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Turnover,
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You Be the Judge



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Upcoming Events

Free Webinars

Thursday,
March 10th
2022



Performance Management: 7 Trends to Anticipate

Presented by Trish McFarlane, CEO and Principal
Analyst for H3 HR Advisors

sponsored by  learn more [🔗](#)

Monday,
March 14th
2022



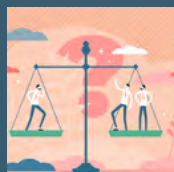
Eliminating Paper & Spreadsheets from your HR Department

Discover Free online solutions that can help your
transition to paperless easier

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Premium Webinars

Wednesday
March 23rd
2022



HR Ethics: Maintaining Standards in Today's Work Environment

Take a close look at the role ethics play in every
organization, and what to do when personal and
professional ethics collide.

courtesy of Premier Learning Solutions learn more [🔗](#)

On-Demand
Webinar



Managing Your Managers: Unlocking Their Leadership Potential

Unlock the secrets to getting the most out of your
leaders In this interactive 60-minute session

courtesy of Premier Learning Solutions learn more [🔗](#)

News Briefs

HR Stories You Might Have Missed

Latest student loan extension: Steps employees can take now

January 5, 2022

If employees are [stressing about paying](#) their [student loans](#) back after the pause is over, there's good news for them. The student loan payment extension has been pushed out through May 1, 2022.

[Read more](#) 

Job candidate looked great on paper, but ...

January 18, 2022

A job candidate looks great on paper. That doesn't mean you have to take them — but you better be ready to have a good explanation if they claim illegal bias.

[Read more](#) 

What do employees really want from their employers?

January 19, 2022

Now that open enrollment is almost over, you can take a breather and relax a little. After you recover and feel refreshed, it's time to start on next year's benefits offering.

Why so soon?

Because the "Great Resignation" has caused employees to reevaluate what they want from an employer.

[Read more](#) 

Employer pulls plug on 'lifetime' benefit — and retirees aren't too

happy

January 20, 2022

An employer offered some employees life insurance. The insurance continued into retirement. But then it put an end to it.

A summary plan description said the employer could end the plan. But the employer also said retiree life insurance benefits were "paid up" or were "for life."

[Read more](#) 

DOL issues reminder: Companies need to accommodate nursing employees

January 21, 2022

When one employer failed to give a nursing employee private space to do so, the DOL stepped in and filed a lawsuit.

[Read more](#) 

Federal judge blocks vaccine mandate for govt. employees

January 21, 2022

What's this world coming to when the U.S. government can't even require its federal employees to be vaccinated?

[Read more](#) 

Was criticizing supervisor protected by free speech? Court says no

January 27, 2022

There's always going to be some conflicts at work. And

when an employee criticizes their supervisor, things can get sticky.

[Read more](#) 

Government employers now must 'Ban the Box'

January 28, 2022

Heads up, federal employers and contractors. If you have a question about a candidate's criminal history in your application, you'll need to remove it.

[Read more](#) 

ADA violation: Employee fired for getting sick

January 28, 2022

Here's a word of advice of what not to do: If you suspect an employee has cancer, think twice before you let them go. That could only bring you misery in the form of an ADA violation and lawsuit, like this one.

[Read more](#) 

New benefits package: Linktree's hoping to inspire others

February 2, 2022

Here's an example of how one company is taking an innovative approach to their benefit's package: Australia-based Linktree's new comprehensive benefits package – Total Rewards program – allows staff at all levels to invest in what's important to them.

It may be personal wellness, professional growth, their lifestyle, etc. It's all about flexibility.

[Read more](#) 

Employee fired for policy violation, not race, court says

February 9, 2022

When an employee violates a policy but also has complained of discrimination, firing them can get tricky.

And when one employer dismissed an employee for [breaking the rules](#), she ended up suing for racial bias.

[Read more](#) 

Who's quitting – and why: Research answers HR's questions



Michele McGovern

5 TIPS ON HOW HR CAN PREVENT TURNOVER

EXIT



If you knew which employees were thinking about quitting, you might be able to curb turnover.

And then you'd be ["The Great Retainer" in midst of the The Great Resignation.](#)

Now's the time to get better at identifying employees at risk of leaving.

"The world of work has been in a constant state of motion," said Don Weinstein, corporate vice president of global product and technology at ADP. "The needs of the global workforce are evolving."

Certainly, the pandemic changed workplaces and prompted the evolving needs. It also changed employees' perspectives and priorities – and many found working arrangements that used to be a good fit weren't anymore.

HR needs to know who feels that way. Fortunately, new research has helped identify the employees most at risk of quitting.

We gathered the expert insight into how you can retain more employees.

Who's quitting

According to [Mercer's 2021 Inside Employees' Minds](#) report, about 30% of employees are considering leaving their jobs.

The bulk of them are front-line employees. That's not terribly surprising. Those positions tend to be volatile, pandemic or not.

But lower-level and low-wage employees are quitting at significantly higher rates now. And the people in those roles are mainly women and minorities.

Specifically, the Asian and Black populations are more likely to quit. And anyone making less than \$60,000 a year is at higher risk, the Mercer study found.

"In many organizations, frontline and lower-level employees have been underinvested in and not considered a priority. But the pandemic has shown that this same group of workers not only kept business afloat, but were critical in keeping our nation running," said [Melissa Swift, Mercer US Transformation Leader](#). "Employers now need to think differently about frontline and lower-level workers and deliver a compelling value proposition that addresses their needs."

Another at-risk group: Women in middle management. They are three times more likely to quit next year, according to research from Qualtrics.

"The data shows us that female leaders are the most likely to leave," said Tara Belliard, Principal Consultant, Employee Experience at Qualtrics. "Work with them to understand what kind of support they need, rather than piling on more pressure."

Why they're quitting

So why are these populations [quitting](#) at higher levels? The majority say it's the money: Pay and benefits aren't sufficient.

Another large group say it's the stress: They're overworked and overwhelmed, especially since

many of them on the front line worked in-person and straight through the pandemic.

More specifically, most lower-wage employees say they want to quit because they can't cover monthly expenses. And that takes a toll on their mental health. Other employees – those earning more than \$60k – cite mental, physical and overall well-being as the reasons for departure.

With that in mind, here are five ways to stay ahead of turnover:

Make the front line a high priority

No one intends to take any employee for granted. But front-line employees often feel like they are taken for granted.

One way to prove they're valuable employees – and encourage their loyalty – is to improve their economic stability.

Look into ways to increase their pay first, because as Mercer researchers put it "perks and other benefits won't matter if these employees can't address basic needs."

Beyond the hourly wage, try to provide them with affordable healthcare and tools and resources to help them achieve financial wellness. That might include retirement savings programs or financial and budgeting training.

Improve DEI

Many organizations have improved their [Diversity, Equity and Inclusion \(DEI\) efforts](#), but some employees still don't feel safe and accepted:

Mercer found minorities quit at higher rates.

