

**December 2022**

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# News You Can Use

## HR Stories You Might Have Missed

### **Do your people know about prescription savings from digital providers like Amazon Pharmacy?**

November 3, 2022

In the darkest days of COVID, many of your employees may have turned to online retailers to meet household needs. Seizing an opportunity, Amazon Pharmacy launched in November 2020.

John Love, the vice president of Amazon Pharmacy and PillPack, said a big reason the company got into the pharmacy marketplace is workers deserve not only the convenience of ordering their prescriptions from an app and delivered to their home – or as he put it, “a pharmacy in your pocket” – but also better drug price transparency.

During a “fireside chat” presentation at the Thomson Reuters “Total Health 2022” event in Chicago, he encouraged attendees to visit Amazon Pharmacy on their phones and search for the diabetes drug Metformin. The price of a 30-day supply with the prescription plan copay applied is accessible with just a few touches.

For those taking maintenance medications, the app reminds them when it’s time to reorder, or they can choose to automatically refill. That can go a long way in improving health outcomes among your workforce.

Shipping is free for Amazon Prime members and same-day shipping

is available in “a handful of cities,” according to Love. He also said the company is shooting to launch one-day shipping of medications that covers 90% of the U.S. by the end of this year.

“The letters that we’ve gotten from customers (saying) it helps them improve their own lives and their own health, and/or that of a loved one, it’s super powerful,” Love said.

Check if Amazon Pharmacy accepts your company’s health insurance. If so, you’ll want to share that with your employees and encourage them to shop around for the best price for the medications they need. It’s something they’ll appreciate if they’re struggling to make ends meet in inflationary times.

### **Healthy competition**

When employee benefits providers compete to offer services of the same quality for the lowest price, it’s a win for your employees and your organization’s bottom line.

Competing in the generic drug space against high-profile pharmacies like Amazon, CVS, Rite Aid, Walgreen’s and Walmart, is the Mark Cuban Cost Plus Drug Company online pharmacy. That’s Mark Cuban as in the “Shark Tank” entrepreneur and owner of the NBA’s Dallas Mavericks.

The company also prides itself on price transparency.

### **Digital privacy with Amazon Pharmacy?**

Because of Amazon’s popularity, it’s an appealing target for hackers and your employees may have concerns

about the security of their sensitive medical data.

Amazon Pharmacy says it’s HIPAA-compliant when it comes to using and disclosing protected health information, such as medication history, medical conditions and health insurance information.

[Read this article online](#) 

### **Elon Musk’s Twitter layoffs: A lesson in what not to do**

November 8, 2022

After an ongoing battle between Elon Musk and Twitter, the mogul has finally taken over ownership, bringing in a new and controversial Musk era of Twitter.

In addition to big changes to the platform itself – like charging users monthly to have a verified checkmark – Musk is transforming the workforce itself, starting with a 50% reduction in force (RIF).

As the world watches, Musk’s Twitter layoffs have some valuable lessons for HR on what not to do when navigating workforce changes.

### **Leaving employees in the dark**

Rumors that mass Twitter layoffs were looming once Musk took over proved to be true. Between Thursday afternoon and Friday morning, 3,700 employees – nearly half of the workforce – were affected by the layoffs.

The announcement came through an email, telling employees they would be notified through their personal email if they were affected by the Twitter layoffs and their work email if they were still employed. For those who were laid off, the notice was swift and blunt. The email said in part, "Today is your last working day at the company," according to Insider.

**What went wrong:** When navigating a layoff, communication is key. Employees who were affected by the Twitter layoffs were left in the dark and had access to their work accounts revoked immediately, leaving both affected and unaffected employees confused.

**What HR can do better:** Keep communication open and streamlined to prevent confusion and miscommunications. Although mass layoffs can be chaotic, it's important to let employees know all the information they need in a timely manner and be compassionate in your messaging.

[Read this article online](#) 

## Is that physical ability test legit? Keys to getting it right

November 8, 2022

A federal appeals court has revived claims of sex and age discrimination filed by a psychiatrist who lost her job because she could not pass a physical ability test.

The plaintiff in the case is Jane DiCocco, who was 67 years old when she accepted a job as a psychiatrist at a federal prison located in Virginia.

The prison required all new employees to pass a physical ability test that was made up of five parts.

Specifically, new hires had to drag a 75-pound dummy about 700 feet for three minutes. They also had to climb a ladder to retrieve an object within 7 seconds and finish an obstacle course in 58 seconds.

In addition, they were required to run a quarter mile and handcuff someone within 2 minutes and 35 seconds, and they needed to climb three flights of stairs within 45 seconds while wearing a 25-pound weight belt.

### Physical ability test leads to suit

DiCocco did not pass the test, and the prison's policy required that she retake it within 24 hours. She declined to do so – citing her "exhausted physical condition" – and chose instead to resign.

She later sued, alleging unlawful disparate impact sex discrimination under Title VII and age discrimination under the Age Discrimination in Employment Act (ADEA).

A lower court dismissed her lawsuit. It reasoned that she did not sustain any harm that was traceable to the prison because the facts she alleged did not constitute an "adverse employment action." Thus, it concluded that she lacked what is known as "standing" to proceed with the suit.

DiCocco sought review by the Fourth Circuit Court of Appeals (which covers Maryland, North Carolina, South Carolina, Virginia and West Virginia).

The Fourth Circuit review panel reversed the lower court's ruling,

finding that DiCocco has standing to raise her claims under Title VII and the ADEA.

A person has standing to sue, it explained, if they suffer an injury that can be traced to the defendant's conduct and remedied by a favorable court ruling. To have standing, one need not establish a valid claim for relief, it added.

