

April 2023

Improving the quality of new hires:

49 best interview questions to check for culture fit

How to disagree with your
boss – and still have a good
relationship **15**

Employee: 'Anti-bias training
clashes with my religious
beliefs' **17**

How to conduct an employee
performance review: A 5-step
guide **20**







April 2023

In This Month's Issue




News You Can Use

New AI discrimination suit uncovers learning curve: 3 key lessons for HR.....	3
No more new normal: Buzzwords employees can't stand	4
How the Perk-cession will affect HR — and 5 ways to respond now	5
Don't mess with HR: Company pays \$460K to settle age bias lawsuit	6
What did the EEOC sue most for in FY 2022 – and why does it matter?	7

Articles

 49 best interview questions to check for culture fit	11
 How to disagree with your boss – and still have a good relationship	15
 Employee: 'Anti-bias training clashes with my religious beliefs'	17
 How to conduct an employee performance review: A 5-step guide.....	20

Insider Content

 You Be The Judge Manager investigated sexual harassment claim, why was she demoted?	9
 HR Case Study Shift to a nonlinear workday increased productivity, boosted meaning.....	14
 Cost of NonCompliance Clause in separation agreement leads to \$35M civil penalty.....	19

News You Can Use

HR Stories You Might Have Missed

New AI discrimination suit uncovers learning curve: 3 key lessons for HR

March 3, 2023

HR has embraced artificial intelligence (AI) across most major functions, according to Eightfold AI's annual Talent Survey. For example, 73% of HR leaders reported that they used AI "to some extent" during the recruiting and hiring process.

But AI, like most new tools, also comes with a learning curve, as a new lawsuit shows.

Applicant files AI discrimination lawsuit

The complaint against Workday alleges the platform's AI systems and screening tools discriminate against applicants based on race, age and disability. (As an FYI, Workday is a popular HCM platform used by many companies.)

Plaintiff Derek Mobley is a Black man who is over the age of 40 and suffers from anxiety and depression.

According to his complaint, Mobley has "applied for at least 80-100 positions" since 2018 at companies that used Workday as a screening tool during the hiring process. He claims he was "denied employment each and every time."

He further alleges he was not hired due to "systemic discrimination" in the screening process and that Workday's AI has a disparate impact on applicants who are Black, over the age of 40 and/or disabled.

The suit alleges Workday's AI components discriminate against applicants based on:

- Race in violation of Title VII
- Age in violation of the Age Discrimination in Employment Act, and
- Disability in violation of the ADA Amendments Act of 2008.

The complaint seeks class-action status, proposing to represent applicants in each of the protected classes (i.e., applicants who are Black, over the age of 40 and/or have a disability) that applied for jobs at companies using Workday as part of the hiring process, but were not hired from June 3, 2019 to the present.

The suit also seeks back pay, front pay, damages and attorneys' fees.

Mobley v. Workday, Inc., No. 23-cv-00770 (N.D. Cal. filed 2/21/23).

AI in the workplace

The use of AI in the workplace isn't an inherently bad thing. In addition to using AI in hiring and recruiting, companies can also:

- use AI data to measure productivity, increase efficiency and streamline decision-making, and
- point to AI tools to help defend business decisions in court.

Learning curve: 3 lessons from EEOC hearing

And even though more companies are jumping on the AI bandwagon and recognizing its potential, we're still learning how to use AI effectively.

For example, earlier this year, the EEOC held a public hearing focusing on the benefits and risks of using AI in employment decisions. Experts discussed ways to reduce AI-based discrimination, such as:

- removing questions that ask for data about protected classes
- conducting regular audits on algorithms, and
- allowing candidates to opt out of AI-based screening methods.

And last spring, the EEOC and the DOJ released guidance to help employers use AI tools in ways that comply with the ADA.

As an FYI, the EEOC enforces disability discrimination for employers in the private sector as well as federal employers. The DOJ enforces disability discrimination laws with respect to state and local government employees. Despite the distinction between the agencies, both guidance documents contain solid info.

For example, the EEOC guidance recommends that employers have a process in place to provide reasonable accommodations when using AI-based decision-making tools and warns that without such protections, workers with disabilities may be "screened out" of consideration for a job or promotion.

that they could perform, either with or without reasonable accommodation.

And the DOJ guidance provides a reminder that AI screening technology must “evaluate job skills, not disabilities.” It also warns that employers are not permitted to seek medical or disability-related information or conduct medical exams through the use of AI hiring tools.

[Read this article online](#) 

No more new normal: Buzzwords employees can’t stand

March 3, 2023

We’re all guilty of using buzzwords and corporate jargon from time to time. Whether it’s to “circle back” to a task or “touch base” with a colleague, overused phrases are just part of the norm in the corporate world.

But within the past few years, it seems like there’s a new buzzword every month, from rage quitting to quiet hiring to quick quitting. It’s gotten to a point where corporate jargon is so common that it’s become an annoyance for many, according to new research from Preply.

The jargon employees find the most annoying

As annoying as corporate jargon may be to some, it’s become so normal that over half (58%) of respondents said they use corporate slang like FYI, “at the end of the day” and win-win in their daily life.

The study found that corporate workers were most likely to hear jargon and buzzwords in emails and in person. The top five most-used words were:

1. FYI
2. At the end of the day
3. Win-win
4. Touch base, and
5. Think outside the box.

Other highly-used phrases included “ping you,” popularized by messaging apps like Slack and Teams, and “hop on a call.”

The phrase “circle back” was the eighth most-used, but was also the phrase that annoyed respondents the most, followed by “work hard, play hard” and “boots on the ground.” Synergy, “put a pin in it” and “reinvent the wheel” were also ranked as some of the most annoying.

Not all phrases were considered annoying, according to the study. Some of the least annoying jargon includes:

1. Sync
2. Pushback
3. Pipeline
4. Level set
5. Have in back pocket

Buzzwords that turn off job candidates

More than half (55%) view buzzwords in job postings negatively, with 33% saying it makes them hesitant to apply and 22% saying they see it as a red flag. A mere 2% said that it makes the job more appealing.

Words in job postings that Americans found the most annoying were:

1. Like a family
2. Fast-paced environment
3. Rockstar
4. Ninja
5. Hustle

However, job candidates regarded some words in job postings positively, like:

1. Passionate
2. Core competency
3. Proven track record
4. Hit the ground running
5. Results-oriented

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How the Perk-cession will affect HR — and 5 ways to respond now

March 13, 2023

Sharpen your pencils, HR: The Perk-cession is here and you'll likely have to rethink benefits to attract and engage employees.