Part of the problem: Organizations attract a diverse workforce, but they don't ensure DEI efforts can thrive.

In fact, more than 40% of employees don't think their company is genuinely committed to DEI, the Qualtrics study found.

So prove it by talking to and surveying employees to find out where their experiences fall short – or are downright unpleasant. Then take steps to correct those issues.

Another tactic: Train and equip managers to become allies and advocates for their diverse teams. Give them the voice and authority to stand up against workplace inequities and micro-aggressions so everyone feels safe.

Build flexibility

We won't harp too much on hybrid or remote work schedules. We all know that's what [employees prefer now](#). But research shows most of the people quitting these days aren't in roles that allow for [remote or hybrid schedules](#).

So HR might want to focus on different forms of flexibility to retain employees. For instance, can you cross-train some employees so they can share jobs, leaving more room for flexible scheduling?

Another option: Can employees pick their hours to accommodate their childcare demands?

Or try this tip from a company we know: They brought childcare and academic assistance on-site when schools closed. They continued

with onsite before- and after-school care, along with homework and transportation help so employees could manage it all better.

Improve well-being

Many employees who think about quitting are burned out. They're tired from working too much at jobs that don't excite them, regardless of their level.

"People have been digging deep over these past two years working at home," said [Antonio Pangallo, Ph.D., Principal I/O Psychologist of Employee Experience at Qualtrics](#).

"For many people, the things we have taken for granted such as good health and job stability are now under threat."

You can offer well-being benefits from yoga and mindfulness apps to mental telehealth and time off. But the researchers at Qualtrics found much of the problem lies in culture.

Any workplace that rewards excessive hours and goals, and criminalizes self-care, will lose employees. To avoid that, they suggest executives:

- **Lead by example.** Work reasonable hours. Take personal time. Treat mental health the

same as physical health.

- **Talk about it.** Encourage all employees to do all of those things. And if they can't find a balance, normalize conversations about mental well-being by initiating them.
- **Encourage a culture of well-being.** Create a structure so employees understand the boundaries around how, where, and when work gets done, leaving enough time for days off to focus on well-being.

Amp up belonging




People stay where they feel they belong, regardless of demographics. That's why it's critical to foster a [deeper sense of belonging](#) for everyone in the organization. Do it within teams, across functions and up and down the chains of command.

"Employees must feel welcomed, known, included, supported, and connected," said Dr. Natalie Baumgartner, Chief Workforce Scientist at the Achievers Workforce Institute. "To break down existing silos, employers should focus on welcoming new employees and integrating them beyond their

close teams.

"Create a structured onboarding process that homes in on employee connections," Baumgartner said. "A few tips for accomplishing this include hosting an informal staff meeting to meet various employees, creating a team 'cheat sheet' so new hires have insight on all teammates, and designating windows of time for employees to chat with others to build relationships across an entire organization."

Recommended reading from [Michele McGovern](#)

- [Stay ahead of turnover: 5 tactics to keep your people](#) 
- [Hiring strategies for 2022: Best practices & staying compliant](#) 
- [Can HR leaders slow down The Great Resignation?](#) 

Our transparent company culture resulted in 1% turnover rate



Every company wants to have a healthy culture — but so many don't actively try to achieve it. Most companies are focused on performance metrics and revenue, and a culture just sort of emerges. Sometimes it's a good one, and sometimes it's not.

We wanted to avoid falling into that. Our goal was to create an intentional culture that employees would love to be a part of. So all of our leaders got together and discussed what we wanted out of our culture.

The bottom line was we wanted people to love working for us. We figured that if we looked out for our people, they would return the favor.

Inspires excellent work

Our leaders came up with a few essential values we wanted our culture to consist of: Transparency, inclusion and flexibility. We also decided we wanted managers to focus on employees' behavior instead of fixating on outcomes. When you invest in the people, they'll produce the results you want.

Another thing we emphasized was encouraging employees to always speak their minds. We knew we

wouldn't be successful if we didn't get our people's honest thoughts. At first, we started by asking them straight up for their opinions on certain things. We also conduct employee engagement surveys for those who would prefer to give their thoughts anonymously.

We also make it clear that we trust employees to do their jobs without us constantly checking in on them. We're confident in our employees' abilities, and that confidence inspires them to do excellent work.

For example, we had one employee fix an issue another team was having without even being told to do so. He saw the problem, volunteered to fix it, and the problem was resolved in a matter of days. If he'd had to get permission and run it up the chain of command, it would've taken a lot longer.

How we build trust

Transparency is what it really comes down to in order to build trust. This can be uncomfortable for leaders, but at our company we know it's important to share everything — even the not so great news.

We have weekly CEO roundtable meetings with small groups

of employees where we share company news and ask for their input on anything and everything. Employees really appreciate how easy it is for them to discuss things with higher ups, and this openness makes them comfortable sharing their opinions.

Employees stick around

Because of the effort we've put into cultivating this culture, our employees are happy, engaged individuals. We're in the 95th percentile when it comes to employee engagement. We also have an impressive 1% turnover rate.

Our people are happy to stay with us, but we also work hard to ensure they're successful. We're slow to hire and slow to fire. We carefully consider all job offers we make, and even if it appears an employee isn't working out, we do everything we can to try and address issues so they can stay.

We put effort and trust into all our employees, and we get that from them in return.

Jeff Chambers, CEO, Lumin Digital, San Ramon, CA

Perfect combo: Cutting-edge work culture & traditional benefits



Different is good. To drive that point home for the team, we created a 38-page manual.

The manual talks about everything but our 401(k), how to access the internal server or what you need to do to set up your email account. Instead, we talk about our culture and what it takes to thrive here.

After the initial recruiting process, new hires are interviewed by the people who will actually be working with them to help make sure we're hiring for the right team and the right reasons.

We avoid hierarchy. Instead, we work to have mentors and collaborators, not commanders.

Everyone here is a full-time employee and we have great benefits. As our CEO says, "If you don't give people the comfort level to settle in, you're not building much of a foundation."

There is a flip side. No one is micromanaging, so employees are responsible for figuring out what they need to be doing.

Change it

We tell our team, "If you don't like something, change it."

It can be tempting to say "It would

be nice if someone would organize the (fill in the blank)." Here, we are each that someone.

Every awesome thing you see in our offices and studios is like that because someone decided to put together a plan to get it done.

That goes for anything. Seriously. We used to have a giant wall running through the middle of the office. It blocked all the beautiful light from outside.

A few folks put together a proposal to tear down the wall, and weeks later, we did. Let there be light.

Every tradition here was started by one of our colleagues, not dreamed up by a boss or an outside benefits "expert."

And there are a ton of them: Whiskey Club, foosball tournaments, karaoke, street dice, ski trips, show and tell, and Bagel Fridays, to name a few. Each one exists because someone just decided to do it. We tell everyone here, "Start your own ritual."