DiCocco easily met this test. She said she was injured by the loss of employment; she asserted that the injury was caused by the prison's allegedly discriminatory policy requiring new hires to pass the physical ability test; and a favorable court decision would remedy her harm.

The lower court's approach wrongfully conflated the merits of DiCocco's claims with the threshold issue of standing, the appeals panel said.

The appeals court reversed the lower court's ruling and remanded the case for further proceedings.

### A useful — but potentially dangerous — tool

Physical ability tests can be a valuable tool for assessing the ability of job candidates to perform essential job functions. But they can also lead to legal issues, especially in cases – like this one – that say the tests have an unlawful disparate impact on women.

Title VII, the ADEA and the Americans with Disabilities Act all ban the use of discriminatory employment tests. And unlawfully discriminatory tests can sometimes include those that are facially neutral but have the effect of disproportionately excluding people based on their

membership in a protected class, such as sex.

The EEOC has said that determining whether a test has a disparate impact on a protected group normally requires statistical analysis. If there is a disparate impact, employers can avoid liability under Title VII by showing that the test is job-related and consistent with business necessity.

How can employers make this showing? By establishing that the test is measuring skills that are needed to perform the job safely and efficiently.

Even if the test measures such skills, employers have an obligation to see if they can measure such skills in a way that does not produce a disparate impact on a protected group. In other words, they must ask this question: Is a less discriminatory alternative available?

Under the ADEA, an employer can defeat a disparate impact claim based on testing by showing that the test was reasonable.

### How to get it right

There are important keys to using physical ability tests in a way that steers employers clear of legal trouble.

First, it is absolutely critical to ensure that the test measures skills and abilities that workers need to do the job.

Key step: Perform a job analysis that accurately documents the skills that are actually needed to perform the position's essential functions. To do this, employers can retain independent professionals and/or consult with employees already in the position to accurately document what duties the position entails.

Only after this information is firmly in hand should employers proceed to the step of devising the precise contours of a physical ability test.

Another important key: On a periodic basis, reassess and reevaluate the validity of the tests. Job requirements can change over time, and it is imperative to ensure that any utilized physical ability test accurately measures currently required job skills.

The cost of excluding candidates based on faulty assessment tools can be high. In one case, a transportation company agreed to pay \$3.2 million to settle EEOC charges that its strength and fitness tests had an unlawful disparate impact on women. In another, Wal-Mart agreed to pay \$20 million to end an EEOC suit that said a physical ability test Wal-Mart used for order fillers disparately impacted women.

Physical ability tests are valid and appropriate tools for employers, but they must be sure to take all steps necessary to avoid claims of disparate impact discrimination connected with their use.

*DiCocco v. Garland*, No. 20-1342 (4th Cir. 11/3/22).

[Read this article online](#) 

### New court ruling explains tricky FLSA issue: Must workers be paid to boot up computers?

November 15, 2022

Picture this tricky FLSA issue: Your company invested in a computer-based time clock. But now workers have to boot up computers – before

they can clock in. Does that amount to a violation of the Fair Labor Standards Act (FLSA)?

### Time clock's on the computer

A call center in Las Vegas provides customer service and scheduling for an appliance recycling business. Call center agents are hourly, nonexempt employees. Their primary work responsibilities include providing customer service and scheduling appointments for customers over the phone. Company policy prohibits off-the-clock work and requires hourly employees to record their actual time worked.

The company used a computer-based timekeeping system. To reach the timekeeping program, employees had to turn on or boot up computers, log in with their usernames and passwords, and open the timekeeping software. At that point, they could clock in on the computer. Further, employees could use "punch claim forms" to correct inaccuracies on their timecards due to technical issues.

### Estimates of unpaid time ...

Employees were not assigned to a specific computer. Instead, it was a first-come, first-served arrangement. As such, the length of time spent before employees could clock in varied, depending on the age of the computer and whether it had been shut down or was in sleep mode. The average was estimated to be between 6.8 to 12.1 minutes to boot up computers.

Once clocked in, employees used software called "Five9," a phone program that operates through employees' computers rather than a physical telephone. At the end of each shift, employees wrapped up

the call they were on, closed out Five9, clocked out and then logged off or shut down their computers. Employees gave varying accounts of how long it took to log off their computers. On average, it took an estimated 4.75 to 7.75 minutes to log off and shut down computers.

Employees filed a class-action suit, alleging violations of the FLSA. Specifically, they asserted they should've been paid for the time spent:

- booting up their computers prior to clocking in via the computer-based timekeeping system, and
- closing down their computers after closing out of the timekeeping system.

The company filed a motion for summary judgment.

### **Company wins first round in court**

The district court sided with the company, holding that “[s]tarting and turning off computers and clocking in and out of a timekeeping system [were] not principal activities” of the employees’ jobs because the company hired them “to answer customer phone calls and perform scheduling tasks.”

Moreover, the court noted that the company “could dispense with the electronic timekeeping method and the employees could still perform their work.”

As such, the tasks of booting up and shutting down the computers were “not integral and indispensable to the employees’ duties,” the court held, so that time was not compensable under the FLSA.

The employees appealed to the Ninth Circuit.

### **A brief history of this tricky FLSA issue: What you need to know**

The employees appealed to the Ninth Circuit.

The FLSA was enacted in 1938. As you well know, it requires companies to pay nonexempt employees one-and-a-half times their regular pay for any time worked over 40 hours in a single workweek.

A few years later, in *Anderson v. Mt. Clemens Pottery Co.*, the U.S. Supreme Court held that “the statutory workweek includes all time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed workplace.” The Court provided specific examples, such as activities like “walking to work on the employer’s premises,” “putting on aprons and overalls,” and “turning on switches for lights and machinery.”

