

COLUMNS

Luxury brands may feel the economic pinch: new severance agreement laws to follow now

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By **Rania V. Sedhom**

Economic turmoil is prevalent globally.

We are amid two wars, high borrowing rates, inflation and stealth layoffs. While the wealthy have buoyed luxury sales, it is inevitable that luxury brands will need to make personnel cuts.

Luxury layoffs

Some of my clients have all but decimated their marketing departments, finding that outsourcing marketing saves substantial amounts of money.

In February of this year, Neiman Marcus Group announced that it would cut 5 percent of its workforce.

Perhaps Neiman Marcus will not need to make further reductions. However, more layoffs across the luxury brands seems inevitable, as the light at the end of the poor economic tunnel is too far to see.

Making the cut

Customarily, when employees are laid off due to an economic downturn or, through no fault of their own, en masse, companies offer a severance payment to help the newly unemployed stabilize while searching for their next job.

Luxury company employers have enjoyed the ability to include non-disparagement and confidentiality provisions in their severance agreements. However, those provisions are no longer permitted by law and, worse, the mere presence of those provisions subjects the employer to penalties.

In February 2023, the National Labor Relations Board, declared said provisions illegal in the McLaren Macomb decision.

Of importance is that the new restriction is retroactive. In other words, previous severance agreements that have the now impermissible provisions are subject to scrutiny.



In February of this year, Neiman Marcus Group announced that it would cut 5 percent of its workforce. Image courtesy of Neiman Marcus Group

So, what can and cannot brands include in severance agreements? Only narrowly tailored clauses are permitted.

For example, a severance agreement cannot include a blanket non-disparagement clause but can include a restriction related to maliciously false statements made with a reckless disregard to their truthfulness or falsity or are made with knowledge of their falsity.

In other words, defamatory statements are illegal, and, therefore, the severance agreement can restrict such declarations.

By the book

Similarly, a blanket confidentiality provision that usually includes the confidentiality of the agreement itself is now prohibited. Instead, luxury employers are limited to maintaining the confidentiality of their trade secrets and proprietary information if the period of the restriction is reasonable, and confidentiality is necessary for the brand.

While supervisors are exempt under the new law, there are instances where they may also be covered.

Luxury brands should immediately review their current severance agreement provisions to determine what changes are necessary and should digest recently signed severance agreements to determine whether former employees have standing to sue or renegotiate.

This author anticipates that more employee-friendly laws will be enacted, affecting areas such as non-compete and non-solicitation.

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