Family values

It's important to us that everyone is enjoying their job, but we also work hard to provide excellent traditional benefits.

For example, we are a proud signatory to the Pledge Parental Leave, a movement for employers in the creative industries to provide meaningful, paid parental benefits.

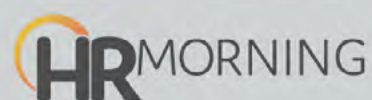
In addition to what's required by FMLA, full-time primary care parents are eligible for up to 12 weeks of leave at base pay.

And secondary caregivers are eligible for up to four weeks of parental leave at base pay.

While on paid parental leave, the company covers 100% of health insurance premiums, and employees remain eligible for salary increases and bonuses.

Trishna Shah, Talent & Culture, Big Spaceship, Brooklyn, NY

ONE-SIZE FITS ALL PROGRAMS DON'T WORK



POLICY & PROCEDURES

Remote onboarding: Pitfalls and must-haves



Renee Cocchi

As an HR/Benefits pro, knowing what makes a great remote onboarding program is vital. It sets the tone for connecting new employees to the workplace.

Shocking news: Only one in 10 employees “strongly agree” their employer knocks onboarding out of the park, according to a [Gallup study](#) published before the pandemic hit the U.S. And, one- to two-thirds of new hires bolt within their first year of employment.

Wonder what employees think now with their company's remote onboarding efforts?

Now, it's more important than ever to make onboarding a priority.

Employers must give new hires a bang-up first impression and experience.

Remote onboarding pitfalls

Here's where companies go wrong, according to Gallup.

1. They don't connect with new hires. Nowadays, people want to connect with their new employer's mission and purpose. And just telling newbies about your company mission and purpose isn't enough. You must connect with them on a personal level. Let them know how their specific position helps attain the company's mission. Connect them with others – not just from

their level/position but from all levels – so they can share how the company has affected them.

2. They overload them with information. New hires don't have to know everything about the company in their first week. Spread the information out over the span of a month or so. Let them digest little chunks at a time.
3. They overwhelm them with technology. Being the new person on the block is overwhelming as is. Start off with what they need to get started. Then add in other tech issues as needed.

Must-haves

Here are components your remote onboarding program must have, according to [Onboarding new hires: Keys to accelerated success](#) by Premiere Learning Solutions.

Out with the old and ...

In with new and innovative ways to bring your company values to life.

Some old aspects of your in-person onboarding program may work fine, like the paperwork and distribution of compliance information. However, many aspects of your program will be lost. Those aspects are the in-person interactions. The ones that conveyed the company culture just by being part of it.

The point isn't to recreate your company culture remotely. How would you do that?

Look for new ways to bring company values to life ... online. Employers must switch their focus from creating a company culture to imparting company values. What does it take to be successful at your company? These values are what your company is built on.

Connect and connect some more

Employers who have successful remote onboarding programs [connect with their new hires](#). They nurture new employees. Give them the technology they need to connect with others, but don't load them with work their first week. Have people from other

departments connect with them and discuss whatever they want. Let the new hires ask questions.

It's the employers' job to plan these connections and guarantee they happen. If not, new employees will feel isolated and alone. Let them know who they can go to for whatever questions or needs they may have. Better yet, have those people reach out to the new hires.

The important keys: [communicate daily so they feel like they're in the loop and remain transparent](#).

Personalize the program

One-size-fits-all onboarding programs rarely work, especially for remote programs.

After all, part of the joy of working remotely is employees can set up their day as to what works best for them. A remote program needs to be "employee-centric." It allows employees to feel empowered and shows you trust them.

Find out what new hires need to feel comfortable in their work environment and give it to them when you can. It goes a long way toward making them feel connected and appreciated!

Track metrics

Employers can't know if they have a successful program unless they ask and measure. Survey new hires and ask them what they liked, and think could be improved. Ask




them to be brutally honest. You'll never be able to improve your onboarding program if new hires sugar coat their answers.

Then ask the new hires manager. Find out how the person is doing and if the manager thinks they're invested.

Finally, look at first- and second-year retention rates. Obviously, this isn't for immediate results, but it will show you if your program has staying power.

The more data you can collect and analyze, the clearer of a picture you'll have of your remote onboarding program's success.

Recommended reading from [Renee Cocchi](#)

- [Remote onboarding: Keys to getting your culture to shine through](#) 
- [Adapt onboarding for a remote world](#) 
- [Time to re-onboard employees who started remotely](#) 

Question

If an employee is salaried, does that automatically mean they're exempt from overtime pay?

Answer

This is a common though incorrect assumption, say employment law attorneys Jennifer Prozinski and Karel Mazanec of the firm Venable LLP.

In general, exempt employees are paid a predetermined amount that doesn't fluctuate and is at least \$684 per week (or \$35,568 a year). However, salary is not the only factor in determining whether an employee is exempt from overtime pay or not.

Under the FLSA, exempt employees must also meet certain requirements under a job duties test. In order to be exempt here, employees must be performing executive, administrative or professional work.

Some examples of job duties that fall under these categories include:

- managing at least two employees
- having hiring/firing power
- performing office or non-manual work, and
- performing work requiring advanced knowledge.

This list is not exhaustive, and the complete list can be found [here](#).

Question

Some of our remote workers have expressed feelings of loneliness. How can we help them combat that?

Answer

Feeling left out or isolated comes with the territory for remote workers — but there are some things that can help, says HR expert and author of *Evil HR Lady* blog Suzanne Lucas.

One easy way to address the loneliness is to invite remote workers to come into the office one or two days a week (if possible for them). This could be just enough to reconnect with colleagues and feel part of the group, while still reaping remote work benefits such as less commuting and more time with family three to four days out of the week.

If remote employees can't come in or prefer not to, encourage them not to overwork themselves. Studies have shown remote workers tend to put in more hours, since there's no clear separation between work and home. By getting employees to sign off sooner, they have more time for family, friends and activities that get them out of the house.

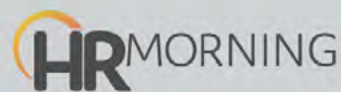
RECRUITING

Hiring strategies for 2022: Best practices & staying compliant



Rachel Mucha

REVAMPING THE RECRUITING PROCESS



Every HR pro knows that hiring is tough right now. And with the pandemic ongoing and employees unwilling to settle for sub par job options, companies need to rethink their hiring strategies to snag the best talent.

The pandemic has resulted in employees reevaluating a lot of things, and many see remote work, flexibility and supportive company culture as nonnegotiable perks.

This means that to have a fighting chance in the current war for talent, employers should consider revamping the way they recruit.

Legal issues

Before getting into the nitty gritty hiring strategies, it's important to get the basics right and ensure you're complying with employment laws. Here are some compliance tips courtesy of employment law attorney [Robert Ames](#) of the firm Venable LLP.