So why are companies pulling back on perks — creating this so-called Perk-cession?

For one, employees don't want to be in the office, so they aren't interested in pool tables, free dry cleaning and barista-style coffees that once fed their need to be appreciated. Secondly, the economy has tanked and many companies are cutting back. The extras have to go.

Perk-cession perfect example

Perks were so powerful in recruiting employees, some large organizations such as Google created videos to walk potential employees through them. Many companies one-upped each other with over-the-top perks to attract talent. More recently, the financial industry threw in perks such as free transportation to and from work to get people back in the office.

Now, it's receding.

Google gives the perfect example of Perk-cession: The tech giant offered free food all day, fitness programs, spa treatments, nap pods and personal budgets for technology — all meant to keep employees on site as long as possible. Then, their CEO announced a reduction in workforce of 12,000 roles early this year. But they had already rolled back perks as employees didn't come on-site and business didn't expand.

Perk-cession in the making

Now, think about it: Have you dropped a benefit or perk in the last two years that were once used to entice job candidates and retain employees? You have, haven't you?!

What was cool before the pandemic isn't so cool now.

Although it's been more gradual than we might think, a Perk-cession — just like any recession and its cousin skimpflation — has been in the making.

But just because companies can't — or don't want to — offer employees over-the-top perks, doesn't mean you have to stop making your organization a great place to work.

"It's no time for employers to back off from supporting their workforce, even as they seek

to cut back on perks," says Jan Bruce, CEO and co-founder, meQuiibrium.

The good news: Employees and job candidates don't necessarily need an in-house masseuse and open taps to want to work for you.

What employees really want

Employees' true needs have evolved — but free meals and yoga aren't the answer.

"Some of these 'feel good office perks' grew too quickly and employers are taking a more strategic approach to total rewards moving from creating 'office perks' to delivering value-based employee benefits," says Jeanne Meister, Executive VP of Executive Networks. "These focus on enhancing a worker's holistic well-being, including their physical well-being, emotional well-being, financial well-being, social well-being and career well-being."

Here's a closer look at each:

1. Physical well-being

"It is our experience that employers are not cutting back on their well-being programs as they recognize the critical importance to their business and their ability to manage change in a disruptive environment," Bruce says.

And that starts with adequate health insurance. Everyone knows the costs are rising, but helping employees meet the rising costs, while maintaining and improving their health, is a perk that will never go out of style.

If you don't already have them, try to add HSAs or FSAs to your plan to help employees better manage their health care costs.

2. Emotional well-being

The pandemic sparked a grater awareness of mental and emotional well-being. While employees have called for more balance to maintain well-being, many companies have normalized conversations around mental wellness and self-care.

"(Our) research across our global member base has shown that across six key indicators of well-being, employees who feel strongly supported by their employer have broadly better well-being outcomes than those who do not feel strongly supported," Bruce says. "Well-supported employees are more positive, have better work-life balance, are less burned-out, bear lower job stress, are more motivated and are half as likely to turn over. Employees who enjoy

strong manager support for their mental well-being are 33% less likely to suffer burnout.”

Continue to promote and normalize mental well-being in the workplace.

3. Financial well-being

“Value-based benefits are growing and include student loan repayment assistance, assistance for childcare and aging parents, increased access to mental health benefits for the worker and their loved ones, financial literacy training and investment in employer funded skills-based training and certifications,” says Meister.

One trend catching speed: A transition from tuition reimbursement policies to upfront funding for employee education. That means employees don’t take on debt for a learning program. Many employers create longer-term contracts so the degreed employees stay with the organization and possibly take on bigger roles.

4. Social well-being

Every employee will have a different need for social well-being. But for the most part, they’ll want to build and maintain healthy relationships and have meaningful relationships with those they work with every day.

Try to give employees the tools and opportunities to drive engagement through a robust Employee Resource Group (ERG) program.

5. Career well-being

As the labor market shifts, you’ll want to offer perks that keep employees engaged and growing professionally within your organization. And it’s easier than ever as more training and resources are available online, on-demand and in-person again.

“According to Executive Networks’ 2023 The Future of Learning and Working report we found 76% of knowledge workers and 77% of frontline workers believe an employer’s commitment to providing access to employer funded training should be used as an attraction and retention tool,” Meister says.

To recruit and retain, you might include a learning, development and training budget for employees to use as they please.

“The movement toward value-based employee benefits will ultimately have a favorable impact

on employee engagement. Increasingly, workers are concerned about their future and expect their employer to prepare them for their current job and their next career opportunity,” says Meister.

[Read this article online](#)

Don’t mess with HR: Company pays \$460K to settle age bias lawsuit

March 13, 2023

An HR director received a six-figure settlement to settle her age discrimination claim. Here’s what happened:

An overseas company hired a new president to run a location in the state of Georgia. Things quickly turned problematic, the HR director said, when the company planned to implement changes that violated federal law.

And when the HR director tried to explain how anti-discrimination laws worked in the U.S., she was fired.

HR director explains age discrimination — to no avail

In 2019, Fischer Connectors, Inc., a Swiss-based national manufacturer of circular connectors used in medical devices, hired a new president for its location in the state of Georgia.

The new president and the company then made plans to “eliminate all older management and sales employees” and replace them with younger workers “under the guise of job eliminations,” an EEOC lawsuit later alleged.

The HR director, a 67-year-old, said she witnessed the company “repeatedly turning down qualified older employees in favor of less-qualified, younger employees and forcing out all older upper-management employees.”

The HR director said she tried to explain the company’s legal obligations under the federal Age Discrimination in Employment Act (ADEA), but her message was not well received. Moreover, when she refused to “participate” in the company’s actions, she was “fired and replaced by two significantly younger individuals,” she said.

She filed an age discrimination complaint with the EEOC, and the agency sued on her behalf.

The company agreed to pay \$460,000 to the former HR director to settle the dispute. It also agreed to:

- Train all of its U.S. employees and managers on the Age Discrimination in Employment Act (ADEA).
- Distribute its ADEA policies to all employees.
- Post a notice about federal anti-discrimination laws and employee rights in the workplace.
- Submit to EEOC monitoring on how it handles future ADEA discrimination complaints.

Info: Company to Pay \$460K to Settle Age Discrimination Suit, 2/28/23.

