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– and how you can get a head start





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News You Can Use

HR Stories You Might Have Missed

Recruiting and retention trends to follow for 2023

December 2, 2022

Yesterday we told you about how the majority of employees don't believe their salaries are keeping up with inflation and because of that many are once again looking for better-paying jobs. Today we're going to share six recruiting and retention trends that if followed will help you keep your current talent happy and attract new talent at the same time.

The following trends, according to Talent.com, will play a significant role in the workforce in 2023:

Benefits play larger role in recruitment

In 2023 expect to see an increasing importance of benefits in worker compensation packages. In fact, 60% of job seekers find benefits to be an important element when looking for a job, second only to salary, according to a Talent.com study. With the talent crunch that the labor market witnessed and continues to experience in some verticals, organizations will turn to implementing more comprehensive and attractive benefits packages to attract and retain top talent.

"Non-traditional benefits such as access to fertility treatments, financial wellness programs and pet insurance won't be irregular to see," says Robert Boersma, VP, Operations, North America at Talent.com. "Moreover, as an increasing number of states move in the direction of pay transparency, job seekers will also turn to benefits as a negotiation tactic. Increased vacation days, parental leave and 401(k) matching are a few of the many avenues job seekers will leverage."

Upskilling, developing soft skills take centerstage

Upskilling and soft skills made their appearance in 2022. But with the economic uncertainty of 2023, upskilling opportunities are going to be a prominent retention strategy.

Why?

Because it shows an employer's commitment to growing its company.

"Organizations today have picked up on employees' desire for continuous learning and so we will see unique learning and development programs set in place as they create an environment where upskilling is encouraged and also reap the rewards of developing highly skilled teams," explains Boersma.

Additionally, soft skills are invaluable to an organization. "Holding these skills often sets top leaders apart," says Boersma. "Interpersonal communication, decision making, time management and collaboration are all soft skills for employees and job seekers alike to focus on in the new year to increase their value in the workforce."

Hybrid work popularity continues

The desire for a flexible work environment isn't going anywhere. In fact, in 2023, its popularity will only increase.

Employees feel working in an office five days a week for eight hours a day is going backward, especially after experiencing the freedom of remote work for the past few years. Providing this freedom and the technology to work remotely will give organizations one up on their competition.

"Many employees have stated that having a non-flexible work environment can be a dealbreaker," says Boersma. "So, we will continue to see employees' wants being taken into account through hybrid work models."

Measuring employee productivity grows

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Measuring employee productivity grows

With the popularity of remote work, employers want to make sure their employees are being productive since hybrid work models are here to stay.

"We will begin to see organizations put efforts into place to measure productivity," notes Boersma. "From tracking hours to monitoring softwares employers will be looking to gain insight into how their teams are spending working hours and how time can be optimized to produce increased results."

Pay transparency gains momentum

2022 was the year pay transparency took hold of the U.S. And in 2023 it's going to gain a lot more traction because according to Boersma, "[it's] the future of work." New York City and Colorado already have pay transparency laws in place, requiring employers to state salary ranges in job descriptions. California is next to legalize pay transparency on Jan. 1.

"Pay transparency is ultimately one way to correct wage gaps, and erase pay discrimination, which would be a huge victory," said Boersma. "A recent study conducted by Talent.com showcasing New York City residents' thoughts on pay transparency displayed that nearly 35% of job seekers experienced pay discrimination and over 50% of those were women. Pay discrimination is an issue that has plagued the employment sector for far too long, and enacting salary transparency can help address the situation."

Mental health focus still required

With all the economic stress that's going on in the U.S. from the possible recession to nationwide layoffs, many employees are stressed about the future of their jobs. And while the U.S. has come a long way since the start of the pandemic to embrace the mental health and wellness needs of employees in the workplace, there's still more work to be done.

"Although we have moved past the pandemic, now is not the time to move backward on the tremendous progress made that allowed employees to be open about their mental health struggles," says Boersma. "Times of economic uncertainty bring about a whole new set of fears that have the power to negatively affect mental health. The onus is on employers to recognize these potential barriers and provide

employees with ongoing access to resources that can improve their mental well-being, and in turn work performance."

[Read this article online](#) 

Flu season pays U.S. an early visit: Keep employees safe

December 7, 2022

If you haven't noticed, you probably will soon. Flu season came unusually early this year.

The latest statistics from the Centers for Disease Control and Prevention (CDC) show that from Oct. 1, 2022, through Nov. 26, 2022, there were:

- 8.7 to 19 million flu illnesses
- 4.2 to 9.5 million flu medical visits
- 78,000 to 170,000 flu hospitalizations, and
- 4,500 to 13,000 flu deaths.

2022-23 flu season more severe

Flu season typically peaks somewhere between December and February. However, the numbers above are from October and November.

This flu season is more severe than it's been in 13 years, according to the CDC. The last time we've seen numbers like these was in 2009 during the swine flu pandemic. And it won't be slowing down any time soon.

The reason this flu season is so bad, according to the CDC, is reduced immunity, low vaccination uptake and the end of COVID-19 safety protocols.