### **Not so fast! Congress enacts checks and balances system**

The following year, Congress passed the Portal-to-Portal Act, an amendment to the FLSA, to “correct the ‘unexpected liabilities’” created by the high Court’s broad ruling. In a nutshell, the amendment clarified that companies are not required to pay workers for the time they spend on activities done before or after their principal job duties, often referred to as “preliminary” and “postliminary” activities. Examples of this non-compensable time include traveling to and from work and engaging in incidental activities before or after work.

A 1956 ruling highlights the Court’s revised understanding of the FLSA in light of the Portal-to-Portal Act. In *Steiner v. Mitchell*, the Court held that “activities performed either before or after the regular work shift ... are compensable ... if those activities are an integral and indispensable part of the principal activities for which covered workmen are employed.” In the case, workers at a battery factory changed clothes prior to shifts and showered afterward because they were exposed to toxic dust while working. As such, the court held the pre- and post-shift tasks of changing and showering were “indispensable” – and thus compensable under the FLSA.

But not all pre- and post-shift tasks are “integral and indispensable” – even if they are required by companies.

For example, in *Integrity Staffing Solutions, Inc. v. Busk*, the Court heard a case filed by warehouse workers at Amazon who were required to undergo security screening before leaving the warehouse at the end of their shifts. Ultimately, the Court determined that time was not compensable under the FLSA because “the screening was not ‘an intrinsic element’ of the job the employees were employed to perform – retrieving products from shelves and packaging them for shipment.”

### **Workers boot up computers: Is that compensable time?**

Applying the “integral and indispensable” test to the current case, the Ninth Circuit first examined the job that the workers were hired to perform –



answering customer phone calls and performing scheduling tasks. How workers completed these tasks was important, the court said. Importantly, they used computer software for the phone tasks and the scheduling tasks, the court noted.

Because the workers had to turn on and boot up computers to access the software to phone customers and schedule their requests, the act of “turning on the computer itself is a principal activity ... and the time spent waiting for the boot-up process is a part of the continuous workday.”

As such, turning on and booting up computers was “integral and indispensable to the employees’ duties and is a principal activity under the FLSA,” the Ninth Circuit decided.

### Key lesson for HR and supervisors

This case turned on employees’ primary job duties. The court clarified that its decision was not about workers booting up computers to get to the timekeeping system. Instead, the court explained that it sided with these workers because they couldn’t complete their actual work without booting up the computers.

Thus, when determining whether a particular task is “integral and indispensable,” a good rule of thumb is looking at whether the job can be performed if the task is eliminated. No? Then it’s likely an “integral and indispensable” task that is compensable under the FLSA.

### Shutting down computers: Ninth Circuit punts back to lower court

In the footnotes of the ruling, the Ninth Circuit clarified that its opinion was limited to the issue of booting up computers.

It explained that the parties disputed whether the workers were instructed to shut down the computers at the end of their shift. The court also said time spent shutting down computers might be compensable, depending on whether it was “determined to be a principal activity in and of itself.” More info was needed, so the court remanded on the issue of shutting down computers.

### What about that form the company provided?

The company argued that it had no knowledge of the alleged overtime so it couldn’t have violated the FLSA. The company said it provided punch claim forms for workers to report additional time, but the workers didn’t use them. The company reasoned that, because it provided a procedure to correct inaccuracies, then it wasn’t responsible for paying employees for unreported time because it didn’t know the work was being performed.

Since the district court did not address this issue, the Ninth Circuit remanded the question to the district court without opining on it.

Thus, the Ninth Circuit reversed the summary judgment on the FLSA claim as it pertains to booting up computers. It remanded the case for further proceedings on whether:

- Time spent shutting down the computers was compensable under the FLSA, and

- The company had no knowledge of the alleged overtime so that it was not a violation of the FLSA.

*Cadena v. Customer Connexx, LLC.*, No. 21-16522, 2022 WL 13743450, (9th Cir. 10/24/22).

[Read this article online](#) 

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## Three outcomes from the 2022 midterm elections that all HR pros should know

November 17, 2022

From political ads to campaign signs as far as the eye can see, there was no avoiding the 2022 midterm elections this year.

No matter what side you’re on, the laws and legislations that were passed on November 8 have sweeping effects for the rest of the country. As an HR pro, it’s important to know which measures passed may affect the workplace. Here are three things all HR pros should know about the outcomes of the midterm elections.

### Marijuana legalization

The issue of cannabis has been on the ballot for years. While it used to be regarded negatively, there has been a culture shift within the past decade with more and more states beginning to lessen restrictions, both medicinally and recreationally.

In this year’s midterm elections, many states chose to legalize marijuana in some form. Arkansas, Maryland and Missouri all passed laws legalizing marijuana for

adults 21 years of age or older. In North Dakota and South Dakota, legalization was on the ballot but was not passed.

**What HR needs to know:** The rise of cannabis legalization has grown exponentially, making it hard for HR to keep up with shifting cultural attitudes and new legislation. If your company doesn't already have a policy surrounding marijuana use, now may be the time to do so. HR may want to consider creating some guidelines around recreational use during work hours and beyond, as well as shifting policies about screening new hires for cannabis use.

### Minimum wage

Even though the federal minimum wage has stagnated at \$7.25 since 2009, states have chosen to raise the minimum wage over the years. Currently, the

highest state minimum wage is in California at \$15.

In this year's midterm elections, Nebraska passed Initiative 433 to raise the minimum wage from \$9 to \$15 by 2026 and adjust it annually for the cost of living. Nevada also raised their minimum wage to \$12 by July 1, 2024, and removed annual inflation adjustments.