[Read this article online](#) 

What did the EEOC sue most for in FY 2022 – and why does it matter?

March 14, 2023

A new report released by the federal Equal Employment Opportunity Commission (EEOC) shows where the agency focused its litigation enforcement efforts for federal employment laws in fiscal year (FY) 2022.

The report describes litigation enforcement activities and lists amounts the agency recovered under various federal statutes.

The agency filed 91 merits suits in FY 2022, which include direct suits, interventions and suits to enforce prior settlements.

More than two-thirds (68.1%) of all suits filed included claims filed under Title VII, the report shows.

Title VII is the federal law that bans discrimination based on race, color, religion, sex and national origin.

Other suits included claims under the Americans with Disabilities Act (ADA) (nearly 30%), the Age Discrimination in Employment Act (7.7%) and the Equal Pay Act (6.6%). Some suits included claims under more than one statute.

Sex discrimination at the fore

The EEOC focused many of its Title VII suits on sex discrimination, raising that allegation in nearly half of all the suits it filed.

The 91 merits suits filed in FY 2022 is the lowest number of suits filed in any fiscal year between 2013 and 2022. The low number coincides with a precipitous drop in litigation support funding, which went from \$3.72 million in FY 2021 to \$2.60 million in FY 2022.

Nearly all suits resolved in FY 2022 – slightly more than nine out of 10 – were settled via entry of a consent decree, the report says.

Types of suits filed by EEOC

Sex discrimination was easily the most commonly alleged basis for suits, appearing in 49.5% of all suits filed.

- Other bases for suits included:
- Retaliation (35.2%)
- Disability discrimination (29.7%)
- Race discrimination (18.7%)
- Equal pay violations (6.6%)
- National origin discrimination (6.6%)
- Age discrimination (6.6%), and
- Color discrimination (1.1%).

The most commonly alleged issue presented in the EEOC-filed suits was wrongful discharge, which was asserted in nearly 64% of suits. That was followed most closely by harassment (42.8%), discrimination in hiring (23.1%) and disability accommodation (16.5%).

Less commonly asserted allegations related to terms and conditions of employment (15.4%), wages (9.9%), discipline (4.4%), assignment (3.3%), religious accommodation (3.3%), recordkeeping violations (2.2%) and prohibited medical inquiries or examinations (1.1%).

In sex discrimination, religious discrimination, disability discrimination and retaliation cases, wrongful discharge was the most common assertion. In race discrimination and national origin cases, it was harassment. And in age discrimination cases, it was an alleged wrongful refusal to hire.

Suit resolutions

The agency resolved 96 merits lawsuits in FY 2022, recovering a total of nearly \$40 million for 1,461 people.

Of those resolutions, 91.7% were reached by consent decree.

And of the 96 total resolutions, only five were unfavorable court orders, according to the report.

Almost all – 87– of the resolved suits included claims filed under Title VII or the ADA.

But Title VII again dominated when it came to the percentage of total monetary relief recovered, accounting for \$34 million (85.7%).

That was followed by \$4 million for the ADA and \$700,000 for the Age Discrimination in Employment Act.

Systemic suits, systemic relief

Of the cases filed in FY 2022, 13 were systemic lawsuits.

The agency defines systemic cases as “pattern or practice, policy and/or class cases where the discrimination has a broad impact on an industry, profession, company or geographic location.”

The report says 10 systemic suits were resolved in FY 2022, producing more than \$28 million for about 1,300 people.

It adds that another 25 suits filed in FY 2022, though not systemic, sought relief for multiple individuals.

What to do now

If the past is prologue, Title VII will continue to be a major focus of the agency's enforcement efforts going forward. Since at least FY 2013, it has formed the basis for EEOC lawsuits more than any other federal statute.

As to specific Title VII issues, these statistics show it is a good time for a renewed emphasis on processing all job terminations with careful regard to Title VII protected classes – and especially sex – and reviewing harassment policies to make sure that they are up to date.

[Read this article online](#) 

Manager investigated sexual harassment claim, why was she demoted?



"Joanna, I asked to meet with you because I wanted to clarify a few things," said Betty Murphy, HR director.

"I'm glad to help clarify things for you in any way I can," said Joanna Kline, one of the group leaders in the shipping warehouse.

"Trisha Washington came to me yesterday and told me she was being sexually harassed by Tobias Heckman," said Betty. "She also told me she came to you a few weeks ago and made the same report."

"Yes, she did. And I immediately started an investigation of my own. I interviewed a few of her co-workers and Facebook messaged a former co-worker whom I suspect quit because of Tobias. I'm still waiting to hear back from her," said Joanna. "I also called the ombudsperson."

"You did?" asked Betty.

"Yes, but no one answered when I called," said Joanna.

"Did you call back or leave a message?" asked Betty.

"No. I was going to call back after I was done investigating the claim," said Joanna.

Dropped the ball

"Well, that's commendable of you. But as a manager, when someone makes a sexual harassment claim to you, you're required to report the allegations to higher-ups or HR. The company has provided you with clear instructions on how to do so," said Betty. "Our Anti-Harassment and Reporting Procedure instructs that employees who feel they've been harassed need to promptly report it to their manager, a department head or an HR representative.

"Trisha did the right thing reporting it to you. But you dropped the ball."

"How did I drop the ball?" asked Joanna. "I launched an investigation."

"You were to report it to me or another executive," said Betty. "You took the training class. I checked. I have a signed document saying you underwent the training and understood the policy and procedure.

"I'm afraid we have to demote you for this violation," said Betty.

"Demote me?!" exclaimed Joanna. "I was sexually harassed by Tobias two years ago, and I reported it to my manager, who did nothing! But you didn't demote him!"

"Why didn't you come to me when your manager did nothing?" asked Betty. "We can't stop harassment or discipline managers if we don't know about it."

A few days later, Joanna quit and sued her company for retaliation.

The company tried to get the claim thrown out. Was it successful?

The Decision

Yes. The court dismissed the claim, ruling no reasonable juror could find that Joanna was retaliated against. Joanna, however, disagreed and appealed.

The appeals court agreed with the lower court ruling in favor of the company.

You Be The Judge

Manager investigated sexual harassment claim, why was she demoted? (Continued)

To have come out on top, Joanna would have had to produce evidence from which a reasonable juror could find that:

1. she engaged in a statutorily protected activity
2. she suffered an adverse employment action, and
3. there's a causal link between the two.

Joanna said the reason she didn't go to the company first was that she thought getting Trisha's statement in writing and corroborating statements from co-workers would force the company to investigate the allegations rather than cover them up.