Prevention is key

So, the best thing you can do to prevent employees from contracting the flu is to encourage them to get their flu vaccine. They can get their flu vaccine and COVID-19 booster at the same time.

Employees at the highest risk of serious flu complications are pregnant people, those with certain

chronic health conditions like asthma, diabetes or heart and lung disease, and people 65 years or older.

To prevent the spread of the flu, in addition to getting the flu vaccine, encourage workers to:

- Avoid sick people
- Stay home if they're sick – at least 24 hours after their fever is gone without using fever-reducing medicine – and limit contact with others
- Cover their mouths when they cough or sneeze
- Throw away tissues after use
- Wash hands often with soap and water, or use alcohol-based hand sanitizer, and
- Don't touch their eyes, nose and mouth.

Many of the same protocols you used to prevent COVID-19 can be used to prevent the flu. That's why we had a mild flu season last year.

Check out the CDC's page for similarities and differences between the flu and COVID-19.

[Read this article online](#) 

How to keep from getting stressed out when you're an HR department of one

December 16, 2022

You may know from personal experience that being an HR department of one is challenging. But there are several things you can do to make it easier to be successful in that role.

Lori Kleiman, SPHR and SHRM-SCP, president of the consulting firm HR Topics, divided them into four categories during a presentation at the 2022 BambooHR Virtual Summit.

Use tech tools

Helpful tools Kleiman recommended for staying organized and saving time when you're an HR department of one include:

- Outlook reminders for important deadlines. Tip: Give yourself a cushion of a couple weeks before the hard deadline.
- FollowUpThen, which is a free app for day-to-day email reminders like "Ask how this person's liking

their new job" or "This person is eligible for 401(k)," and

- Calendly for appointment scheduling. "Instead of people just popping by whenever they want, let them schedule an appointment. And you can say how long you want those appointments to be," she said.

Get help for your HR department of one

The reason you're an HR department of one is probably a tight company budget. Consider delegating some of the more routine aspects of your job by:

- Off-shoring tasks to freelance professionals in countries like India and the Philippines via sites like Upwork.com or Fiverr.com, which should cost less than outsourcing
- Asking appropriate external stakeholders, such as your benefits broker, for help. For example, if an employee's going on short-term disability leave, have the vendor email them the paperwork, or
- Enlisting interns. "Contact your local community college or local four-year college (or) your local job placement agencies and see if you can't find an intern who can come and work for you to get some things done," Kleiman said.

Demonstrate leadership to your team

Remember, not only are you the one that's in charge of HR, you're one of your organization's leaders. To reinforce that with your employees, Kleiman said to:

- Stay current with your HR knowledge (HRMorning's got you covered there) and the business news that's impacting your industry. And because you're an HR department of one, you don't have time to read all the latest best-selling business books. Kleiman recommended checking out their summaries at Summary.com.
- Keep your goals and deliverables specific, measurable, action-oriented, realistic and timely. "Make sure, wherever you can, under-promise and over-deliver," she added.

Communicate effectively

Effective communication is crucial to being a good leader. Some tips to keep in mind:

- Whether it's in-person or in an email, strive to use plain language and strong action words, and be

careful not to use too many acronyms. (e.g., Not everyone knows what FMLA stands for.)

- When making a business case for something you want, connect it to the things that your CEO and CFO care about, tell how it benefits the company, back it up with data points, provide a cost estimate, outline a plan of action, and then ask if it's OK to move forward.
- If you're going to mention metrics, make sure they're relevant to the stakeholders in the room.

[Read this article online](#) 

New settlement: Work-from-home dispute costs employer \$47K

December 20, 2022

Work-from-home arrangements were always a potential accommodation under the Americans with Disabilities Act (ADA), and they became generally more prominent when the now-lingering pandemic first hit.

But despite their proliferation, some employers are continuing to run into trouble when it comes to permitting work-from-home schedules.

A case in point: The Equal Employment Opportunity Commission (EEOC) just settled a lawsuit it filed on behalf of an employee who allegedly was illegally denied a work-from-home job accommodation.

The EEOC said Ronisha Moncrief worked as a health and safety manager for ISS Facility Services Inc.

From March 2020 through around June 2020, the agency said, ISS had its employees work remotely for four days of each workweek.

Sometime in June, the EEOC added, ISS asked its employees to return to work at its job site on a full-time basis.

Work-from-home accommodation sought

That is when Moncrief, who has a pulmonary condition, asked for a disability-related job accommodation.

Specifically, she asked ISS for permission to work remotely for two days each workweek – and be

allowed to take frequent breaks when she was working on site.

The EEOC's suit alleged that even though ISS allowed other employees in Moncrief's position to work from home, it denied her request. To make matters worse, it then terminated her employment.

That alleged conduct violated the ADA, the agency alleged in the suit. In addition to discriminating against Moncrief based on her disability, ISS also illegally retaliated against her, the suit said.

Generally speaking, the ADA requires covered employers to provide reasonable accommodation to qualified applicants and employees with disabilities, so long as doing so would not create an undue hardship.