- 1. Create a standard interview outline.** Before the interview, HR pros and hiring managers should think up standard questions that relate to the job description and duties. This can help reduce on-the-spot questions, which could unintentionally violate certain employment laws (some examples include “When did you graduate college?” and “Are you planning on having children?”). The outline also helps ensure all interviews are conducted equally, allowing employers to fairly compare candidates.
- 2. Train all interviewers.** It’s important that those who are conducting the interview know which questions can create legal liability, and to avoid those. Other crucial topics to train on include unconscious bias and creating a good candidate experience.
- 3. Fill out standard evaluation forms.** Again, this tactic ensures candidates are held to the same standards and compared fairly. Everything written on these forms should be related to the job. Notes on irrelevant character traits, for example, could be considered discrimination if the candidate were to sue.

5 strategies

But successful hiring is so much more than having a good interview system in place.

Here are some additional hiring strategies you’ll want to implement this year, according to recruiting software company [Innoflow](#).

1 Embrace remote recruiting

The pandemic has forever impacted the way we all think about remote work now. What was once a semi-rare benefit is now almost an expectation. Companies that want to compete for the best talent will need to provide at least a part-time remote option — 80% of employees said they’d reject a job offer if remote work wasn’t a possibility. So, if you’re going to have remote employees, you might as well hire them remotely, too.

There are so many benefits to [remote recruiting](#), including:

- access to an unlimited, diverse candidate pool
- speeding up the hiring process, and
- saving money.

By opening up the job to any person working from anywhere, you can truly find the best fit for the job — not just the best fit who lives in a twenty-mile radius.

2 Put effort into the candidate experience

No matter how good your compensation package or how stellar your company’s track record, if a candidate doesn’t get a good vibe during the interview process, it’s all over.

Making a good impression on the candidate during the interview is crucial. Not only is it important to help land the hire you want, but word will get around if candidates aren’t pleased with the hiring process, affecting all future hiring prospects. These days, people aren’t afraid to warn others about bad experiences with companies on social media.

Some easy ways to make a good impression during the hiring process are to be very communicative, be respectful of the candidates’ time, and ask thoughtful questions.

3 Don’t forget about retention

With so much focus on hiring right now, it can be easy to take your current employees for granted. This is resulting in a mass exodus (coined [The Great Resignation](#)) of employees looking for greener pastures.

However, it’s so much easier to keep your current employees than to hire new ones — not to mention, cheaper. There’s also always the risk that a new hire won’t be as stellar as they seemed to be in their interview. This is why it’s so essential to check in with your current employees. Make sure they’re doing OK, and give them praise and recognition for getting the job done.

4 Focus on soft skills

Technical skills and flashy resumes can be tempting, but while experience and hard skills can be gained, soft skills are something that employees just have. It’s much harder to teach someone how to work effectively as a team than teach someone how to use your company’s system.

Here are some soft skills predicted to be the most valuable this year and beyond:

- emotional intelligence
- adaptability and resilience
- integrity and ethics
- creativity, and
- teamwork.

So if you're having trouble filling a job, it's always worthwhile to ask yourself if certain requirements (like 10 years of experience or a master's degree) are actually necessary.

5 Tailor your approach

Not all hires are equal, and different generations of workers respond to different things. For example, Gen Z is big on tech, and many prefer to apply to jobs on their smartphones. Young employees also prefer to

communicate over text and instant messaging instead of email. Tailoring your process to suit their needs will help expand your reach in the current talent pool.

Recommended reading from [Rachel Mucha](#)

- [4 things to look for while hiring remote candidates](#) 
- [Talent Acquisition: 3 ways HR can guide those picky hiring managers in the right direction](#) 
- [Job ad tweak helped us overcome hiring woes](#) 



FREE WHITEPAPER FROM **HealthEquity**

The Engagement Imperative: Thinking Beyond Employee Education to Maximize HSA Program Success

To be successful, benefits leaders need to think beyond employee education and consider new ways to systematically engage their people. The difference matters. Education involves informing members about their benefits, but engagement is about consistently cultivating positive behaviors and habits.

Download the latest white paper from HealthEquity to discover proven engagement strategies that can help your clients maximize account utilization and propel members on their journey to long-term savings and retirement readiness.

[get the white paper](#) 

The Cost of NonCompliance



\$14,685

Bakery used a child as unpaid labor

What happened: As if allowing a 13-year-old child to operate a power-driven bread slicer isn't bad enough, Bread & Co. in Winter Park, FL, didn't pay the child for his work, deeming him a volunteer.

What people did: Not only did the bakery violate child labor laws, but the DOL's Wage and hour Division investigated and found the company violated wage requirements of the FLSA because it:

- paid bakers and cooks straight time, and failed to pay the time-and-a-half rate required for all hours over 40
- paid overtime rates only to those employees who exceeded 80 hours in a bi-weekly basis when federal law requires OT to be calculated on a weekly basis, and
- failed to maintain accurate records of employees' pay and hours worked.

Result: The bakery now has to pay a civil money penalty of \$9,979 for the violations and 17 workers will receive \$4,706 in recovered back wages and liquidated damages.

"Bread & Co. used a minor as free labor and then exposed the child to a dangerous machine with the potential to cause serious injury in violation of federal law," said Wage and Hour Division District Office Director Wildalí De Jesús in Orlando. "Work can provide a valuable learning experience for young workers, but they must be paid properly and kept safe."



\$75,000

Company owes \$75K for religious discrimination

What happened: When one employer refused to grant a religious accommodation, the EEOC stepped in and taught it an expensive lesson.

What people did: Wellpath LLC, located in San Antonio, TX, was sued by the EEOC after it failed to grant a reasonable religious accommodation. An employee, who was an Apostolic Pentecostal Christian, was hired as a nurse and requested to be able to wear a skirt to work, which was in line with her religious beliefs. Her uniform was supposed to be scrub pants.

The employer denied the employee's request to wear a skirt and then fired her, despite this employee having demonstrated being able to work in a scrub skirt at past jobs. Her firing was a violation of the Civil Rights Act, the EEOC said.

Result: To settle the discrimination lawsuit, Wellpath must pay \$75,000 to the employee. The employer will also be required to conduct anti-discrimination training.

The Cost of NonCompliance



\$150,000

Employee fired over potential illness, company pays \$150K

What happened: When an employee might be seriously ill, one thing not to do is to fire them immediately. But one company did just that, and ended up shelling out six figures.

What people did: Victory Automotive Group in Sacramento, CA, was sued by the EEOC after it fired a sick employee. The employee, a title clerk, missed several days of work for a sudden illness. She told her employer that she was in the hospital and undergoing tests to find out if she had cancer. Despite getting the all-clear to return to work, the employer fired her the day before she was set to return.

Result: This is a violation of the ADA. The employee's termination letter even stated that her firing had nothing to do with her performance, and the employer wanted her to "focus on her health."

Victory Automotive Group will pay \$150,000 to settle the lawsuit and must also retain an ADA consultant so a similar situation doesn't happen again.



