policy or an unwritten personnel practice prescribes limits on changes that employers

may make to compensation.” These exceptions will generally not apply to a typical worker outside the C-suite, Osborne adds, because employers avoid making them: “Such contracts limit the right of the employers to treat the employment as they want.”

Same Work, Less Pay

Absent an employment contract or personnel policy as described above, an employer likely can change the wage of an at-will employee while expecting the same amount of work going forward. “If the employer wants to change the rate of compensation of an employee,” Osborne says, “the employer is free to do that and leave the employee’s job duties intact, make them greater, or diminish them.”

Employers’ Rights

Depending on state law, employers may not be obligated to tell an employee why they’re being laid off, and they can do so with little or no notice, Osborne says. But he recommends against that. “Even though it’s lawful for the employer to discharge or ... fire an employee at-will for [whatever or no] reason, there are a lot of unlawful reasons why employers discharge employees.”

Employee Rights

If an employee is not initially offered or entitled to a severance package, they can still request one. “It’s not uncommon for an employer and employee to engage in a settlement and release agreement providing for severance pay, the result of which the employer and the employee get something in the agreement,” Osborne says.

Grant's practice experience of more than 30 years encompasses a wide range of issues that arise in employment and labor law. He provides counsel to clients in the health care, financial, hospitality, construction, business services, employee staffing, and non-profit sectors. Grant is a member of Ward and Smith's COVID-19 Response Team and has written extensively about issues affecting employers and employees during the pandemic. Visit our [COVID-19 Resources page](#) for more in-depth articles.