Of course, it also prohibits employers from terminating the employment of qualified individuals with disabilities based on disability.

ISS broke both of those rules, the suit said, and further retaliated against Moncrief for seeking a legitimate disability-related job accommodation.

The agency filed the suit in a federal district court in Georgia. It said that it did so after first attempting to resolve the matter via a pre-litigation conciliation process.

Money plus other relief

To end the suit, ISS agreed to pay \$47,500. In addition, it will also provide training to its employees relating to the requirements that are set by the ADA. It further agreed to make changes to its employment policies and permit the EEOC to monitor how it responds to future requests for job accommodation.

Some work-from-home questions have become more complicated in light of COVID-19.

Here are some that the EEOC has specifically addressed in guidance.

One sticky question that may arise if an employer requires employees to work from home due to the pandemic: If the employer provided disability-related accommodations to the employee in the workplace, must it provide them to the employee at home?

On this question, the agency advises that the employer and employee should discuss what is needed and why – and whether a substitute

accommodation might work in a home setting. The undue hardship inquiry is significantly affected when the accommodation is provided at home rather than at work, the agency adds. For example, it says, the unknown duration of a period of telework may make it unreasonable for an employer to provide certain accommodations.

More akin to the situation that led to this settlement, in the guidance the EEOC specifically advises that when an employer reopens after a COVID-19-related period of telework, it does not automatically have to grant telework as a reasonable accommodation to every employee with a disability who wants to continue to work from home. Instead, telework need not be granted as an accommodation unless there is a disability-related limitation that requires it.

Important reminder: The ADA never requires employers to eliminate essential job functions as a disability-related accommodation – even if an employer chose to excuse employees from performing essential job functions during a period of telework.

The overriding key to avoiding liability under the ADA in job accommodation cases: Engage in a good-faith interactive process with the employee to learn the full and true nature of any disability-related limitations and whether accommodation enabling the performance of essential job functions can be provided without causing undue hardship.

[Read this article online](#) 

Autistic employee fired: McDonald's franchisee pays \$100K to settle EEOC lawsuit

December 20, 2022

JDKD Enterprises, the owner/operator of several McDonald's franchises in New Jersey, has agreed to pay \$100,000 to settle a lawsuit filed on behalf of an autistic employee.

The EEOC claimed the franchisee fired an employee who worked at several McDonald's locations over a 37-year period because he has autism. The suit further alleged that the employee had a long history of excellent service and had won several awards recognizing his job performance.

Autistic employee fired 2 months after takeover

Despite the employee's track record, he was "abruptly fired," the EEOC alleged, just two months after the franchisee assumed ownership of the location where the employee worked.

The EEOC said the franchisee's conduct violated the Americans with Disabilities Act (ADA), which prohibits employers from taking adverse employment actions based on workers' disabilities and need for accommodations.

In addition to the financial payout, the franchisee entered into a two-year consent decree. Under it, the company must submit periodic reports to the EEOC and provide training to managers regarding legal obligations under the ADA.

Info: JDKD Enterprises Will Pay \$100,000 to Settle EEOC Disability Discrimination Suit, 12/16/22.

[Read this article online](#) 

What to Plan for the 2023 Employee Experience



LEADERSHIP & STRATEGY

2023 employee experience: Trends HR needs to know now



by Michele McGovern

What will the 2023 employee experience look like?

While HR can't predict this year's experience, you can most definitely help define it. And you'll likely want to make it better than ever.

The key will be to act on employees' emerging expectations and underlying needs that changed dramatically over the past several years.

"Just because employees are now choosing to stick around doesn't mean that they're suddenly going to be highly engaged, highly motivated employees," says Jabra SVP Holger Reisinger. "To reverse the years-long trend in decreasing employee engagement, leaders must begin to show more recognition – for the financial challenges employees are facing, for the changing role that

work is playing in people's lives, and simply for a job well done."

To move forward with that as a guidepost, here are five of the top 2023 employee experience expectations and trends – and how you can meet them.

Need for assurance

Nearly everything has been unsettling in the past few years – pandemic, work and home upheavals, social concerns and the economy. Perhaps the most important workplace trend in 2023 will be creating a greater sense of security.

Employees are looking for assurance that their job and their employer are on solid footing, according to the Qualtrics 2023 Employee Experience Trends Report.

"Employee expectations have fundamentally changed, and the progress we've made cannot be undone," says Qualtrics Chief Workplace Psychologist Dr. Benjamin Granger. "But as the economic picture shifts and people focus on their basic needs, clear and open communication are essential. Employees want reassurance that their jobs are secure, and that they'll get some relief from burnout after the disruption brought on by the confluence of COVID, an economic downturn and geopolitical events."

To reassure employees in 2023, transparency is critical. Ask leaders to regularly give employees a bigger view of company performance and goals going into the new year. Then, ask managers to talk with their teams about where they fit in for hitting goals. Finally, require managers to have at least quarterly one-on-ones with employees to

review performance, recognize accomplishments and set new goals.