In Washington, DC, Initiative 82 was passed to eliminate tip credit for tipped employees while also raising the minimum wage to the same rate of non-tipped employees by July 1, 2027.

**What HR needs to know:** Minimum wage increases and pay transparency have been in the news due to rising costs of living and inflation. It's important for HR to not only make sure that employees are getting a livable wage, but also that

it is being adjusted to accommodate rising costs all over the country.

### Right-to-work

In Tennessee, a measure was passed to amend the state constitution to include a right-to-work law.

This amendment means that Tennessee will join nine other states to stop workplaces from requiring workers to join a union in order to be employed and allows them to opt-out of paying union dues.

**What HR needs to know:** With a stronger focus on workers' rights throughout the COVID-19 pandemic, there has been a spotlight on unionization for high-profile companies like Starbucks and Amazon. It's HR's job to make sure all workers know their rights and to provide them with the choice of joining a union or not in states with right-to-work laws.

[Read this article online](#) 

## You Be The Judge

# Employee demoted: Was it failure to perform required duties or retaliation?



"I'm telling you, Veronica, I spoke to your boss and if you don't attend the meeting this afternoon, there will be consequences," Benefits Manager Betty Murphy told the employee as they talked in her office.

"And I'm telling you for the fifth time," Veronica said. "I know what Andy makes. It's a lot more than me. He does the same work as me. I should be paid what he is paid.

"You've done nothing about my complaints, so I need to take drastic measures to get my point heard and resolved," Veronica continued.

"I have listened to you every time you've complained, and I've looked into the accusations that your pay is unfair," Betty said. "And I've told you the claim is unfounded. Andy has more experience and skills than you. Your salary fits your experience and role."



## You Be The Judge

### Employee demoted: Was it failure to perform required duties or retaliation? (Continued)

#### Promises kept

"If you still stand by that, don't expect me and my report at the meeting," Veronica said.

Veronica did as she promised – didn't show up at the meeting. And when her manager told Betty, she did as she promised – invoked consequences. Veronica was demoted for her constant complaining and failure to show up for an important job duty.

Veronica sued, claiming her lower salary and demotion were discriminatory based on gender.

The company fought the case. Did it win?

#### The Decision

Yes, the company won the case.

The employee's attorney claimed she was the victim of gender discrimination.

First, the employer paid her less than a male counterpart who was in the same position, doing the same work.

Second, she was demoted for her attitude and complaining about the disparity.

The company's attorney (and Betty) agreed she was paid less than her male colleague – because he had more experience and skills than she did.

Furthermore, she was demoted for failing to show up at a meeting, which was an important part of her work.

The court agreed, recognizing the employee was paid less because she was less qualified. The court also agreed that the constant complaining and skipping of the meeting were unprofessional and unacceptable – and demotion-worthy – behaviors.

#### Be clear, consistent

This case shows that pay differences can be justified with good, tangible reasoning – such as more experience or training.

Equally important were HR's actions – looking into the complaint – and clear, consistent answers to the string of complaints.

*Davis v. Town of Tazewell*, No. 1:18CV00030, (W.D.Va. 2019). Dramatized for effect.

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

## BENEFITS

# Open enrollment: How 2023 will be different



by Renée Cocchi

**O**pen enrollment for 2023 plans will be different because employees' expectations and needs are changing.

Amid inflation and the pandemic, employees are evaluating healthcare coverage options differently than they were a few years ago. As the economy continues shifting, employers must offer employees flexibility and personalization to make sure their needs are properly addressed during a time when the job market is still very competitive.

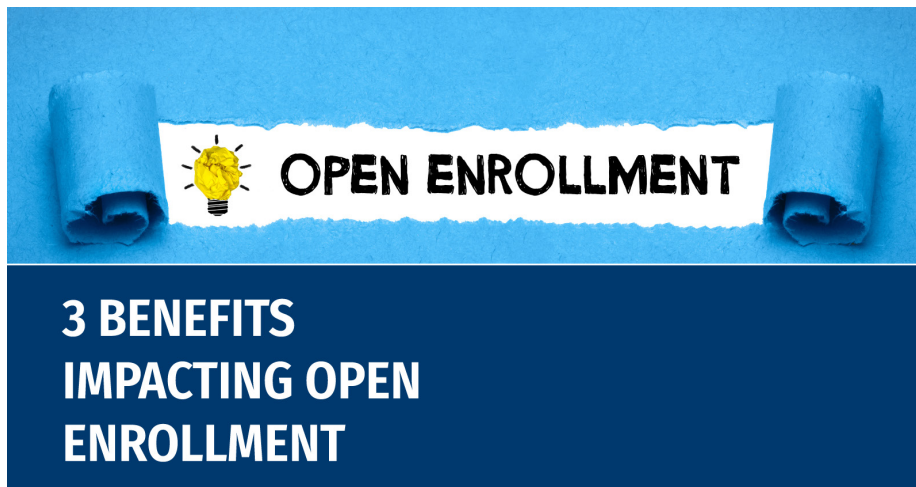
So, now more than ever, benefits and compensation are on the main stage – making open enrollment season a critical time for HR teams to deliver benefits that meet employees' evolving needs.

Luckily, there are a few steps you can take to make sure your open enrollment season is successful.

### Educate, educate, educate

Education has always played a role in open enrollment. This year, however, it'll be different. "You'll be seeing it from the employees themselves, where there's more emphasis to try and understand their benefits better," says Chase Ambrosia, senior benefits consultant for OneDigital. "Employees want to make sure they have the right coverages to protect their families, and they want to feel good about the benefits they have in such a competitive job market."

