

welcome

The Firm is proud to welcome John T. Moran, III, as partner with the Firm. His practice focuses on government affairs, legislation, and regulatory projects, and he represents clients with gaming matters in the United States and other international jurisdictions. John's experience encompasses the gaming industry, from gaming operations to regulatory matters. His practice includes those related to land-based gaming, internet gaming, and the manufacture and distribution of gaming equipment.

John represents private and government clients before various State and local government agencies, including the Nevada Legislature, city councils, county commissions, State Gaming Agencies, and various other political subdivisions, including lobbying and administrative hearings. ■



Congratulations

The Firm congratulates Joseph W. Brown, of counsel with the Firm, who was honored as a recipient of the 2024 Distinguished Nevadan award by the Nevada System of Higher Education Board of Regents. The award is the most prestigious award conferred by the Board. It is bestowed upon prominent individuals who have made significant achievements that have contributed to the cultural, economic, scientific or social advancement of Nevada and its people; or for exceptional service to the state or nation that has influenced constructively the well-being of humankind.

Among Joe's impressive accomplishments: Joe developed the Keystone Corporation to preserve free-market principles and economic prosperity for the State of Nevada. Joe is a former appointee of President Ronald Reagan to the State Justice Institute and The Foreign Claims Settlement Commission of the United States. He has served as chairman or director of many business, civic, and charitable organizations, including the Nature Conservancy, the Department of Wildlife, the Nevada Development Authority, the Nevada Athletic Commission, Nellis (AFB) Support Team, the Catholic Community Services Board, Bank of America, Wells Fargo, and the founder of the Nevada Military Support Alliance. Joe is the only person in Nevada history who has been appointed to all three of the following commissions: Fish and Game (Wildlife Commission), Athletic Commission, and Gaming Commission. ■



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John T. Moran, III

Congratulations,
Joseph W. Brown

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Legal Matters

WINTER 2025

EMPLOYERS: TAKE NOTE OF 'FAILURE TO REHIRE' CLAIMS

It's common for employers to furlough workers or temporarily lay them off during recessions, government shut-downs, and other periods when there's not enough demand for goods or services to keep all their employees on the payroll. This often happens with the expectation that employees will return to work once the economy picks up again.

If your business needs to let people go for the time being, but expects they'll ultimately be brought back, you should consult with an employment attorney to go over your plans and policies. Because if you decide not to bring back certain workers and you do so for non-neutral reasons, your company could be vulnerable to a "failure to rehire" suit.

This doesn't mean you have to bring back bad employees. But tread carefully when deciding not to rehire those you consider "troublemakers" who complain a lot or question the boss. They may be engaging in legally protected activity.

Take, for example, the worker who's inconvenienced you with requests to take leave under the federal Family and Medical Leave Act (FMLA) to deal with a temporary health condition or a sick relative. Or the person who complained that you calculated their hours in a way that left them just short under state or federal minimum wage or overtime laws. And perhaps you got annoyed by the employee who pointed out safety hazards in the workplace or filed a workers' comp claim for what you thought was a minor injury.

If any of these individuals have evidence that such conduct played a role in your decision not to bring them back, they potentially could claim you were discriminating against them and you would be facing a costly lawsuit under state or federal wage and anti-discrimination statutes. Many of these statutes double or triple the employees' damages and enable them to collect attorneys' fees if they win.

What's more, a recent Massachusetts case indicates that an employer can face failure-



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to-rehire liability for conduct that occurs after the employee has been terminated and when they haven't even applied for a newly open position.

In that case, Thomas Cafarella worked at the Massachusetts Institute of Technology for 14 years before his position was eliminated for economic reasons. Less than a month later, MIT posted an opening for a position similar to his former job, but he claims a manager said he wasn't well-suited, so he didn't apply.

A former colleague soon told him of another job he was qualified for that was about to be posted, but MIT filled the job without ever posting it.

In a failure-to-rehire suit, Cafarella claimed MIT refused to rehire him because he had filed a wage violation claim and complained about age discrimination after he was terminated.

While MIT argued that higher courts had ruled previously that an aggrieved worker actually needs to have applied for the jobs they were allegedly denied in order to bring such a claim, a U.S. District Court judge decided otherwise.

The judge ruled that Cafarella had presented enough evidence to go to trial on a charge that MIT altered its usual practice of posting job openings publicly before filling them once it heard he was interested in being rehired. Now MIT faces significant costs.

The lesson? Talk to an employment attorney when making decisions like this so that you don't walk into a similar trap. ■



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