

THE LATEST FROM



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**The Work Week
with Bassford Remele**

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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

[Bassford Remele Employment Practice Group](#)

What ESG Means for Employers

Did your workplace honor Earth Day last week with new sustainability initiatives? If so, it may be implementing ESG measures.

Companies are increasingly adding ESG policies and incorporating ESG into business practices. ESG stands for Environmental, Social, and Governance, which is a framework that prioritizes a company's performance related to the environment, social relationships, and the organization itself. This can include sustainability efforts both for products and employee behavior, diversity, equity, and inclusion (DEI) initiatives, and certain disclosure requirements to increase transparency within the organization.

As ESG continues to gain momentum, states are enacting specific laws either for or against ESG policies. Some states have passed, or are considering, laws that would require a quota for publicly traded companies to include women on their boards of directors. The SEC has also alluded to paying increased attention to ESG matters. Last year, the U.S. Department of Labor promulgated a rule explicitly allowing fiduciaries of employee retirement plans regulated by ERISA to consider ESG factors in investment decision making and exercising shareholder rights. In March 2023, President Biden vetoed a bill aiming to reverse that rule as it drew criticism from some lawmakers.

Apart from these legislative initiatives, employers are increasingly seeking to integrate ESG measures to attract and retain talent, customers, and investors. ESG can be particularly attractive to younger candidates, who seek diversity in the workplace and socially conscious employers. In some instances, it is the employees driving companies to establish ESG policies and practices, particularly in response to social movements such as Black Lives Matter and #metoo.

But while ESG policies can benefit employers, they are also ripe for risk and compliance issues. For example, these initiatives often require more disclosures and accountability on behalf of organizations, such as workforce metrics on DEI and employee turnover. ESG programs frequently address DEI, pay transparency, whistleblowing, and workplace health and safety, which all have employment-law implications. DEI initiatives aiming to hire and retain diverse employees at all levels of the organization are increasingly popular. Tracking diversity, both existing and desired, together with pay transparency can create numerous employment-law issues if the metrics reveal disparities between protected classes. The legal risks related to ESG are continuing to unfold.

For these reasons, employers should consider the employment-law repercussions before simply implementing any new ESG measures or adopting new policies. Should your workforce begin organizing a campaign around ESG initiatives, it is also beneficial to consult with counsel on appropriate responses. Finally, beyond the policies themselves, the communication of ESG initiatives to employees is critical, both in terms of setting the initiative up for success and in mitigating risk.

At Bassford Remele, we are well-versed in counseling clients to avoid the risks associated with ESG measures. Our attorneys are available to handle any questions you have to ensure you are reaching your ESG goals while avoiding the common pitfalls.

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