But it doesn't end there. Employees



are also thinking about how they can be more conscientious consumers with the benefits they're offered. "For example, they want to know about tax advantage opportunities, whether it's HSAs [Health Savings Accounts] or FSAs [Flexible Spending Accounts]," says Ambrosia. "They want to know how much they have to pay for their health care or insurance needs on a pre-tax basis to really get the value out of their benefits packages."

### Communicate clearly and often

All good open enrollment experiences start with excellent communication. "I've always been a believer – regardless of the type of benefits package you offer – that how well you communicate it really dictates the perception of the benefits to your employees," said Ambrosia.

Most people don't do in-person meetings anymore, so the human

contact/personal touch aspect has been lost. While Zoom meetings are effective, they don't resonate as much as personal small-group meetings did. So, if you can implement them again, great. If not, don't rely solely on Zoom recordings or webinars to communicate benefits plans. "Do a combination of things so that you're hitting home with how employees can perceive your benefits package and get the best info from you," says Ambrosia.

One suggestion from Mercer is using two-way communication like having leaders host live sessions where they answer questions from employees.

Lastly, offer multilingual communications so every employee has the opportunity to learn about their benefits.

### Embrace automation and technology

Many employers have gone into a hybrid or fully remote workforce.

So, to accommodate remote workers employers must embrace automation and technology tools. That means goodbye paper forms.

If you're thinking, "We haven't been using paper forms for a few years now," think about this: 78.5% of U.S. employers have fewer than 10 employees, and 89% have fewer than 20 employees. So, for these companies, what has traditionally been a paper-based environment is quickly going digital.

"In the process of going digital, not only is it easier, but it's an environment that for the first time we're beginning to see employees of small businesses have access to a broader benefits package that they haven't had access to previously," said David Reid, CEO and co-founder of Ease.

### Take a holistic approach

Open enrollment for 2023 is seeing some clear changes like offering more innovative and holistic offerings, according to Ease's The 2022 open enrollment readiness report.

"Traditional benefits are still going to be top of the list with medical being the one that leads it," said Reid. "But the concept of holistic or the term equitable benefit offerings is coming front-and-center. We're seeing employers move toward more creative types of plans rather than traditional plans."

The report, which surveyed more than 1,700 employers, brokers and agencies, found that 75% of agencies predict needing to provide more insurance options to their groups this open enrollment season with the following topping the list:

- Worksite benefits (42%)
- Health insurance (33%), and
- Mental health benefits (32%).

"HR leaders must take a holistic approach to benefits – one that addresses employees' physical, mental and financial wellness needs – while also considering the diverse backgrounds and circumstances of their employee base," says Lauren Uranker, head of corporate relationship management at Goldman Sachs Ayco Personal Financial Management. "A one-size-fits-all approach is no longer an option."

### Benefits impacting open enrollment

Some benefits trends that Uranker says are picking up steam and she expects to impact open enrollment this year include:

- **Lifestyle spending accounts:** There's been an increased interest in lifestyle spending accounts, notes Uranker. These accounts enable employees to allocate a fixed amount of funds for elective expenses – anything from their gym membership to student loan repayment. This benefit offers the flexibility and ease that employees want out of benefits today.
- **Student loan assistance:** Student loan assistance options are important to enable employees to achieve other financial goals, like retirement planning. Some student-loan-related benefits, according to Uranker include loan refinancing and management tools, fixed contributions toward student loans, match on student loan repayments and allowing employees to redirect accrued PTO toward payments.
- **Financial wellness programs:** "In our latest bi-annual (every other year) Ayco Executive Benefits Survey, we saw financial education make one of the

biggest increases of any benefit with an 11% jump in companies offering financial education to all employees, compared to the 2019 Ayco Executive Benefits Survey," shares Uranker. "We expect this trend to accelerate as employers and employees alike are conscious of the current economic environment: a potential recession, inflation and rising interest rates."

Employers can incorporate or improve their financial wellness benefits for employees to help navigate this time. Financial wellness programs can span budgeting, investment planning and enhanced 401(k) offerings, like after tax-spillover features and annuity payment options.

"While employers navigate employees' evolving needs this open enrollment season, it's also important to consider the needs of your organization, especially as benefits costs are top of mind in today's economic environment, and inflation has impacted the price of employee premiums," advises Uranker. "By working closely with employees to understand what they need, employers can identify value-added benefits and scale back in underutilized areas as needed."

[Read this article online](#) 

## Case Study

# Adapting and adding new benefits to connect with remote team



The foundation of our company culture is and has always been trust. And that was never more important than during the pandemic.

Employees will always remember how we treated and communicated with them.

During the pandemic, we did everything we could to maximize transparency. We wanted to be as upfront as possible with our teams on what we knew and what we didn't know.

### Virtual care packages

On the benefits side, we were working on expanding the benefits that were significant to our people at that point in time.

This meant we were thinking about all aspects of our employees' health by addressing the four pillars of health: physical, mental and emotional, financial and social.

Even before this pandemic, we sent our remote folks a "benefits fair in a box" package. And that was our template for sending out care packages to remote workers now. But during the pandemic, we were delivering virtual care packages,

offering employees things like the Calm relaxation app.

### Financial, mental health benefits

We also started streaming live and recorded webinars four days a week, touching on the various aspects of the "four pillars." Many of them covered financial topics, including what was happening in the legal arena around tax deadlines and new legislation.

We were trying to address mental and financial health issues our team could have been dealing with. That's why we covered the cost of Cariloop, a support platform that connected employees to care coaches who helped them find and navigate caregiver support resources.

We also partnered with Kashable to provide access to short-term loan benefits that helped our employees avoid bad moves like borrowing against their 401(k) to pay for unexpected expenses, especially if a spouse or partner was laid off.