Focus on communication to avoid conflict

Poor communication is the No. 1 cause of conflict at work, according to research from Myers-Briggs. And employees spend about four hours a week dealing with the conflict.

It'll be important to decrease conflict to improve the experience.

Focus on clearer communication to accomplish it in 2023. Myers-Briggs Head of Thought Leadership John Hackston suggests these tips:

- **Give front-line managers time, answers and backup** to communicate HR policies and corporate information directly to employees.
- **Listen to employees more throughout the year.** Take pulse surveys, reviewing subjects that are critical to employees and your business, and adding topics that you hear in the undercurrent.
- **Solicit feedback.** Ask employees how they feel about policies, procedures and the workplace experience. Give them outlets – town halls, anonymous email, office hours, etc. – to share their ideas that might improve the workplace.

Maintained work/life balance

While many organizations continue to bring staff back on-site, most will continue hybrid work arrangements. And leading

a team of hybrid employees isn't the same as leading a group that's onsite and together daily.

"The dynamics in a hybrid environment are complicated and helping every employee get what they need to be effective takes effort, insight and attention," says Hackston. "However, strong hybrid leadership ensures that workers feel understood and that they are given the best chances of success, building a culture of trust in the workplace."

So HR and corporate leaders will want to equip front-line managers with more skills and knowledge to manage their hybrid teams. Whether you make it required or voluntary, do it in-house or hire a trainer, get front-line managers training on leading a hybrid team so they can improve the employee experience.

Focus on employee development

As the hybrid work trend goes on, employees working in that environment will want and need more specialized learning and development.

And it makes good business sense to offer it: Three-quarters of employees would stay longer at a company if they could benefit more from learning and development support, according to a Microsoft study.

"When work happens virtually, so too must personal and professional development. This means that the technology we use at work will shape the way we develop as professionals and as people," says Jabra President & GM of North America Kelly Nagel. "In 2023, we can expect companies to more widely integrate digital benefits

such as online courses, subscriptions to mental health apps and professional collaboration technology into their employee experiences."

Have you considered those options yet? If so, the next critical step is to make sure employees know the benefits exist with an internal marketing effort. From there, schedule training on the learning and development opportunities so you're sure they know what to do with the tools.

[Read this article online](#) 

EEOC sues for sex discrimination, loses in court



"Hi, Aunt Betty. It's Veronica. Do you have a minute?" said Benefits Manager Betty Murphy's niece.

"I always have time for my favorite college professor," said Betty with a smile. "What's up, sweetie?"

"I'm sorry for bothering you during work but I need your advice," said Veronica. "It's really important."

"You sound upset," said Betty. "What's going on?"

"Remember how I told you I was up for a promotion to full professor?" asked Veronica.

"Yes. You mean you didn't get it?" asked Betty.

"No. I did get it," said Veronica. "I got the email confirming my promotion and my new salary increase the end of last week. But then I got another email by mistake later that same day confirming my colleague's promotion to full professor and his new salary which is \$25,000 more than mine, and we basically do the same job!"

More experience?

"Does he have more experience than you?" asked Betty.

"I'm not sure ... maybe," said Veronica. "I do know that I've been here way longer than he has. I can email what I know."

"Good. I'll look at it," said Betty. "But you should contact the Equal Employment Opportunity Commission (EEOC) and file a discrimination charge."

Veronica took her aunt's advice and the EEOC sued the school for violating the Equal Pay Act (EPA).

The school petitioned the court to throw out the EEOC discrimination charge. Was it successful?

Allegations met standard

No. The court refused to dismiss the case, saying that the EEOC had a sufficient cause of action against the school based on the allegations.

To prove an EPA claim, the EEOC must show that the employer pays different wages to employees of opposite sexes 1) for equal work 2) on jobs that require equal skill, effort and responsibility, and 3) for jobs that are performed under similar working conditions. The jobs don't have to be identical, the court said. Rather, they have to be "substantially equal."

The EEOC and Veronica's allegations met this standard, the court said. That is, their lawsuits sufficiently alleged that she and the male professor performed substantially equal work with regard to their job duties, such as teaching classes and publishing scholarly material.

You Be The Judge

EEOC sues for sex discrimination, loses in court (Continued)

Received same ratings

In this regard, the court pointed to the following: First, Veronica and the male professor were teachers in the same department.

Second, Veronica allegedly had more years of teaching experience than her male counterpart and had published more than he did. In addition, the dean of arts and sciences described a book she wrote as “of high significance and visibility.”

Third, with respect to their teaching capabilities, both professors received above-average ratings. Fourth, both were promoted to full professor at the same time after a review by the same committee based on the same criteria. Nevertheless, the school paid Veronica \$24,966 less than it did her male colleague. The court said these allegations also met Title VII’s lesser standard of showing Veronica and the male professor were similarly situated but she was still paid less.

Due to that, the case was able to proceed.

School didn’t discriminate

However, during the trial, the school’s lawyers contended that the male professor’s subspecialty was more attractive than Veronica’s. They also pointed out that the professors taught different classes, specialized in different areas and published in more prestigious journals that garnered the school a lot of attention.