She also contended that such actions were protected under Title VII of the Civil Rights Act of 1964 and that she was demoted because of them. Joanna also said the timing of her demotion was suspicious and if it was indeed due to the "not reporting the harassment" her former boss would have been demoted like she was.

Protected activity?

However, according to the court, the steps Joanna took to investigate the sexual harassment claim weren't protected activity. It went on to say, "an employee engages in a protected activity by either: 1) filing a charge, testifying, assisting or participating in any manner in an investigation, proceeding or hearing under Title VII or other employment statutes, or 2) opposing an unlawful employment practice."

The court pointed out that Joanna never actually reported the harassment. In fact, she failed to report the allegations as required by company policy. Therefore, she didn't engage in statutorily protected activity.

Even if her motives were honorable – she called the ombudsperson – her actions weren't protected activity because she never spoke to anyone, and she couldn't satisfy the first requirement of a retaliation claim.

As for treating her differently than her former boss for not reporting a sexual harassment claim, it wasn't an equal comparison because the company didn't know Joanna made a claim to her former boss. If Joanna had gone to HR with her claim of sexual harassment, then it would have been an equal comparison.

Also, the law doesn't require employers to discipline employees equally for behavior that happened multiple years apart.

Document, document, document

This case goes to show why it's critical for employers to document their policies and training.

Companies can't be held accountable for complaints that were never brought to their attention by anyone.

It's essential for HR to remind supervisors, managers and all employees on a regular basis what their harassment policy covers and requires, as well as the consequences for not following the policy.

New people are hired and promoted all the time. While annual updates might be enough for current employees, make sure to include critical policies in onboarding documents.

Alley v. Penguin Random House, No. 21-3158 (7th Cir. 3/3/23)

[Read more You Be the Judge in your Membership Dashboard](#) 

CULTURE FIT INTERVIEW QUESTIONS CAN IMPROVE QUALITY OF NEW HIRES



RECRUITING

49 best interview questions to check for culture fit



by Sarah Harris, HR Expert Contributor

Before you hire a new employee, you want to make sure they'll fit into your organization's culture. Ideally, their values will align with your organization's values, and they'll have an attitude reflective of your organization's principles.

For instance, if your company values innovation and creativity, you'll want any potential hires to possess traits that align with those beliefs. Someone who fits well within your company's culture is more likely to stay on board for the long term. They'll enjoy their work and have a high level of productivity.

To find the best-fitting new employees, when you start your interview process, consider incorporating questions that can help you identify whether a candidate is a good culture fit.

Example interview questions focusing on culture fit

We've compiled a list of 49 interview questions you can use to assess your applicant's potential culture fit.

1. Can you describe your dream job?
2. What do you find to be motivational at work?
3. Can you describe our company culture?
4. What excites you about your current job?
5. What does work-life balance mean to you?
6. Do you have a management style? What is it?
7. Why did you apply for a role at this organization?
8. Do you consider yourself to be a leader or a follower?
9. How do you deal with conflicts with other colleagues?
10. What do you plan to accomplish in the next five years?
11. If given a chance, what type of business would you start?
12. Do you think you'll find this role challenging? In what way?
13. Can you describe the steps you follow to make a decision?
14. Are there any blogs or websites that you frequent regularly for your job?

49 best interview questions to check for culture fit

15. How do you manage communication with other colleagues?
16. How would your current or former colleagues describe you?
17. What advice would you give to someone early in their career?
18. What do you find stressful about your current work environment?
19. What do you find most appealing about working for this company?
20. What allows you to stay organized at work, especially during busy periods?
21. Which one of our company's core values do you least identify with?
22. How do you maintain productivity at work, even during challenging periods?
23. What three words would your current manager use to describe you?
24. What's the ideal working environment to best benefit your productivity?
25. Have you taken any professional risks? Can you describe an example?
26. Can you think of a time when you've been most satisfied in your career?
27. How would you handle criticism from a colleague who wasn't your boss?
28. Can you think of a time when you exceeded other people's expectations at work?
29. Is there a particular management style that you find especially motivating?
30. Would you take your work home with you so you could meet a tight deadline?
31. Are there any specific tools you find helpful for improving your work efficiency?
32. If a senior colleague made a serious mistake, how would you handle it?
33. What factors are most important for maintaining strong business relationships?
34. Why are you leaving your current job? How would our company be a better fit?
35. Is there a specific aspect of our organization's culture that you find compelling?
36. Do you believe that kindness and humor are essential qualities in the workplace?
37. What do you like most about working for your current company? What do you like least?
38. Can you describe a serious mistake you made at your last job? How did you handle it?
39. Who is the most intelligent person you can think of? In your opinion, what makes them bright?
40. Has a supervisor or colleague criticized you in the past? How did you react to their criticism?
41. Think of a recent challenging situation you overcame at your current job. How did you handle it?
42. Can you think of a previous professional relationship that didn't work out? What was the cause?
43. Do you consider yourself a collaborator or do you prefer to handle your work tasks independently?
44. Can you think of a situation where your colleagues disagreed with your ideas? How did you handle it?
45. Can you think of a prior boss or another leader you admire? What made them admirable to you?
46. What is your idea of the perfect work schedule? Do you prefer an early start to the day or a later one?
47. As an employee or manager, do you want to participate in every decision or are you happier with simply learning the outcome?
48. Do you typically make friends and spend time with co-workers outside of work? How do you think that this impacts your professional relationships?
49. Is there anything you would change about our hiring process? Can you think of anything on our website or in our business model that needs adjusting?

These questions should help you assess a job candidate's values and expectations for the workplace. You'll learn critical information that can help you decide whether the candidate will fit nicely into your work culture.

What to look for when you're interviewing for culture fit

Before beginning the candidate interview process, it's critical for hiring managers to list the top traits and values in the organization or department. That way, you'll have an objective list to refer to as you listen to each applicant's responses to your questions.

When you're considering a candidate's responses to your culture fit inquiries, you'll want to compare them to your list of company values.

If you note qualities in the applicant's answers that align with your organization's principles, it indicates a potential culture fit. On the other hand, a candidate who provides answers that don't

49 best interview questions to check for culture fit

align with the company's culture may not be the right choice.

For instance, consider an SaaS company seeking a new marketing director. The SaaS company includes values such as innovation, creativity and customer service in its mission statement. The company considers itself a disruptor, and they want someone with a lot of energy and the ability to shake things up in the marketing department.