### Chat sessions

It was important for us to make sure communications got out with a regular cadence, so everyone knew what we were thinking about and working on.


But we also knew everyone was being bombarded with so much information that we were careful not to hit them with too much.

Our CEO also made video messages that were sent out to our associates to communicate everything that was going on. In addition, we hosted team meetings within all the different areas of our organization.

We also made our execs available for scheduled chats to keep everyone as connected as possible.

And we reminded our teams that they needed to take breaks from the news and be careful about where they got their information to help reduce stress from inaccurate stories.

*(Misty Guinn, director of benefits and wellness, Benefitfocus, Charleston, SC)*

[Read more Case Studies in your Membership Dashboard](#) 

# Overcoming problems with hybrid work



## WORK LOCATION

# 4 biggest problems with hybrid work – and how HR can ease them



by Michele McGovern

**Y**ou'd think, by now, we'd have the problems with hybrid work figured out.

But there's still no panacea for employees, their managers and the HR pros who facilitate it.

Despite that, employees want hybrid, flexible work. The most recent data is telling: Almost 55% of employees expect to continue a hybrid schedule going forward, a Gallup survey found. Two-thirds of employees who are working remotely would consider quitting their jobs if they were required to go on-site full-time, a Monster survey found.

"The ability to work a blend of remote and in-person relieves some of the anxieties that are often associated with challenges outside of work, too – whether it's with child/elder care, or prioritizing personal health and well-being," says Christina Schelling, SVP, Chief Talent & Diversity Officer at Verizon. "Research also suggests that a hybrid workplace decreases opportunity for bias. All of that adds up and ultimately, happier and healthier employees are more engaged employees."

All true, but problems with hybrid work persist. These are the top four complications that still plague

employers, plus strategies to avoid or beat the issues.

## Motivation

Harvard Business School researchers found hybrid and remote employees suffer from a lack of motivation. But the reasons you might suspect – such as distractions or the temptation to loaf – aren't the major underlying issue.

The problem: working at non-standard times – such as weekends or holidays – cuts into people's intrinsic motivation. They aren't excited about or happy to do the



work, mostly because they're doing it outside of social norms (yep, they actually function better in a 9-to-5.)

So the very thing that people praise about hybrid work – flexibility – actually hinders their ability to do it.

Fortunately, the researchers also found a way employees can stay motivated when working outside “normal” hours. It's all about mindset. Employees who put in odd hours and thought about how they were making good use of their time catching up on work – as opposed to thinking about time missed doing fun things – were 23% more engaged in their work.

So, to boost motivation, employees might need some encouragement to change their mindset when putting time in outside normal business hours.

### Connection

It's no secret: Hybrid work diminishes face time between employees, teams and their bosses. People can avoid conversations, interactions and certain colleagues when they want by choosing their days to be in the office.

Yet, Gallup has famously found employees with a best friend at work are more likely to be happy with their job and loyal to their employer. And nearly 20% of hybrid employees in a GoTo survey say they miss creating workplace friendships.

Those connections and friendships help foster creativity, collegiality and, at the most basic level, fun in the workplace.

The best solution: Mindfully schedule time on site. Ask teams to find one, mutual day a week to be on site and schedule all work collaboration that day. Then, when possible, give them the resources to do something more casual – such as a group lunch or

coffee break – so they connect on a personal level, too.

### Well-being

Even though we've crawled out from the worst of pandemic isolation, people working remotely – all or part of the time – continue to suffer from mental health issues prompted by isolation and loneliness.

Stress levels and burnout rates continue to rise, especially for women, younger generations and the LGBTQIA community in the workplace, a trio of studies from Deloitte finds.

“While hybrid working presents an opportunity for both employers and employees to address some (mental well-being) challenges, our data shows that this runs the risk of exclusion and a lack of exposure to senior leaders – both of which can serve to increase stress and anxiety,” says Emma Codd, Global Inclusion Leader at Deloitte. “Companies have a critical role to play – to ensure that new ways of working are an enabler of well-being and to provide a stigma-free workplace environment where people know that it's OK to not be OK.”

One way to help is to give employees more opportunities to be involved with ideas and groups that interest them. The best way is through your Employee Resource Groups (ERGs), places and moments designed to make them feel “at home.”

For instance, at Verizon the ERGs are meant to “strengthen our culture and empower employees to bring their whole and authentic selves to their work and contribute their unique perspectives,” Schelling explains.

The key: Give employees time and resources to take more control of their ERGs. That helps them form relationships and break down isolation walls.

### Technology

Technology still ties everyone's hands a bit with hybrid work. Employees run into issues at home, in transit and even on site.

To ease the transitions and overall issues, Kristin Major, the head of HR for Aruba, a Hewlett Packard Enterprise company, suggests HR work with IT to:

- Create systems that safely allow for bring your own device (BYOD). The key here is “safe.” Many companies have been reluctant to allow the transfer of company data to personal devices. So work with IT on a flexible infrastructure that support Remote Access Points (RACs) that are secured through a Zero Trust security model.
- Create the right space. For safer collaboration, try more “hoteling” in your workplace. Give employees space to work independently, plus the ability to book meeting space.
- Know and manage the drawbacks. Identify your biggest potential issues – from processes and technology to logistics and well-being – and work with IT on solutions to proactively fix each.

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## The Cost of NonCompliance



**\$800K**

### Whistleblower violations: \$800K for back pay, interest and compensatory damages


**Who was involved:** ExxonMobil Corporation and two employees who were terminated when the company suspected them of leaking info to the press.

**What happened:** In 2020, the Wall Street Journal (WSJ) alleged Exxon may have inflated production estimates and the reported value of oil and gas wells in the Texas Permian Basin. The WSJ also reported the company's assumption that drilling speed would increase substantially in the next five years may have been inaccurate. These assumptions had been included in company filings with the U.S. Securities and Exchange Commission in 2019.