In addition, it was shown that the school administrators did salary comparisons within their school and other schools looking at past teaching experience, research records, credentials, publications and possible counteroffers from other schools.

The jury found that the school didn’t discriminate against Veronica.

This case shows you don’t have to pay everyone at the same level the same salary. However, it is a fragile road to tread.

Your best bet is to document your payment strategies and pay scale policies, and follow them. If there is any reason to veer off that path, put it in writing and have your lawyers verify it’s legal.

EEOC v. Univ. of Miami, No. 19-23131, 2019 WL 6497888 (S.D. Fla. 12/3/19).

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

What's wrong with annual reviews – and 6 tips to improve them



by Michele McGovern

TIME TO DITCH THE 'ANNUAL' REVIEW



Annual reviews are a thorn in the side of employees, managers and HR. Yet, despite the bad rap, companies continue to schedule performance reviews one time a year.

Employees usually dread the conversations, wondering how they've measured up. Managers often stress over the additional pre- and post-meeting work, plus the discomfort associated with sometimes having to tell employees things they don't want to hear.

HR has to keep it all in check, adding more chaos to your year-end. For many, this could be the first year

in a few you'll amp up for reviews as many organizations dropped formal evaluations and career conversations throughout the pandemic.

Still, nearly a third of companies still do them, and another 18% check in biannually, according to research from Workhuman. Employees worry that sitting down once a year isn't enough. Specifically, Workhuman found employees are concerned that:

- their review won't accurately reflect their performance (22%)
- they won't receive a bonus/raise (19%), and

- they had fewer opportunities to grow, and that will be reflected (12%).

"Annual reviews are not a bad idea, but they must be part of something larger and never stand alone as an indicator of performance," says Rosette Cataldo, Vice President of Performance and Talent Strategy at Workhuman. "Many employees have grown weary with the traditional once-a-year appraisals and its clunky processes and managers can become overwhelmed with the sheer amount of work it takes to look back and recall all that the employee contributed or fell short of delivering over the year."

Every organization is different and the pace, complexity and process for performance reviews will need to vary. But some strategies are universally effective to help employees perform well and stay engaged, plus help leaders and companies manage performance to optimize business.

Here are six strategies for more effective performance evaluations.

Ditch annual reviews

Experts, practitioners and researchers agree that employers should ditch annual performance reviews for varying reasons.

Perhaps this is the best reason: Just 14% of employees strongly agree an annual review is actually effective, a Gallup study found.

This isn't to say you should ditch reviews entirely. Instead, most experts agree, you want to increase the regularity of reviews – quarterly or monthly. And train managers to approach them more informally so the constant review of what's going well and what needs to be tweaked is comfortable for both sides.

From there, you can add these other effective strategies.

Start with online assessment

More companies today start the regular cadence of reviews with brief self-assessments. It's particularly effective with more informal, frequent reviews.

For instance, Treva Fairman, Chief Operating Officer at Ascend Behavior Partners, told the *Wall Street Journal*, her organization adopted an online

assessment that takes managers just about 10 minutes to complete before having brief one-on-one chats with front-line employees who traditionally didn't get much feedback. It's helped them evaluate employees on performance and their commitment to company values.

Whether you use a third-party tool or rely on an in-house manual process, you can create a three-question assessment to make the actual conversation effective. Touch on:

- What's gone well since the last discussion
- Where there have been struggles, and
- The support the employee needs going forward.

Put weight on company culture

Company culture matters – and employees want credit for their contributions to it. In fact, 35% of employees plan to put greater emphasis on their contributions to company culture in self-assessments. That's ahead of how much they plan to emphasize their business contributions!

"Employees are investing more of their whole selves into the workplace. A culture that fosters positivity through recognition, continuous feedback and the sharing of goals for the purpose of receiving supported growth recreates an environment where employees have a greater sense of belonging, purpose, achievement, happiness and enthusiasm," says Cataldo.

While it might be more difficult to quantify employees' impact

on company culture, front-line managers can almost always see if employees lift up or bring down others. Make that part of the assessment, having managers and employees identify behaviors that add to or detract from culture.

For instance, at *SuccessFuel*, the parent company of HRMorning, collegiality is part of the hiring standards and review process. Employees are expected to work well with others, share information, participate in team projects and support colleagues.

Vary how you assess skills, contributions

Annual, bi-annual, quarterly, monthly – whatever frequency you choose – is predictable and usually relies on the same person or people to review the same performance.

To broaden the view of performance, try a different approach to cadence, people and what's measured.

"Annual performance reviews have a place in an organization's approach to evaluating an individual's overall performance, but they often miss the full picture of an employee's contributions," says Joan Goodwin, Performance Management Practice at Deloitte Consulting.

Instead, she suggests "upon completion of a project or initiative have the team members or managers who have been closest to an employee's work complete 360-degree or multi-rater feedback that identifies the top two or three skills being demonstrated and then one area where they need development."

You don't have to take extra time for this, either. Managers can

weave the skills conversation into check-ins to recognize strength and development areas in real time. Then they can identify training and exposure employees might try to grow.