Two people interview for the marketing director position. One individual has 30 years of experience running marketing campaigns, but they heavily rely on traditional methods to reach new customers. They prefer sticking to tried-and-true marketing techniques and have a top-down management style.

The second candidate has only 10 years of experience. However, they've worked for several other SaaS companies, and they're known for their expertise in digital marketing, including the newest trends in video and social media advertising. They believe customer experience is critical to successful marketing and sales.

Who is the better fit for the role?

The second candidate appears to align better with the company's values. They'd likely assimilate well into the organization's culture. The first candidate has lots of experience, but their values of tradition and bureaucracy aren't the right culture fit.

When should you use questions about culture fit?

In most cases, you should sprinkle a few culture-fit questions into every interview. Culture-fit inquiries are just as crucial as other questions considering a candidate's experience, skills and education.

A poor culture fit can result in an unhappy employee. People who don't enjoy their working environment are less likely to perform at peak capacity, even if they have the skills to do so. They're also more likely to leave in search of other positions that better align with their personal values and work expectations.

You should tailor your culture-fit questions to address the needs of each role. For example, if you're seeking a data analyst, values like work ethic and accuracy are likely important. In your search for sales agents, you might seek individuals who are comfortable with criticism, place a premium on collaboration and value relationships.

The number of culture-fit questions you include in your interviews should vary by company needs and the role itself.

If you notice that a certain department has a high number of employees departing, there may be a problem either with employee value alignment or within the department's culture. You'll want to find people with the appropriate skills and professional outlook to handle each position while also maintaining a healthy departmental work culture.

Incorporating culture-fit questions can improve the quality of new hires

Many companies make the mistake of seeking individuals who possess the skills and experience to perform a job, but they fail to consider the impact that culture fit can have on the workplace.

Next time you hire a new employee, identify a few important values in your work environment. Pick a few questions from our list that will give insight into the candidate's beliefs about those values. You can

compare their answers to your list and decide whether their principles align with the organization.

You've likely found the right candidate when you find an applicant who has the right skills to do the job and also aligns with your organization's core values.

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Case Study

Shift to a nonlinear workday increased productivity, boosted meaning



We have experimented extensively with the traditional workday and found that we may not do our best work in a strict 9 to 5 schedule.

Through personal experience, we realized that productivity ebbs and flows. While we may be the most creative at home some days, other days productivity may strike after a long day at the office.

We decided to put it to the test: we recruited employees to track their time and we measured productivity, quality and best creative moments.

As a result, we learned that many traditional work models weren't as effective as we thought. They needed to be updated and designed to optimize for the best outcomes instead of the effort and time spent.

Reduced meaning at work

Through interviews and research into people's psychological connection to their work and companies, we learned that meaning at work was diminishing.

Reduced meaning at work went beyond disengagement and quitting. As technology changed

how we work, people began to re-evaluate their values and what matters to them in life.

Although we had made small changes to the 9 to 5 schedule, the opportunity to really experiment with workday schedules came to us during the pandemic. .

Gave employees flexibility and autonomy

We avoided trying to set employees' schedules for them. Instead, we brought them into the process to discuss what works for them, as well as their team and customers.

Those conversations led to employees being able to have an open and honest conversation with the company about what works for them. So some employees were able to break up their workday into chunks to better manage their time.

For example, some of our workers are caregivers who prefer to get up early and do some work before beginning parental duties. Then again in the afternoon, they may block out time to get the kids from school, run errands or go to the gym. Then, after dinner and getting the kids to bed, they can come

back and do more thoughtful and creative work.

Changes to the workday produced big results

Letting employees set their own schedules and allowing for a nonlinear workday has produced several benefits for the company. We have seen increases in productivity, and our productivity is five times better than our competitors.

In addition, a nonlinear workday has led to more meaning at work. People are more mindful of their time and time constraints ensure that all meetings have a true purpose.

Because each person has different circadian and ultradian rhythms, a nonlinear workday helps our employees be their best selves at work, whether it's at 9 a.m. or 9 p.m.

(Danny Gutknecht, co-founder and CEO, Pathways, Phoenix)

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How to disagree with your boss – and still have a good relationship



by Michele McGovern

WHEN IT'S WORTH IT TO DISAGREE WITH YOUR BOSS



Your boss has a really good idea — at least she thinks so — and you hate it. Awkward, isn't it?

But how do you disagree with your boss?

On one hand, you owe it to your company to point out the problems. On the other hand, you don't want to hurt a good relationship.

Fortunately, you can disagree with the boss — or anyone — when necessary and still maintain the relationship. Even better, you can accomplish goals.

A disagreement worth having?

"Now is the perfect moment to focus on the skills we need to navigate the often tricky terrain of getting along with others," says Amy Gallo, in her book *Getting Along*.

In most instances, it's important to respectfully disagree with your boss (or colleague) when a greater good can be accomplished — perhaps your point of view can improve quality, creativity or revenue. Or perhaps your point of view is incorrect, and there's something for you to learn.

Gallo, who is also the cohost of HBR's Women at Work podcast, offers these six proven strategies to disagree with your boss (or colleague or friend) and maintain a great relationship.

1 Think about it

Don't just blurt out your point of view. It may seem timely to say it right now. But a well-thought opinion is almost always a better argument than a timely one.

Be strategic. Think it through by asking yourself:

- Why do I disagree?
- Could the disagreement be perceived as “political?”
- Do I have the good of the organization (project, group) at heart of the disagreement?

Ideally, you don’t have any personal gain from winning the argument.

2 Get it right

Follow this rule I was taught decades ago when I was crime reporter for a wire service: Get it first. But get it right first.

In other words, get your facts straight before you broach the subject. And recognize that your boss may have access to more information than you do.

If you even suspect you’re missing something, couch your argument by saying something like, “I think there’s another way to look at this. Before I present my ideas, can you tell me of any other critical facts I don’t know?”

3 Test your idea

Bounce your point of view — including the facts you know — off a few trusted colleagues. If you can’t convince them it’s a better idea, you probably won’t be able to convince your boss.

So get feedback on your idea and on ways to be more persuasive. Encourage them to poke holes in your theory and ask questions they think any executive would have.

And don’t ask your direct reports to chime in. They may not want to disagree with you and likely won’t give the candid feedback you need.

4 Offer an expert

Get a respected, credible expert to go over your conclusions before you take your idea to the boss. Then offer to have him or her review it with your boss after you present it.