\$50,000

401(k) fiduciaries cheat employees out of funds

What happened: The DOL's Employee Benefits Security Administration investigated Gibson Television Service Inc.'s fiduciaries – President David Gibson and Director Robert Gibson – and found they didn't remit and/or forward employee contributions in a timely manner to the company's 401(k) plan and trust from January 2016 through August 2019.

Result: Due to that a federal judge signed a consent order and judgment against the Madison Heights, MI, company. The fiduciaries were ordered to give back \$50,764 in payroll-deducted retirement contribution and lost opportunity costs to the plan. They also had to pay a \$10,153 penalty for ERISA violations and were barred from serving as fiduciaries of any ERISA-covered plan in the future.

The court appointed AMI Administrators Inc. as an independent fiduciary and authorized AMI to reallocate \$50,764 from the defendants' individual plan accounts to ensure the participants' individual accounts receive the money they were owed because of the breaches. Also, AMI was authorized to reallocate \$3,570 from the defendants' individual accounts to cover plan expenses.

"When fiduciaries fail to act with integrity in their obligations to the hard-earned retirement savings of participants it puts the future savings of hard-working employees and the viability of their retirement plan in jeopardy," said Employee Benefits Security Administration Regional Director L. Joe Rivers in Cincinnati. "The U.S. Department of Labor's Employee Benefits Security Administration is committed to ensuring the integrity of employee benefit programs and holding those who violate the law accountable."

6 ways to make the Great Reopening great for employees



by Michele McGovern

GET READY FOR THE WORKPLACE



The Great Reopening looms – or maybe it’s already launched. How can HR make it truly “great” for employees?

It won’t be science. It’ll be more like art, mostly because we’ve never experienced something like this before. Just like we’ve never experienced a work and life disruption like the pandemic caused.

“Companies and employees are rethinking what they want out of work,” said [Mark Lobosco, VP of Talent Solutions at LinkedIn](#). “For HR leaders, this is an opportunity to make a real difference. Now is the time to adopt solutions that make this new world of work better than the old one. Creating a [culture of flexibility](#) — one that fosters true

work-life balance — will reap long-term rewards. In short, work will fit into life — not the other way around.”

It may not be an easy go at first (at least). One-third of employees who have returned to the workplace say it’s a drain on their mental health, [McKinsey researchers found](#). And half of those who are expected back soon say they anticipate the same negative effects – anxiety, depression and/or distress.

“It’s not like we haven’t been working. If you look at the data ... you’ll see that people are working more, longer hours,” said [Mary Mesaglio, Managing VP Analyst of Research at Gartner in the webinar “Tips To Pursue and Traps To Avoid in the Great](#)

[Reopening](#).” “We’re calling it ‘The Reopening’ and sometimes ‘The Recovery’ because we can not and should not call it “return to work” because people have been working really, really hard.”

Fortunately, there are some things HR pros and front-line managers can do to [ease stress](#) and make the Great Reopening something employees want to be part of.

Here are new ideas and tips:

Help employees connect

The good news is many employees want to come back to the office for a variety of reasons. So you’ll want to capitalize on what already has them eager and engaged.

At the top of their list: 75% of employees say they want to connect with team members, according to [Conference Board researchers](#). Nearly half say they want to brainstorm with their teams.

On the less formal side, more than half want to socialize and get together with colleagues. And 40% want to go to organizational events and activities.

Bottom line: People want to be with people again.

So let your front-line managers know many employees are ready to have team meetings and brainstorming sessions. You might set up meeting space schedules so they can easily plan time and purpose together.

Now might be a good time to pull together your social team, too. Or ask for a group of volunteers to start planning events and activities that appeal to people across the spectrum of COVID-19 comfort levels.

Draw clear boundaries

One of the biggest drawbacks to remote and hybrid work is the blurry line between work and life. Employees across dozens of studies said they couldn't disconnect and felt overwhelmed while working from home.

Create clear boundaries between work and home life, and you can make the Great Reopening more appealing.

Here's what employees in the Conference Board study said are the best ways to help them make a clean break:

- **Encouragement.** Give more than lip service. Encourage employees to disconnect at the end of the work day. Remind managers to not expect after-hour work or responses to messages.
- **A clean slate.** Employees want to be able to take vacation or personal time guilt-free. That's a result of a culture where management promotes time off as a deserved way to disconnect, relax and recharge. They also give employees the space to step away and backup resources so they aren't just working extra before and after vacation to do all their work anyway.
- **Scheduling flexibility.** Employees prefer the ability to schedule blocks of deep work so they can accomplish more distraction-free and be flexible with other time. One way: Create "organizational off-limit blocks" – time when no meetings or

calls can be scheduled so all employees can work individually.

Beware of burnout

Many people are anxious about returning to the office for a variety of reasons: They're used to the new remote routine. They're afraid of getting sick. They don't want [rigid schedules](#). And that will quickly lead them to burnout.

So you might be tempted to put off the return to work, but [Rahaf Harfoush](#), executive director of the Red Thread Institute of Digital Culture and author of [Hustle & Float](#), suggests you don't. Instead, manage the anxiety that comes with the Great Reopening.

Harfoush suggested these two ways:

- **Re-establish rituals.** How you gathered before – perhaps in large groups for fun reasons – may not work for many employees now. You might consider turning some social events into supportive events. For instance, offer a time and a place for employees to share their pandemic experiences and reflect on what's happened since they've last worked together.
- **Check the creep.** Many people took on additional and more difficult roles throughout the pandemic – either because others left or roles changed. Now, what was likely meant to be temporary, has crept into their jobs permanently without further compensation or loss of lesser duties. Re-assess duties and responsibilities to make sure employees aren't overwhelmed.

Focus on outcomes, not inputs

Most companies still plan on some kind of hybrid schedule, so the Great Reopening in many places might be

more like the Mediocre Reopening.

And that might be cause for HR leaders and everyone in leadership to rethink how and where people work, and change perspective.




"What you offer to your people in terms of flexibility matters a lot in how you perform in the [war for talent](#)," Mesaglio said. "I would encourage anyone to really [think about the future of work](#) ... not only in terms of location. We're talking about leaders not making arbitrary decisions."

That means, it might not be the best idea to determine the number of days and exact days employees are in. If the work gets done, does it matter if it's Tuesday and Thursday between 9 a.m. and 5 p.m.? Or can it happen on Mondays and Thursdays between noon and midnight?

"It's not just a location decision," Mesaglio said. "It's about flexibility and autonomy for your people."

Even better, you might push those decisions down to the team level, where managers and employees can figure out what works best for their workflow.

Recommended reading from [Michele McGovern](#)

- [How are employers doing returning to the workplace?](#) 
- [How employee engagement will make – or break – companies now](#) 
- [Staff is back, fighting begins: How to curb conflict at work](#) 

Can you require an employee to see a doctor?



It's a tricky situation when you notice an employee isn't performing as they should, and you think their health has something to do with it.

But at what point are you allowed to legally require them to undergo a medical exam?