Be more transparent

Pay transparency may be all the buzz now since some states have enacted laws on the subject. But on a more personal scale, job and business transparency is critical to effective feedback.

While employees need – and want – to know how they measure up, they should also understand how leaders make decisions about promotions, assignments and pay.

Then front-line managers and employees can also work together on how to capitalize on their strengths or pursue resources for areas they want/need to improve.

in appreciation for great work.

Regardless of how you reward or incentivize employees, the most important part is that front-line managers know when their people are doing well or struggling so they act quickly and accordingly. And the best way for that to happen is through frequent check-ins and reviews.

“Many companies are now using continuous performance development to complement the annual review, enabling them to weave in a consistent stream of feedback, check-ins and priorities throughout the year,” says Cataldo. “This strategy is a win-win for both the employee and organization. Ultimately, by shifting performance review tactics, end-of-year conversations can be more meaningful to the employee and impactful to the organization.”

[Read this article online](#) 

Support employees post-review

No matter how often you do performance reviews, what happens afterward is critical to success. Employees usually need some support to use the feedback and reach the next milestone.

What does it take to incentivize and support them? According to the Workhuman research, employees want, in order of preference: money, flexibility, positive work culture, job security and recognition.

Money still talks as the biggest incentive to perform well, and the researchers found companies act in kind, giving financial incentives

The Cost of NonCompliance



\$1.18M

Overtime violations: Krispy Kreme pays \$1.18M

Who was involved: Krispy Kreme Donut Corp. and 516 workers across the U.S.

What happened: The DOL's Wage and Hour Division opened an investigation at a Krispy Kreme in Louisville, Kentucky, and expanded the probe to all 242 locations of the chain across the U.S. The investigation found "widespread and systemic" violations of the Fair Labor Standards Act (FLSA). Specifically, the company failed to include monthly bonuses in some employees' regular rates of pay. By doing so, the employer paid overtime at lower rates than the FLSA requires.

Result: The company agreed to pay \$1,187,757 in back wages and damages to 516 affected workers. It also agreed to make necessary changes to comply with the FLSA in the future.

Info: [Dollars To Doughnuts: Krispy Kreme To Pay More Than \\$1.1m To 516 Workers After Us Department Of Labor Finds Systemic Overtime Violations](#) , 11/17/22.



\$55K


EEOC: Hospital agrees to pay \$55K to settle disability discrimination claim

Who was involved: Grady Memorial Hospital Corporation, a public hospital in Atlanta, and an employee who was fired for allegedly violating company policy.

What happened: The employee requested leave due to a medical condition. When she tried to return to work, she provided a doctor's release, the EEOC's suit alleged. Even so, she was told that she had to provide another doctor's note. Before the employee could obtain the second note, she was fired, purportedly for violating a work rule. The EEOC's suit alleged this proffered reason for termination was a pretext for disability discrimination.

Result: The company agreed to pay \$55,000 to the employee. In addition to the financial payout, the company agreed to:

- Provide ADA training to employees
- Make changes to its employment policies, and
- Submit to EEOC monitoring on how it handles future requests for accommodations.

Info: [Grady Memorial Hospital Corporation to Pay \\$55,000 to Settle EEOC Disability Suit](#) , 11/16/22.

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Gaslighting at work: How to recognize and stop it in its tracks



by Alison Roller



GASLIGHTING IN THE WORKPLACE

A few days ago, Merriam-Webster announced their “word of the year” for 2022: gaslighting. The word had a 1,740% search increase throughout the year.

Merriam-Webster defines gaslighting as “the act or practice of grossly misleading someone, especially for one’s own advantage.”

The word gaslight originates from a 1938 play and 1944 movie of the same name. In it, a man convinces his wife she cannot trust her reality. However, gaslighting doesn’t just happen in romantic relationships. Manipulation and gaslighting can happen in the workplace and lead to a toxic work culture that can have detrimental effects on employees and the business.

Recognizing gaslighting at work

One of the hardest parts of addressing gaslighting at work is figuring out that it’s happening. Due to the nature of the manipulation, victims of gaslighting may believe the other party is correct and that they can’t trust their own judgment.

However, the word is also often overused, so it’s important to understand the differences between gaslighting and simply lying.

“Gaslighting must make the other party question their own reality and is typically persistent behavior,” says William Stonehouse III, co-founder and president

Gaslighting at work: How to recognize and stop it in its tracks

of Crawford Thomas Recruiting. "Gaslighting in the workplace can start as small as a manager strategically excluding an employee from important meetings to present their own work to more obvious belittling like speaking negatively of a person to peers and leadership to make them appear unfit for a raise or promotion."

Gaslighting at work could look like:

- A supervisor who enjoys flexible scheduling denies a worker's request for more flexible arrangements, calling it a "ridiculous request" or an impossible thing to allow. When pressed on the issue, the supervisor gets defensive, makes excuses and causes the worker to question their reality.
- A co-worker fails to communicate clearly about expectations on a project and then "misremembers" what was agreed upon by team members. When challenged or proven wrong, the co-worker gets defensive, blames team members for submitting "subpar" work and makes them question their value to the team.