It doesn’t have to be an outside consultant. It should be a person recognized within your company or among your mutual network as an expert on the topic.

5 Prepare

Pull together data, charts, spreadsheets and any other hard evidence you can to support your point of view. Leave out hypotheticals and anecdotes.

Disagreeing with a boss is time for a businesslike approach.

6 Call on a buddy

People trust their friends, particularly those who are at the same level as them.

Find someone who is your boss’ friend and at the same level as your boss, and use your data to convince him or her of the merit behind your idea. Ask him or her to back your idea.

That’s not to suggest you gang up on your boss. You just want to find genuine support from someone who can address it in a friendly manner, too.

[Read this article online](#) 

Employee: 'Anti-bias training clashes with my religious beliefs'



by Tom D'Agostino

COURT: MANDATED DEI TRAINING **DID NOT** SUPPORT RELIGIOUS DISCRIMINATION CLAIM



What should an employer do if an employee says anti-bias training clashes with their religious beliefs?

A new federal appeals court ruling backed an employer's decision to terminate an employee who presented that objection and refused to attend the training.

The employee did not show the termination decision was unlawfully discriminatory, the court said, and accommodating the employee's request to be excused from the training would have resulted in an undue hardship on the employer's business operations.

Raymond Zdunski began working as an account clerk in the Erie 2-Chautauqua-Cattaraugus Board of Cooperative Educational Services (BOCES) in 2011.

BOCES is a public education collaborative and is an extension of local school districts.

BOCES policy requires all employees to complete anti-bias training "to raise staff awareness and sensitivity of harassment and discrimination."

After a transgender employee asked for accommodations to facilitate a gender transition, BOCES decided to add specific LGBTQ training.

Anti-bias training is mandated

The training supplemented anti-bias training that is mandated by a New York state law known as the Dignity for All Students Act.

In February of 2018, BOCES told Zdunski to attend a mandatory training session on LGBTQ rights.

Zdunski refused to go, explaining that he is a devout Christian and that "he did not want to be forced to listen to indoctrination that is in contradiction to the tenets of his faith."

He also asked BOCES to provide training that would "teach greater cultural sensitivity towards persons of faith."

Zdunski also criticized the LGBTQ training on Facebook, and he made the post during work hours. BOCES' HR director documented that action due to concerns that it violated a policy banning employees from posting material that might disrupt classroom or other BOCES activities.

When BOCES told Zdunski to attend a make-up training session, he asked about its specific objectives and again requested the provision of training designed to prevent discrimination against Christian employees. The HR manager told him he needed to attend the make-up session, and that he could be terminated if he missed it.

Was it insubordination?

BOCES issued Zdunski a counseling memo for insubordination, and he did not attend the make-up session. BOCES then terminated his employment for insubordination based on his refusal to attend.

He sued, alleging religious discrimination and refusal to accommodate under Title VII. He further asserted due process and equal protection violations as well

Employee: 'Anti-bias training clashes with my religious beliefs'

as conspiracy and violation of state law.

The trial court granted a defense motion for summary judgment.

As to Zdunski's claim of disparate treatment, the court ruled that he did not show that the circumstances surrounding his discharge permitted an inference of religious discrimination.

None of the alleged facts supported the claim that the termination was tainted by an inference of unlawful bias, the court said. Instead, the alleged facts showed that Zdunski was terminated because he would not comply with BOCES policy that mandated anti-discrimination training.

There was no allegation that the training would have been conducted in a malicious or discriminatory way, or that it would have subjected Zdunski to harassment or ridicule.

Instead, the training sought to prevent harassment and discrimination toward transgender employees, and it was consistent with internal policy as well as state and federal law.

There was simply no evidence that the training was directed toward Zdunski or other Christian employees in a discriminatory manner, the court said.

Nor did Zdunski show he was treated differently than other employees who refused to attend anti-discrimination training, the court added.

No evidence of bias

In a nutshell, there were just no facts to support a finding that Zdunski was terminated based on his religion, it said.

"[I]t would be anomalous to allow an employer to deny

a transgender employee's legal right to a workplace free of discrimination and harassment in order to accommodate the conflicting religious beliefs of other employees," the court explained.

BOCES was not required to grant Zdunski's request to be excused as a religious accommodation because doing so would have resulted in an undue hardship, the court added. Granting the requested accommodation would have conflicted with BOCES' legal obligation to protect its employees from harassment and discrimination, the court reasoned.

BOCES is required by state law to provide anti-discrimination training annually and to maintain an environment free of discrimination and harassment, it noted.

The lower court ruled for BOCES, and the U.S. Court of Appeals for the Second Circuit summarily affirmed.

A rock and a hard place

When employees present religious objections to DEI training, employers are stuck in the middle. Title VII protects religious rights, but it also recognizes gender expression and sexual orientation as equally protected classes — as the lower court in this case noted.

So what are employers to do?

The law does not provide crystal-clear guidance. When the U.S. Supreme Court ruled in 2020 that Title VII's ban on sex discrimination encompasses a ban on sexual expression and gender identity, it was also careful to note that it was "deeply concerned with preserving the promise of the free exercise of religion." And it expressly declined to answer the question of how doctrines protecting religious liberty interact with Title VII.

The EEOC has indicated quite clearly that in its view, it would be an undue hardship for an employer to excuse attendance at sexual orientation discrimination training based on a religious belief, where the training is held to make sure employees are aware of applicable EEOC laws and workplace rules.

Here are some general tips employers can keep in mind:

- Where employers are legally obligated to provide anti-bias training, they will be more likely to show that an employee need not be excused from attending such training based on a religious objection.
- Ensure that no employee who does attend such training is harassed or ridiculed based on their religious beliefs.
- Do not segregate employees with respect to anti-bias training, such as by requiring only Christian employees to attend.
- Do not require employees to affirmatively support any particular gender identity or sexual orientation. Focus instead on what workplace conduct is required and prohibited by EEO laws.
- Remember that a general animus toward a protected class is not a form of religious expression that the law protects.

Zdunski v. Erie 2-Chautauqua-Cattaraugus BOCES, No. 22-547-cv, 2023 WL 2469827 (2d Cir. 3/13/23).

[Read this article online](#) 

The Cost of NonCompliance




\$35M

Clause in separation agreement leads to \$35M civil penalty

Who was involved: Activision Blizzard, a video game development and publishing company, and an undisclosed number of former employees.