Test your knowledge.

Decide whether the following statements are True or False.

[check answers on the next page](#)

- 1 TRUE OR FALSE:** An employer can ask a candidate to get a medical exam before they begin work.
- 2 TRUE OR FALSE:** If an employee mentions a health issue but you haven't seen it affect their work, you can still request a medical exam.
- 3 TRUE OR FALSE:** If you're unsure you should request a medical exam, you can ask the employee questions about their condition first.

Go to the following page to see if you are correct.

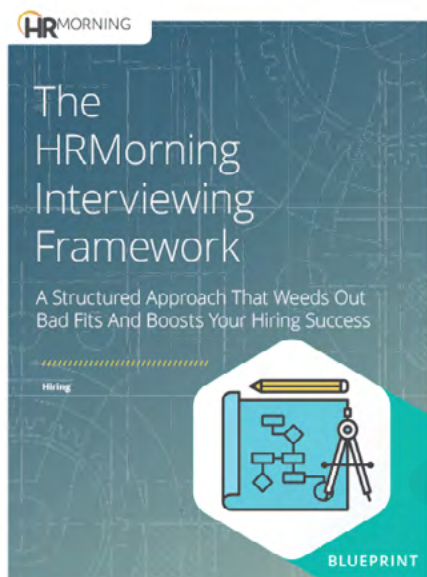


Test Your Knowledge: Answers

Answers from previous page



- 1 TRUE:** The [EEOC's guidelines](#) say an employer can make an employment offer, then ask that person to undergo a medical exam before their first day.
- 2 FALSE:** Employers must tread lightly when requesting a medical exam. The EEOC says you can only require a worker to see a doctor if the employee can't perform an essential job function because of a health issue, or performing an essential job function could pose a direct safety threat to the employee or others.
- 3 FALSE:** Employers aren't allowed to ask employees specific questions about potential disabilities or serious health conditions under the ADA. However, employers can ask broad questions like, "How are you feeling?" and "Are you able to perform your job duties?"



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Vaccine mandate: Benefits takeaways from Supreme Court Ruling



by Renee Cocchi



Now that the [Supreme Court blocked](#) the federal vaccine mandate for businesses with 100 plus employees, it's almost a forgone conclusion that it's dead in the water. But that doesn't mean you can't implement your own vaccination or testing requirements. Far from it. In fact, there's a lot of information Benefits pros can take away from this ruling!

If you're thinking wait, the Supreme Court said they won't allow it to go into effect until all litigation is done, and there's still active litigation. You're right. But since the case goes back to the [6th Circuit Court](#), which is overwhelmingly conservative, they're probably going to take their lead from the Supreme Court and determine that OSHA's emergency temporary standard (ETS) is unconstitutional, according to

industry expert Dr. Jim Castagnera Esq., Chief Consultant of Holland Media Service and regular webinar presenter on HRMorning.

"I think it's absolutely dead," said Dr. Castagnera. "So, if you are not covered by any other mandate at your organization, it's up to you to decide if you want to mandate or incentivize vaccinations."

It's possible the Biden administration might have OSHA come up with narrower requirement that the Supreme Court wouldn't have a problem with, but it would be a struggle.

"The EEOC and other federal agencies have made it clear that you can mandate vaccinations," said Dr. Castagnera. "This does not take that mandate out of your hands. You can still do that unless you happened to be in Florida where they passed

a law that made it very hard for an employer to mandate vaccinations. But in most jurisdictions, it's now on you."

Do you need a vaccine mandate?

But as a Benefits pro you also must think about do you want to implement a vaccine mandate considering the Great Resignation.

"It's like any other health or safety decision," said Dr. Castagnera. "On the one hand, you want your employees to be safe. On the other hand, you must be able to run a profitable business. So, you try to find that sweet spot where you're being reasonably safe, you're meeting the General Duty requirements under OSHA and, at the same time, you're able to operate your business."

OSHA is not out of the game. There's a lot of guidance from OSHA as to what makes a safe workplace, and it's often industry specific. "Most of it falls under the General Duty Clause," notes Dr. Castagnera. "So, you want to look at the guidance, decide what are the things you should be doing, and, if you're doing those things, do you really need to have a vaccination mandate in place?"

There are surveys out there that say one-third of your employees will quit if you implement a vaccine mandate. And still other surveys say one-third of people will jump ship if you don't implement a mandate because they won't feel safe.

"If they haven't done it already,

Benefits and HR pros need to get the pulse of their workforce,” said Dr. Castagnera. “There’s no one-size fits all solution. Every workplace is different. And I think that’s where employers are left right now.”

Shift from vaccination to testing

Rather, than come up with a narrower focus, Dr. Castagnera thinks the Biden administration is shifting their emphasis from mandatory vaccination to testing. “It seems clear to me that what the Biden administration has said in the wake of losing this case is, OK, we can’t mandate vaccinations for the bulk of employers like we thought we could so we’re going to have to put pressure and resources into testing. And I think Benefits people have to begin to flex in terms of how the testing requirements are going to play out.”

Now that the government is providing free federal at-home COVID-19 test kits ([covidtests.gov](https://www.covidtests.gov)) availability should improve so mass testing should be a lot easier.

Reimburse for tests

Another factor that Benefits pros need to concern themselves about is on Jan. 15, 2022, private insurance companies were required to reimburse their plan members for rapid antigen COVID-19 tests. So, if you have a self-funded health insurance plan at your company or if you’ve got a group plan and you deal with a carrier, it’s an issue you must deal with. “It’s almost like reverting back to the old days,” said Dr. Castagnera. “In the sense that

employees who buy [COVID-19] testing kits need to keep the receipts and test kit boxes as proof of their purchase because they’re going to have to put in a claim. And it’s going to take some time for insurance carriers to get up to speed on how they are going to handle all these claims electronically.”

In addition, carriers under this rule are entitled to make deals with drug stores and some other retailers. So, eventually, it’ll be just like picking up any other prescription. People will be able to walk into CVS, pick up test kits and their insurance company will be billed automatically.

But this is all going to take time to figure out and implement. So, the bottom line: Patience is a virtue

Healthcare worker mandate

The Supreme Court allowed the healthcare worker vaccine mandate to be enforced in all 50 states. It applies to healthcare providers that bill Medicare and Medicaid. They must have at least one dose of a COVID-19 vaccine by Feb. 14 (happy Valentine’s Day) and must be fully vaccinated by March 15.

Government contractors

There’s also the government contractor leg of the vaccine mandate. That’s still in litigation, and it’s not going to be argued in front of the 11th Circuit Court until Feb. 22.

If it ends up in front of the Supreme Court, will it go the way of the healthcare mandate or the 100 plus employer mandate?

“I don’t know,” said Dr. Castagnera. “We’re going to have to watch that one, and it’s probably not going to be resolved until the end of March. So, if you happen to be a federal contractor, you really have to watch this closely because it could really be a game changer for you!”