How it can affect the workplace

Manipulation like gaslighting can quickly turn the workplace into a toxic and hostile environment. Employees may feel like they need to walk on eggshells and watch what they say. Beyond that, though, it can lead to a decrease in productivity and morale. If they are being gaslit about their work, they could start believing that they're not good at

their job or not qualified, leading to imposter syndrome and a lack of confidence.

"If an employee is made to believe they are crazy or not good enough, they might lose excitement in their work over time and develop resentment toward the employer," says Stonehouse. "In more severe cases, gaslighting can creep into a person's private life, impacting their mental health and well-being."

What HR can do

It's one thing to understand and identify gaslighting at work, but fixing the problem is another challenge.

"HR needs to be aware of the differences and be ready to set the record straight when it comes to what is actually gaslighting vs. general toxic behavior, giving the employer or employees a 'reality check' so to speak," says Stonehouse.

Here are some steps HR can take to identify and stop gaslighting at work:

- **Stay alert.** Be on the lookout for hyperbolic terms such as "crazy," "ridiculous," or "absurd."
- **Listen.** Listen intently to employee complaints and confirm the situation is really gaslighting.
- **Monitor.** If the situation is truly gaslighting, keep a closer eye on the perpetrator, and look for subtle signs of the behavior and intercept red flags.
- **Confront.** Once you've gathered evidence of the behavior, document your findings and confront the individual. Depending on the severity of the behavior, the next steps may be a

performance improvement or exit plan, and

- **Support.** Provide support to the victims of gaslighting to help mitigate the effects on their mental health.

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Case Study

Week-long shutdowns provide employees time to disconnect, recharge



We spend a lot of time listening to our people. Something that came through loud and clear in a variety of feedback forums was the value of protected time off. It was high on our employees' priority list. The problem was when people took time off, they felt guilty or like they were missing out on things in the office.

The guilt came from other people having to take on their work when they were on vacation. The fear of missing out on something is a normal fear most people have. So, a few years ago we started shutting the company down for a week in December.

Took planning, communication

While it was an easy sell to the powers that be – they also reaped the no-work benefits – it wasn't as easy as shutting the lights off and walking out the door. We're a client service organization first and foremost. It took a lot of planning, and communicating within our client teams and with our clients directly.

We wanted to keep our employees happy and healthy, but we also needed to keep our clients happy. And what we've heard from client feedback is they appreciate and are inspired by what we're doing

for our people. And in some cases, they've adjusted project timelines and have adopted some of the same benefits our people have, and their people could benefit from as well.

Disconnect and recharge

The goal of the December shutdown was to give people five consecutive days off to disconnect and do something outside of work so they would return refreshed and renewed. It worked so well that we recently added a five-day shutdown in July.

There are circumstances where certain teams might need to work over a shutdown. But their team leaders make sure their people take time off either before or after the formal shutdown. This way we meet our clients' needs and our people get the protected time off that they need and deserve.

Both shutdown weeks are in addition to employees' regular paid time off, and the 13 paid holidays the company provides. So, for example, I get 176 hours of vacation time that's gifted to me from the firm each year, 13 paid holidays and two weeks of firm shutdowns.

As part of our My+ strategy we try to tech-enable employees anywhere we can. One way we

do that is by providing vacation planning tools and surveys with the intention to make it easier for our people to plan and take uninterrupted time off.

Employee favorite benefit

Our people absolutely love the shutdowns, and we know that because we like to measure data whenever we can. Following our week-long July shutdown that we just had this past summer; we issued a survey. Just shy of 20,000 PwCers completed the survey. In it, we asked if their time away was protected and, if not, why.

Ninety-two percent said their time off was uninterrupted and protected. And for those who said it wasn't, it was typically their choice – there was a reason they had to interrupt that time. So, we know that firm-wide shutdowns are widely viewed by our people as truly one of our best firm perks.

(DeAnne Aussem, managing director and well-being leader, PwC, Los Angeles)

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FMLA abuse suspected: Is surveillance a good idea?



by Tom D'Agostino

Employers have a legitimate interest in preventing FMLA abuse. But of the tools at their disposal to fight that fight, is conducting surveillance on employees one they should use?

The short answer: Surveillance is perfectly fine as long as there is good reason for it – and it's not used to retaliate or interfere with an employee's use of leave.

So what exactly is "good reason" — and when can conducting surveillance on employees lead to problems for employers?

For the answers, read on.

Preventing FMLA abuse

First things first: The FMLA recognizes that employers have a legitimate interest in ensuring that FMLA leave is taken for a legitimate qualifying reason. To this end, employers may require that an employee's need for leave for a serious health condition be supported by a certification that is issued by the employee's healthcare provider.

That initial certification must be both complete and sufficient. It is incomplete if an entry on an applicable form was left blank, and it is insufficient if it provides information that is "vague, unclear, or non-responsive," the Department of Labor has advised.



In addition, an employer that has a legitimate reason to doubt the validity of an initial medical certification may require a second or third medical opinion, at the employer's expense.