What happened: According to the Securities and Exchange Commission (SEC), the company failed to maintain disclosure controls and procedures to ensure that it “could assess whether its disclosures pertaining to its workforce were adequate.” A clause in the company’s separation agreement violated a Commission whistleblower protection rule, the SEC determined, by requiring an undisclosed number of former workers to provide notice to the company if they received a request for information from the Commission’s staff. The SEC issued a \$35 million civil penalty for the violation in the separation agreement.

Result: Activision agreed to remove the clause, revise its separation agreements and pay the \$35 million civil penalty without appealing/admitting wrongdoing.

Info: [Activision Blizzard to Pay \\$35 Million for Failing to Maintain Disclosure Controls Related to Complaints of Workplace Misconduct and Violating Whistleblower Protection Rule](#) , 2/3/23.

[Read more The Cost of NonCompliance in your Membership Dashboard](#) 

How to conduct an employee performance review: A 5-step guide



by Rich Henson



As you take your first steps into your new managerial position, one of the key functions you'll be required to do is employee performance reviews.

It's a big deal you shouldn't take lightly.

Employees are the lifeblood of your organization and so, the better they are at doing their jobs, the better your organization will function and thrive.

And, the better you'll be as a manager!

It will probably come as little surprise that most employees are by

nature cautious and suspect of being reviewed by a higher-up at their company. You may have felt that way yourself at one time. If so, you know firsthand there's good reason for employees to be apprehensive.

Most managers simply go through the basic motions when doing a performance review. For instance, they rate employees on a scale of 1 to 5, which may look good on paper, but doesn't help the employee understand their weaknesses, or how to improve on them.

Worse, poorly done reviews can create alienation and division between a worker and

a manager, or the worker and the entire organization.

Instead of fostering a sense of cohesion and understanding, poor reviews create misunderstanding and tension.

A Lowly 2

A classic example is the employee who feels they are exemplary at something, while the manager only gave them a lowly "2" in that area, with no real explanation why.

That's sure to leave a scar.

According to the Harvard Business Review, too many times managers "hold people accountable for

How to conduct an employee performance review: A 5-step guide

past behavior at the expense of improving current performance and grooming talent for the future, both of which are critical for organizations' long-term survival."

To help you avoid pitfalls and get the most out of a performance review, what follows is a structured employee performance review process that includes specific, objective evaluation and offers insight into how to give constructive feedback that can improve job performance and overall productivity.

Step 1: Prepare for the review

What separates a mediocre performance review from a great one is good preparation. And the first step in preparing to do any employee review is visiting your HR team.

Organizations have different demands and processes for performance reviews, so you want to be certain you've covered all the bases with your own HR team on what's expected of a manager doing a performance review.

While HR is always a great place to start, here are some other essential steps you can take that'll work in every organization.

Gather relevant info

You want to be sure to gather relevant information and documents particular to this employee, including past performance reviews. It pays to have a good understanding of the employee's job description versus their actual real-life job duties, as sometimes these differ.

Job responsibilities can grow with time as the worker gains

experience, or they can shrink when business changes.

Gather feedback

Also, be sure to talk to the employee's colleagues and clients. The people who interact with this employee every day are an excellent resource. Do people like working with this person or do they try to avoid this employee? Why?

Also gather results on any relevant projects or work assignments the employee was involved with. This can be something concrete, like a sales quota or widgets made per week. But it can also be something less tangible, like being a department "thought leader." That's a valuable contribution, but a little harder to measure.

Set meeting time

Once you feel comfortable that you have the info you need, set aside the time for a review meeting. You'll need a private, quiet space to have the conversation. No interruptions.

This lets the employee know you think this is an important function and that you value their future in your organization.

When you first inform the employee about the upcoming review, be sure to clarify with them what the process will be and what is expected of the employee before the review begins.

Let the person know you'll be talking with their co-workers and others, perhaps their former manager, as well as HR, to gather as much useful information as you can to have a more complete review.

It's OK to ask the person what they would like to see in the review. For instance, ask them what they believe are their own strengths and weaknesses, or what they'd like to do

more or less of. Those can become critical pieces of the review process.

Step 2: Focus on specific behaviors and outcomes

While there are no hard and fast rules, the verbal portion of the review should last about one hour or less. Dragging it out any longer could have the effect of diluting the main focus.

It's a good idea to take notes to better help you construct the final written review document.

Use the employee's job description and performance goals as a reference point for the review, and don't be surprised to learn there are considerable differences between how the employee perceives themselves, and how you see them.

Most employees naturally tend to think very favorably about the way they do their jobs.

Your key role as manager is to put things in perspective and keep employees reality-focused.

Reality based evidence

The best way to do this is to use specific examples and evidence to support your evaluation of the employee's performance.

Again, hard performance data, like quotas, are very helpful. So is feedback from customers and co-workers. If customers and co-workers find the employee great to work with, use specific examples from the feedback you got from them.

Avoid making general or subjective statements and instead focus on observable behaviors and results.

How to conduct an employee performance review: A 5-step guide

Here's an example: The statement "It's very cold outside" is subjective because it depends on personal opinions and experiences. The statement "It's 32 degrees outside" is objective.

The statement "You're undependable" is subjective, while the statement "Eight of your last 11 assignments were submitted late" is an objective observation that speaks to the employee's ability to meet deadlines, while giving them something concrete to correct.

Step 3: Provide constructive feedback

Constructive criticism is the key to employee improvement. If you get no other part of the employee performance review right, it's essential to master a good technique to deliver constructive criticism.

It pays to share both positive and negative feedback in a balanced manner.

Feedback sandwich

A proven way to do this is the "feedback sandwich" approach. Here's how it works.

You start with a positive comment, followed by a specific area for improvement, and then end with another positive comment.

The feedback sandwich looks something like this:

The Bottom Slice of Bread: *"Bob, I wanted to point out how well organized I thought your production demonstration was for our clients. You had everything you needed and the equipment ran flawlessly. You did a good job preparing your crew."*

Next, deliver your constructive feedback thoughtfully. Try to focus on

the behavior or action, and not on the person – you're not trying to change who the person is, just what they did.

The Meat: *"As good as the demonstration was, Bob, I don't feel that the cleanup went very well. There was waste and debris scattered about and some of our guests ended up having to help clean it up. Next time, maybe you can be sure to recruit a couple of teammates to help when the demonstration is over."*

Follow up with a second positive comment. This continues the tone you set at the beginning, reassuring your teammate your goal is not to tear him down.

