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SUMMER 2024

# Super Mario: Working With Your Employment Lawyer to “Power Up” Workforce Compliance and Lower Legal Risk



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Mario Bordogna is a partner at Bowles Rice and a member of the firm’s Labor and Employment team. Mario takes pride in helping employers tackle compliance challenges with hiring, firing, accommodations, leave issues, severance, employment handbooks, and policy development. In his litigation practice, he has significant experience in state and federal court and arbitration, defending individual and class claims as well as administrative charges. His experience in traditional labor law and labor-management relations includes first chairing collective bargaining, leading arbitrations and the defense of grievances, working on union avoidance, and managing unfair labor practice and related NLRB matters. Mario is also a certified mediator.

As a labor and employment attorney, I talk with human resource professionals on a consistent basis in my practice. Some I work with more regularly than others, depending on the client relationship and the needs of the operation. But whether we talk a lot or a little, I have learned over the years that an organization with a better track record of staying out of trouble tends to be one where there is a strong legal relationship between the organization/HR and its attorney. So, if you want to “power up” your connection with your company’s labor and employment attorney, with an eye

as well. Said another way, we are also good problem solvers for your business!

Most legal problems that involve your human capital require some form of practical, real-world evaluation. Don’t limit your questions to your labor and employment attorney to those which simply ask, “is this legal?” Instead, inquire with your attorney about what day-to-day impact a decision will have on the business and operation. Will this harm our retention efforts? Will all of our employees find this policy fair?

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towards better compliance and less legal risk, here are some “items” to look for (as someone who shares a first name with one of the most iconic video game characters ever, I may be partial to dropping a Mario Bros. reference or two from time to time!).

## **The Fire Flower**

To begin with, it’s important to remember that while your labor and employment attorney’s specialty is probably providing sound legal advice, either to help minimize risk or get you out of a legal jam, your lawyer is probably good at throwing fireballs full of practical guidance

These types of considerations may not be primary in each and every instance, but they tend to be more important than you may first realize while trying to eradicate the enemies of your workforce. Your labor and employment attorney can often help you craft a solution which is both legally compliant and practically helpful at the same time.

## **The Star**

Of course, labor and employment attorneys are often keenly skilled at laying out for you the pros and cons of day-to-day personnel choices. If you forego getting the medical information



before denying that request for reasonable accommodation, you avoid the complexity that a treating doctor may create in dealing with the situation but, at the same time, increase the risk of an ADA claim. If you don't get the employee's side of the story about that incident, you may be able to put this problem to bed quicker and fire the employee sooner, but your termination decision may be on weaker ground.

But what if you know how you prefer to handle something, but aren't certain if that holds legal water? Labor and employment attorneys can be especially adept at crafting a solution which can work 'backwards' to try and meet your personnel goals in a particular situation. Of course, in the end, the risk is the organization's to bear, and there will likely be a sliding scale of risk which goes along with different approaches to a situation, but we can frequently take a desired outcome and help construct a safer approach to handling it than you might have anticipated at the outset. Rely on your labor and employment counsel to help you overcome through these workforce obstacles in a pinch like you are shielded with star power!

### The Propeller

Finally, remember to partner together with your labor and employment lawyer on ways to avoid workplace conflict in the first place. This means sitting down with counsel and asking what you can do differently or outside of your policy to prevent

harassment claims. Armed with a notebook of issues you've had to deal with over the last year, ask your attorney to review your handbook for trouble spots every fall or winter. Explore whether a wage-and-hour audit of your pay practices is a wise idea. Basically, put on that propeller and rise up above the clouds to look down on your enemies, and do a 360-workplace review of where your trouble spots are from up in the sky with your attorney's help.

It goes without saying that having your labor and employment attorney help tackle trouble spots early, before they blossom into Goombas entering your life, is the best strategy. Sometimes it can be difficult to carve out time for this with all the day-to-day issues HR has to handle, but I can tell you that there's no better adage here than "an ounce of prevention is worth a pound of cure." A few hundred or a few thousand dollars up front is worth its weight in gold if it helps you avoid that \$200,000 employment lawsuit later. Rather than have to identify all of the trouble spots on your own, your counsel can work with you to brainstorm – and even prioritize – the ones which need attention, and can do so in advance of something bad happening.

Armed with these tips – and a stronger working relationship with your employment attorney – you're *now* ready to take on and defeat Bowser! **V**