What if an employer still has doubts about the legitimacy of an employee's need for leave even after receiving one or more certifications from the employee?

In these cases, it may be time to consider using surveillance to make sure there is no FMLA abuse. But there are important caveats to be aware of.

Rulings send clear message

One thing is clear: Multiple court rulings have upheld the general right of employers to institute surveillance in cases of potential FMLA abuse.

In *VanHook v. Cooper Health System*, No. 21-2213, 2022 WL 990220 (3d Cir. 3/31/22), for example, a co-worker of an employee who was using FMLA leave told their employer that the employee might be abusing FMLA leave instead of using it to care for her son. The employer hired a firm to conduct surveillance, and the firm reported to the employer that the employee was seen running errands and going to the gym on leave days. The employer terminated

her employment, and she sued for FMLA retaliation.

In addition to the co-worker's report, there was other evidence to suggest that the employee might be abusing FMLA leave. For example, she often used FMLA leave near the weekend or together with other forms of leave. Also, the employer noticed that the employee's FMLA leave was on pace to exceed her yearly allotment.

The court ruled for the employer, pointing out that nothing in the FMLA bars employers from taking steps to ensure that employees do not engage in FMLA abuse. Here, it stressed, the employer had a reasonable basis to suspect that the employee was abusing FMLA leave and was thus justified in initiating surveillance.

A similar case is *Snyder v. Dow DuPont*, No. 21-1235, 2022 WL 1467439 (3d Cir. 5/10/22). There, an employee "had a pattern of high absences that seemed to coincide with the maximum amount of [FMLA] leave time." In addition, several co-workers told the employer that she was doing things, like boating, that were inconsistent with her claimed need for leave.

The employer suspected that the employee was abusing her leave, and it hired a private investigator to surveil her. After taking leave for supposedly not being able to put any weight on her foot after surgery, she was observed walking, driving, getting a pedicure, and riding a lawn mower.

When the employer fired her, she filed a claim for FMLA retaliation.

She lost. The employer reasonably suspected that she was abusing her leave and legitimately used the surveillance tool to confirm its suspicions, the court said. She

did not show that the employer's reasons for either the surveillance or the termination were pretextual, it found.

Despite the assurance that these cases provide for employers, they should not be read as a green light to pull the trigger on surveillance without good reason. Instead, it is crucially important to have solid objective evidence justifying the need for it. It is also a good practice to first ask for recertification before taking the more drastic step of instituting surveillance.

Don't jump too soon

Employers who jump to surveillance without a solid objective basis run the risk of being accused of using surveillance as retaliation for a request for FMLA leave or a means of chilling an employee's legitimate right to take it.

In *Walker v. City of Pocatello*, No. 4:15-cv-00498-BLW, 2018 WL 650417 (D. Idaho 1/31/18) (rev'd on other grounds at 764 Fed. Appx. 646 (9th Cir. 2019)), for example, a police department instituted surveillance on an officer it suspected of abusing FMLA leave. Instead of asking him for recertification, the employer jumped quickly to beginning surveillance. The employee was denied a promotion after he took FMLA leave, and he sued to allege FMLA claims of interference and retaliation.

The court said a fact issue existed on the question of whether the department's "invasive" surveillance wrongfully chilled his use of FMLA leave. "[W]here an employee is subjected to negative consequences ... simply because he has used FMLA leave, the employer has interfered with the employee's FMLA rights," the court explained. Preserving the officer's FMLA claims, the court

observed that the use of surveillance was an "extraordinary response" to concerns about FMLA abuse.

Surveillance can be a useful and appropriate tool in cases involving potential FMLA leave abuse. But before taking that step, employers should first seek recertification and make sure they have an objectively justifiable basis for conducting surveillance. As the cases show, reliable reports from co-workers and suspicious timing of leave can help form this objective basis. An employee's provision of inconsistent reasons for the leave is another legitimate indicator that leave is being abused.

One final note: As a best practice, employers should put employees on notice via their FMLA policy that surveillance may be used in cases involving alleged leave abuse.

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The Cost of NonCompliance



\$60K

Food processing plant pays \$60K to settle pregnancy-related retaliation claim

Who was involved: Keystone Foods LLC, a food processing facility in Alabama, and a former employee.

What happened: According to the EEOC's lawsuit, the company held a series of job fairs and extended employment offers to several individuals, including a former female employee. However, the company retracted its offer to the woman when a records review showed that she had previously filed an EEOC charge of pregnancy discrimination against the company.

Result: The company agreed to pay \$60,000 to settle the complaint. Under the agreement, it must also:

- Issue a written statement to all employees at the facility that the company will not retaliate against employees or applicants who engage in activity protected under Title VII.
- Educate employees on the process of reporting complaints of discrimination and retaliation.
- Conduct training for employees on Title VII, including its anti-retaliation provisions.

Info: [Keystone Foods LLC to Pay \\$60,000 to Settle EEOC Pregnancy Discrimination Lawsuit](#), 11/16/22.

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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.



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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.



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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