The company then fired two computational scientists who had raised concerns about the company's use of the assumptions. One was the relative of a source quoted in the WSJ article and had access to the leaked information, according to the findings of an investigation conducted by the DOL's Occupational Safety and Health Administration (OSHA).

OSHA determined the communication about the alleged company violations with the WSJ was protected activity under the Sarbanes-Oxley Act. Moreover, the act also protects the employees despite the company's belief that they had access to the info and possibly leaked it. As an FYI, neither employee was revealed as the source of the information.

**Result:** The company was ordered to immediately reinstate the employees and pay them more than \$800,000 in back wages, interest and compensatory damages.

**Info:** [DOL orders ExxonMobil to reinstate terminated employees suspected of leaking information to Wall Street Journal](#) , 10/7/22.

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[Read more The Cost Of Noncompliance in your Membership Dashboard](#) 

## BENEFITS

# Open enrollment: 5 things employees most often misunderstand



by Jackie Plunkett, HR Expert Contributor



HELPING WITH  
WHAT EMPLOYEES  
MISUNDERSTAND  
**ABOUT OPEN  
ENROLLMENT**

**O**pen enrollment means one thing for HR pros: Your inbox and voicemail will be full of questions, and employees will be knocking on your door to get their questions answered. They're confused before it even starts. And they need your help.

The best way to help: Know what employees most often misunderstand about open enrollment and address those with good information early in the process.

Most HR pros work with their brokers on a presentation that reflects all the work they recently did – assessing current benefits, examining costs and doing surveys to gauge the impact of the benefits. You bundle it up into a nice, neat benefits guide and/or a presentation on the details of the open enrollment process.

But what's often missing are simple explanations of what employees misunderstand most.

Here are the top five things most people – sometimes even HR people – have a tough time understanding, plus tips on helping them understand.

## 1. Privacy

Since COVID-19, employers have been encouraged to do more for their employees' mental health, overall well-being and work/life balance. But many employers don't ensure that the use of these benefits is private.

## Open enrollment: 5 things employees most often misunderstand

Remember, it's illegal for employers to see who used Employee Assistance Program (EAP) services. EAP vendors have strict regulations. Employers can know how many people used an EAP site, hotline or program, but not who, where they were or what role they have in the company.

Some employees believe employer-provided coverage allows the employer to know all about their medical usage. Define the privacy standard in plain English, not using the blanket HIPAA statement, which can be confusing and off-putting.

### 2. HRA, HSA, FSA

While Health Reimbursement Arrangements (HRA), Health Savings Accounts (HSA) and Flexible Spending Account (FSA) provide ways for reimbursement of medical costs, they all have differences, which employees often can't distinguish.

Some roll over from year to year. Others need employees to enroll in them every year. Some can't be combined. And others have usage restrictions.

Be sure to plainly define the essential parameters of each account, the overlap and how being in each plan can benefit the employee.

### 3. Providers

Whether you're fully insured or self-insured, people often have issues finding in-network providers.

For instance, if a benefits survey uncovers a disconnect where some people rate the dental coverage the best and others rate it the worst, it could be that the people who gave it poor ratings are using out-of-network providers and aren't aware of it.

Help employees recognize that the best way for a member to verify an in-network provider is to register online with your provider directly. Show them exactly how, once they're logged in via an app or the internet, they can see coverage, claims and providers, and print ID cards.

This is important because many companies that have plans administered by another party may use a separate provider network which may cause confusion with provider verification. Many providers have also moved away from mailing IDs for dental, vision and other benefits.

### 4. Help

Employees make elections weeks or months before the new coverage takes effect, but it is often much longer until they use those newly elected benefits.

One way to fix the disconnect is to ensure your self-service platform displays the current elections each employee has. Another low-tech option is to create a wallet card with names of providers, phone numbers and websites.

Send out quarterly reminders of the plans you offer and how to obtain help with claims or login to the carrier websites as a member to reduce confusion and increase employee satisfaction.

### 5. Disability

I once discovered during an open enrollment prep that five people were signed up for long-term disability (LTD) when they would've been better signed up for short-term disability (STD).

Why? No one had made it clear that STD covered the first few months

of a qualifying leave and LTD started after the STD ended, roughly after three months of being unpaid.

## Be ready to answer unasked questions

Benefits misconceptions exist in every organization, and not every employee will ask enough questions. All plans differ in terms and change even during renewal periods. Even if you've explained things previously and haven't had turnover or plan changes, repetition helps.

It's the responsibility of the HR benefits administration team to successfully communicate the value of their benefits. Make sure to explain your benefits clearly and simply each year. Concise but detailed summaries are an important part of a benefits guide. The more your employees understand and value your benefits, the greater the employee satisfaction rating will be.

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## Case Study

# A novel approach to the traditional workweek



Traditional work hours were burning out employees and increasing turnover, so we turned to a novel approach to the workweek to meet employee needs.

### 14-hour days, three days a week

We wondered what could help employees better manage their work-life harmony while also increasing retention.

We decided to offer an untraditional schedule by allowing employees to fit all their hours for the week into three 13-14 hours days, meaning they had a four-day weekend while still keeping their benefits and full-time pay.

Employees who didn't want to work those hours still had the option to keep their normal schedule. Those who did want to try the three-day week were split up into two groups, with one group working Monday through Wednesday and the second group working Thursday through Sunday for two weeks before alternating.

### Time for family, side jobs

We found that employees valued the change because it gave them the gift of time.