Long COVID

This next point isn’t directly related to the Supreme Court decision, but it’s something Dr. Castagnera feels Benefits pros need to be aware of – long COVID.

If you aren’t already familiar with long COVID, the [Centers for Disease Control and Prevention \(CDC\)](https://www.cdc.gov/longcovid/) defines it as “a wide range of new, returning, or ongoing health problems people can experience four or more weeks after first being infected with the virus that causes COVID-19. Even people who did not have COVID-19 symptoms in the days or weeks after they were infected can have post-COVID conditions. These conditions can present as different types and combinations of health problems for different lengths of time.”

On July 26, 2021, the U.S. Department of Health Human Services (HHS) and the Department of Justice (DOJ) offered guidance on long COVID as a disability under the Americans with Disabilities Act (ADA).

“That’s going to affect more than the ADA and accommodations of those disabilities,” said Dr. Castagnera. “I think that pretty much establishes that it’s a serious medical condition for purposes of FMLA leave. And if you can show you contracted it in the workplace, it’s a pretty good argument for being eligible for workers’ compensation benefits.

And whether it was contracted in the workplace or not, it probably impacts short-term and long-term disability eligibility requirements.”

There’s been a lot of hand wringing by Benefits pros about how they should deal with COVID-19. Do you treat it like the flu, and it’s not covered under benefits, or is it more like a disease that should be covered?

“I think what the Department of Justice has done in coming out with the long COVID pronouncement is to say it can be one or the other,” said Dr. Castagnera. “You can have COVID-19 which is flu like and goes away and it’s not covered by benefits of any kind. Or it could be long COVID that can affect your mind, heart and lungs, and then it’s going to be a disability. And that’s something Benefits people are going to have to deal with.”

Next step

Considering all of this, Dr. Castagnera advises Benefits pros to:

- Look at the COVID-19 policies they have in place and make sure they’re up to date and reflect the reality on the ground
- Find out what COVID-19 policies are at the state and local level, and what they require of them, and
- Recognize that testing is going to be crucial. If the federal government is putting this much emphasis on testing, then OSHA will be able to exercise its authority over testing and contract tracing of COVID-19 in the workplace.

“To me, the most important part of your policy review is determining how testing fits into your overall

COVID-19 plan,” added Dr. Castagnera. “Because from the federal government on down, we are going to see a real shift toward emphasizing testing. So, if you don’t have a robust testing and contact tracing plan in place as part of your overall COVID-19 strategy, that’s probably the most important thing to focus on.”

Recommended reading from

[Renee Cocchi](#)

- [Report: 78% of employees in favor of workplace vaccine mandates](#) [🔗](#)
- [More vaccine mandate Q&A](#) [🔗](#)
- [More states dropping mask mandates](#) [🔗](#)



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What Would You Do?

Manager worries workaholic employee will burn out soon: What can be done?



The Scenario

HR manager Stu Capper sipped his hot chocolate and stared out at the snowy parking lot, hoping spring would come quickly, when department manager Stephanie Plum walked through his door.

"Hi, Stu," she said, sitting down. "Got a minute?"

"Sure, Steph," he replied. "What's up?"

"I'm having a problem with Connie," Stephanie said.

"Connie? Isn't she one of our hardest workers?" Stu asked.

"She is," Stephanie replied. "And that's the problem!"

Pushing herself too hard

"Connie just doesn't know when to call it a day," Stephanie explained.

"She comes in early and stays late. She'll respond to emails in the middle of the night and on weekends. I rarely see her take a lunch break."

"I see," Stu said. "You're worried she's pushing herself too hard."

"There's no way this is healthy," Stephanie responded. "And my

team is a little taken aback by her intensity. But what am I supposed to tell her? That she should be less dedicated to her job?"

"I understand your frustration," Stu said. "It can be really hard to break workaholics of their habits."

"I don't want Connie to take it the wrong way," Stephanie said. "But this can't go on. She's going to burn herself out, and then we'll have a bigger problem on our hands."

"I'm sure we can come up with something," Stu said.

If you were Stu, what would you do next?

Reader Responses

Ellie St. John,

HR administrator, Virginia Education Association, Richmond, VA

What Ellie would do: I'd start by meeting with Connie to see if there was an underlying reason she felt the need to work this hard or if it was completely by choice. I wouldn't automatically assume she must be stressed out, but I'd continue to keep an eye on her work habits.

Reason: Some people genuinely enjoy what they do and thrive on working intensely — that's why it's important to check in with Connie to see whether it's her choice to work like this or if she feels some kind of pressure to do so.

Joyce Babb,

HR director, Louisville Metro Housing Authority, Louisville, KY

What Joyce would do: I'd be sure to tell Connie we greatly appreciate how hard she works, but I'd also remind her of certain workplace rules she must be following. For example, my company requires all employees to take lunch breaks and to use a certain amount of vacation time.

Reason: In this situation, I think it's best to appeal to Connie's logical side. Of course we appreciate her hard work, but at the same time, there are legal requirements that must be met. With Connie's intense work ethic, I think she'd be more likely to relax a bit if company policy tells her to.

Building a healthy company culture must be intentional



Rachel Mucha



With so much of employers' focus on recruiting and retaining talent this year, a lot are concentrating on revamping company culture.

While good pay and benefits can convince a lot of employees to stay, a healthy work environment can be just as critical — and it costs virtually nothing to create.

Research by Deloitte found that

88% of employees believe company culture is crucial to an organization's overall success, as well as employee happiness.

Here are just some of the benefits of a healthy company culture, according to [Forbes.com](https://www.forbes.com):

- **Attracting more talent.** Who wouldn't want to work for a company known for its happy employees? Word of a positive

culture will get around and could be the thing to seal the deal for prospective employees.

- **Less turnover.** Positive culture will help recruit workers as well as retain them. If people are pleased with their work environment and enjoy going to work, they'll be more loyal.
- **Better teamwork.** A good company culture fosters collaboration and socialization. It's only natural this would lead to employees effectively working together. Employees also tend to be more motivated and to produce better work in general.
- **Less stress.** Companies with healthy cultures tend to see fewer stressed employees.

Focus on employees

So how can employers build a healthy company culture? It's not overly difficult, but it won't fall into place just because you want it to, either. [Here's how](#) one company went about it.

Jeff Chambers, CEO of [Lumin Digital](#), knows how important it is to intentionally create the kind of culture you want.

"A lot of companies are focused on performance metrics and revenue, and a culture just sort of emerges," Chambers said. "Sometimes it's a good one, and sometimes it's not. We wanted to avoid falling into that."

Chambers' goal was to create an intentional culture at Lumin Digital — one employees would love to be a part of. So company leaders got together and came up with some values they wanted the culture to consist of, transparency, inclusion and flexibility making the top of the list.

"We decided we wanted managers to focus on employee behavior instead of fixating on outcomes," Chambers said. "When you [invest in the people](#), they'll produce the results you want."