The Top Slice of Bread: *"Overall, I'm pleased with how well the demonstration ended up and thankful that you were able to put so much energy into it. With you in charge, I'm sure the next event will be even better. Thanks for your help."*

Using the Feedback Sandwich Method, you can get your point across better without offending the employee. By shrinking the critical part between two slices of positive feedback, you have delivered two positive compliments and one fixable observation, and ended the discussion on a high note.

Actionable steps

As you can see in this example, it pays to avoid using negative or judgmental language and instead focus on providing actionable steps for improvement. In this case, the manager recommended recruiting teammates in the future to help with clean-up.

As you move through the oral part of the performance review, offer feedback and insights to the employee on each specific issue at the time it is being discussed. It's always best when employees

are encouraged to find ways to solve their own problems and accept responsibility for the results.

Step 4: Set clear goals and objectives

Once you are comfortable you've highlighted the employee's areas of competence, and fully discussed those areas that need improvement, it's time to focus on setting clear and measurable goals for the next review period.

Be sure to ask the employee what they think they need to improve on.

Also, stay alert for any hidden frustrations the employee might be feeling. Sometimes these frustrations are easy to remedy; sometimes they aren't. But they provide an opportunity to explain the rationale behind certain company policies, which brings some clarity to the worker's understanding.

Review goals

An excellent list of effective review goals can be found here, courtesy of Indeed. As the article lays out, these goals can be adapted to combine an employee's needs and desires with those of your company to create a mutually beneficial objective.

Along the way, it's important to be sure you offer the support and resources the employee will need to be successful.

This is where your HR Department can be a resource for training and as well as helping to create a useful improvement plan.

Step 5: Follow-up and check-in after the review

So, you just finished your first-ever performance review meeting with an employee, and you feel good about it. Moreover, the employee

How to conduct an employee performance review: A 5-step guide

says they feel pretty good about it, too! Congrats! Take a bow. You're almost done.

The last step in any successful employee performance review is to schedule regular check-ins with the employee to review progress and offer additional support as needed.

Open door

First, make sure the employee knows your door is always open and they can come see you anytime they have a question or issue to discuss. But after that, set a time, like once a week initially, to discuss how the improvement efforts are working.

Routine discussions

What you'll find, after two or three meetings, is the topics of improvement become more a causal and routine part of your daily discussions with this particular employee. So, after the first two or three weekly meetings, you might move to once a month. That's OK. Just be sure not to drop the ball on the improvement efforts.

The check-ins after a review are also a great opportunity to set the stage for ongoing communication and development.

For example, you may learn that the employee is really good in one training area, and so, might become a good candidate to train co-workers in that area. Growing an employee's job responsibilities by playing to their strengths is by far the best way to keep them feeling like an integral part of your team.

Master the process

As was stated earlier, performance reviews are tools to motivate employees, boost employee engagement, and help meet organizational goals. But they only work when done effectively.

Many managers struggle with not knowing what to write or how to deliver their feedback in a constructive way.

Only by better understanding the performance review process can you learn to conduct more effective performance reviews.

Navigating a performance review is a challenge that requires sensitivity and preparation. By following this 5-step guide on how to write an employee performance review, you'll get better with each review you do, while at the same time building and maintaining a successful organizational team.

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Meet Our Editors

Our editors read and vet hundreds of sources and hand-select the most relevant, practical content. Then we add our seasoned perspective and deliver actionable insights to help you understand what today's trends mean for your business.



Renée Cocchi

Renée Cocchi has a passion for learning and helping other professionals do their jobs more effectively and efficiently. She earned her Master's Degree from Drexel University, and she's spent the past few decades working as a writer and editor in the publishing industry. Her experience covers a wide variety of fields from benefits and compensation in HR, to medical, to safety, to business management. Her experience covers trade publications, newsmagazines, and B2B newsletters and websites. When she's not working, she spends her free time just chilling with her family and volunteering at a local dog shelter. Her goal in life is to help all shelter dogs get happy, loving homes!



Tom D'Agostino

Tom D'Agostino is an attorney and legal editor who has more than 30 years of experience writing about employment law, disability law and education law trends. He earned his B.A. degree from Ramapo College of New Jersey and his J.D. from the Duquesne University School of Law. D'Agostino, who is a member of the Pennsylvania bar, is a past member of the American Bar Association's Section of Individual Rights and Responsibilities and the Pennsylvania Bar Association's Legal Services to Persons with Disabilities Committee. He has provided technical assistance in the production of segments for television's ABC World News and 20/20, and he has been quoted in periodicals including USA Today. He is also a past contributing author of Legal Rights of Persons with Disabilities: An Analysis of Federal Law, which is a comprehensive two-volume treatise addressing the legal rights of people with disabilities. Tom is passionate about baseball and authentic Italian food. When not writing, he enjoys spending time with family.



Michele McGovern

Michele McGovern writes. A lot. These days, she covers HR, digging deep into company culture, DEI, leadership, management and the everchanging world of work. In the years between getting a BA in journalism from a state school and writing about HR, she wrote about big-city crime for a wire service and small-town life for local newspapers. She's a mediocre mom, decent wife, wannabe athlete and consummate pursuer of fun - on land, snow and water. Follow her on Twitter @sheknowswork. Find her on LinkedIn @michele-mcgovern-writer



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Carol Warner has been a writer and editor since 2008, covering the latest trends in employment law, education law, safety and security, human resources, employee training, and emergency response plans. She attended East Carolina University and earned a Bachelor's degree from New York Institute of Technology. When she's not writing, she spends most of her free time listening to audiobooks, playing Scrabble, and solving crossword puzzles.



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Alison Roller is passionate about engaging and informative storytelling through writing and social media. She has been writing since 2018 on a range of topics: politics, higher education, leadership, workplace culture, and diversity, equity, & inclusion. A graduate of West Chester University in Journalism, she is currently pursuing her M.S. in Communications from Syracuse University. When she's not working, you can find her hanging out with her cat, knitting, and scrolling TikTok.



Brian Bingaman

Brian Bingaman has been a journalist in the Philadelphia area for nearly 20 years. He was a contributing editor for *ResourcefulFinancePro.com*, as well as the publications *What's Working in Human Resources* and *What's New in Benefits and Compensation*. He first became interested in HR when he started noticing a distinct lack of human interaction from the HR department of the newspaper group where he worked. In addition, Brian has 15 years of experience in the radio broadcasting industry.

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