This shortened week gave employees a chance to plan more vacations, spend time with family and even invest in a side hustle to make extra money. Employees are able to spend time finishing degrees and graduating college without sacrificing sleep or their social life to do so.

Employees value flexibility, and that sentiment has grown exponentially since the onset of the pandemic. Even though employees are working longer hours, they're getting more time to work on their passions and what really matters to them, and can in turn bring their all when they show up to work.

### Increased applications and job satisfaction

We found that this three-day week wasn't just received well – it was making tangible changes. Within

one week, we had 429 new job applications, and we found that potential hires were enticed by the idea of a three-day week.

It also improved the work of current employees. We have experienced fewer call-outs, improved retention and an overall increase in job satisfaction from employees who opted into the program.

It also improved our bottom line, and we're on track to do far above our average revenue for the year.

*(Justin Lindsey, Owner-Operator at Chick-fil-A Kendall, Miami)*

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# 4 steps to becoming a menopause-friendly workplace



by Renée Cocchi

## WHY PROVIDING A MENOPAUSE-FRIENDLY WORKPLACE IS VITAL



**T**here is one group of people whom HR may be overlooking when it comes to benefits – people going through menopause. This means you aren't providing a menopause-friendly workplace.

What most people don't know is menopause has 34 symptoms associated with it. They include

many things, from the well-known hot flashes to headaches to tingling extremities to dizzy spells to irregular heartbeat to panic disorder, and the list goes on.

Many of these symptoms can make going to work agonizing. In fact, 45% of people reported taking a menopause-related sick day, according to a study by Gennev,

a menopause telehealth company. The study surveyed 2,500 workers experiencing menopause and found that one in four reported quitting their job because of menopause.

### Why is this going on?

Many employers assume that people going through menopause have

## 4 steps to becoming a menopause-friendly workplace

already aged out of the workforce. But that's far from accurate.

The menopausal transition typically begins between the age of 45 and 55, according to the National Institute on Aging. Most people that age are still working and probably have another 10 to 20 years left in the workplace. Add to that the fact that menopausal transition can last anywhere from seven to 14 years, and you have a lot of employees in the workplace who are menopausal.

Here are three reasons all employers should care about their menopausal employees:

- Global menopause productivity losses total \$150 billion a year, according to a Bloomberg study.
- By 2025, there will be approximately 1.1 billion people going through menopause, according to the North American Menopause Society.
- It's a diversity, equity and inclusion issue.

### Communicate openly and often

Use different forms of communication to reach this population. You can offer a dedicated benefits platform, an intranet site, posters, flyers, seminars, presentations and online videos, suggests Peppy Health Corporation. The important thing is to make the subject easy to talk about. People shouldn't be embarrassed to talk about menopause, because it's a natural stage of life.

Plus, encouraging people to talk about it can help some people cope with it or realize they're having

symptoms of menopause. For example, people may not know that brain fog, hair loss and insomnia are symptoms of menopause. By educating them, they may realize these symptoms they're experiencing are from menopause and seek help and/or treatment.

### Revise absentee policy

Some menopause symptoms, such as night sweats, headaches, itchiness, depression, etc., can affect employees' productivity because they affect sleep. This plus heavy bleeding and severe cramping can make it difficult to work in an office.

Look over your absentee policy and make sure you mention in it that menopause symptoms are legitimate reasons to use sick time or work from home when needed. And remind employees of this fact.

### Assess your physical workspace

There are certain things employers can do to make their physical workspace more accommodating to employees going through menopause. One is to make sure your air conditioning units are working properly and that all areas of the office are equally covered by them.

Keep extra floor and desk fans around for employees to use to keep their workspace at a pleasant temperature for them.

Provide access to cold water.

If employees are required to wear uniforms, make sure the material is natural and breathable, and the fit is loose. Artificial fibers and tight-fitting clothing can intensify hot flashes.

### Provide resources

Let employees going through menopause know you support them by providing appropriate resources on signs and symptoms, well-being benefits you offer that can help them like an employee assistance program, and information on things like support groups, hormone replacement therapy and alternative therapies.

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## The Cost of NonCompliance



**\$115K**

### Ford Motor Company pays \$115K to settle EEOC's pregnancy discrimination suit

**Who was involved:** Ford Motor Company and a pregnant applicant who was slated to work at the company's stamping plant in Chicago Heights, Illinois.

**What happened:** According to the EEOC's lawsuit, the company extended a conditional job offer to an applicant, subject to her passing a physical, a drug test and a background check. She passed all three. At her physical, she disclosed that she was pregnant. Her doctor cleared her to work on Aug. 13, 2019. But the company did not schedule her. The woman repeatedly called the company to inquire about her start date and was given "various answers" until late October, when she was told that the company was no longer hiring.

**Result:** Ford agreed to pay the applicant \$115,000 and enter into a two-year consent decree that:

- Prohibits pregnancy discrimination and retaliation at the stamping plant facility.
- Requires the company to adopt procedures for notifying pregnant applicants or employees if it needs more medical information.
- Prohibits Ford from requiring additional medical documentation from pregnant employees that it doesn't require of non-pregnant workers.
- Requires the company to provide anti-discrimination and harassment training.
- Requires the company to adopt and implement an effective complaint and investigation procedure.
- Requires the company to report all complaints of pregnancy discrimination to the EEOC.

**Info:** [Ford Motor Company to Pay \\$115,000 to Settle EEOC Pregnancy Discrimination Case](#), 11/4/22

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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



**Carol Warner**

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.



**Alison Roller**

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.



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## Get In Touch

Phone:  
484-207-6343

Email Customer Support:  
[support@hrmorning.com](mailto:support@hrmorning.com)

Mailing Address:  
660 American Avenue, Suite 203  
King of Prussia, PA 19406

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