Transparency and trust

A big thing Lumin Digital focused on was ensuring employees knew management trusted them. Chambers said this meant managers weren't constantly checking in with workers. Instead, they expressed confidence in their employees that they could get the job done.

Transparency is key to help build this trust. "This can be uncomfortable for leaders," Chambers said, "but at our company, we know it's important to share everything — even the not-so-great news."

Lumin Digital has weekly roundtable meetings between small groups of employees and company leaders. This creates a relaxed setting for leaders to share important news and for employees to give their input. Employees appreciate the fact they have easy access to company leaders — and this allows them to feel good about sharing opinions.

Chambers' efforts to achieve a transparent, trustworthy culture have paid off, the company boasting an impressive 1% turnover rate. Lumin Digital has also ranked in the 95th percentile for employee engagement.

"We put effort and trust into all our employees, and we get that from them in return," Chambers said.

4 more strategies

While working on building trust and transparency, here are some other healthy culture strategies employers can implement:




1 Focus on wellness. Employees won't be able to appreciate company culture if they aren't feeling their best. Physical, mental and emotional wellbeing are the foundation to a great culture. Leaders should look into providing wellness tools and on-site health opportunities.

2 Share your values. Employees feel more connected to their job and company if they know their work has purpose. Give your workers concrete examples of how they're positively contributing to the company or clients.

3 Keep things positive. Leaders should lead by example and praise employees and practice kindness. It's important to show any rude or negative employees that their behavior won't be tolerated.

4 Always listen. The easiest way to know what will make employees happy is to ask them! Not only can you tailor a culture to what they need, but they'll be appreciative you took their opinion to heart.

Recommended reading from [Rachel Mucha](#)

- [Our transparent company culture resulted in 1% turnover rate](#) 
- [To fix company culture, focus on the people](#) 
- [One-third of HR pros struggle to get leaders to see pay equity issues](#) 



Was paid suspension actually discrimination?

"How can someone resign after they've been put on paid leave?" asked Supervisor Harold Joyce.

"I guess you've heard about Martin," said Benefits Manager Betty Murphy.

"Yep," said Harold. "They gave me some of his clients."

"That's right," said Betty. "Well, to answer your question, he wasn't

fired. He was put on paid leave until we investigated the complaints against him. So technically he was still employed so he could resign."

"Well, I say good riddance, if you ask me," said Harold. "He's mean to

everyone. He's a bully. No one here likes him or wants to work with him."

"I know," said Betty. "That's part of the reason he was put on leave."

A few days later

"Martin's suing us! What for? He's the one being investigated!" exclaimed CEO Jordan Spike.

"His lawyer said he's suing for race discrimination," said Betty. "He said other people in his position who are white were treated more favorably

than he was and they were never written up or put on leave for the things they did."

"This is insane," said Jordan. "He spent the company's money way beyond his approved budget, he didn't follow company procedures,

and he's unpleasant to work with. I don't know of anyone else at this company who has done what he has. Let him sue. We'll win for sure!"

Betty's company filed a motion for summary judgment.

Did it win?

The Decision

Yes. The district court granted the motion. It held that Martin couldn't prove unlawful discrimination because he wasn't subjected to an adverse employment action.

Being placed on paid leave wasn't an adverse action, it said, and Martin didn't raise a fact issue on the

question of whether he had been constructively discharged.

Martin filed an appeal.

The U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's decision.

It explained that to prove unlawful discrimination Martin's lawyers

had to show he was subjected to an adverse employment action. These include "tangible employment actions," meaning those that affect continued employment or pay, the appeals court said. Some job actions – like termination or demotion – are obviously "adverse" But a paid suspension wasn't.

Paid suspension?

A simple paid suspension isn't an adverse employment action, the appeals court said.

It called paid suspensions a "useful tool" that employers can use to "hit pause" while they investigate an employee who has been accused of

engaging in misconduct. Employers should be able to use that tool without fear of retaliation.

No special circumstances elevated this particular paid suspension to an adverse action, the court added.

The decision was affirmed.

Employers shouldn't be afraid to use the tools employment laws and regs give them.

But it's a must to document any and all violations of company policy, and to treat everyone the same, including disciplinary actions.

Cite: *Davis v. Legal Services Alabama Inc.*, No. 20-12866, 2021 WL 5711043 (11th Cir. 12/2/21).

Transferred to 'busy work' position: Racial bias?



HR manager Lynn Rondo was just getting her first cup of coffee of the day when employee Rose Santos came into the kitchen.

"Lynn, I'm glad I found you," Rose said. "Do you have a minute?"

"Sure, Rose." Lynn gestured to a nearby table, and they both sat down. "What's going on?"

"I've been having some issues with my manager lately," Rose said. "Patrick's been getting upset with me for being a little late to work, but it's nearly impossible to get the kids to school and get here on time."

Lynn nodded. "I know it's tough doing all that on your own."

"The thing is, he doesn't get mad at other people who come in late," Rose went on. "I think he's being hard on me because I'm Cuban."

Forcing her to quit?

Lynn's shoulders tensed. "Now, Rose, before you start saying that ..."

"It's true!" Rose exclaimed. "I'm the only non-white person in the department. I tried to talk to Patrick about it, and what did he do? He transferred me to a job where I do nothing but busy work. I hate it, and he knows it."

"Let me talk to Patrick," Lynn suggested. "I'll get his side of the story, and we can go from there."

"I'm sorry, Lynn," Rose said, shaking her head. "I know Patrick is doing this because he's biased against me. I think he's trying to force me to quit, but I won't stand for this. I'm going to file a complaint with the EEOC."

When Rose sued the company for race discrimination, the company fought to get the case dismissed. Did it win?

The Decision

No, the company lost when a judge decided that Rose's discrimination claim could move forward.

The court said it was suspicious that Rose was the only person getting

in trouble for being late. The fact that she was transferred to a lower position she didn't want only made her racial bias claim stronger, as that could be perceived as an adverse employment action, the court said.

There were no legitimate reasons for Rose's transfer that the court could see.

Analysis: Be careful with adverse employment actions

This case demonstrates the need to be mindful of how certain personnel decisions may look if they're scrutinized closely.

When reassigning an employee, it's important that the move not look like the employee is being

treated less favorably than similarly situated co-workers.

Cite: *Millan v. Bexlar County, Texas*, U.S. Dist. Ct. W.D. TX, No. SA-21-CV-0659-JKP-HJB, 1/5/22.

HRMorning, part of the **SuccessFuel** Network, provides the latest HR and employment law news for HR professionals.

But we don't stop there.

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.

Meet Our Editors



Renee Cocchi

Renée Cocchi has a passion for learning and helping other professionals do their jobs more effectively and efficiently. She's spent decades working as a writer and editor in the publishing industry, covering 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.



Tom D'Agostino

Tom D'Agostino is an attorney and legal editor who has three decades of experience following employment law, disability law and education law trends. He is a graduate of the Duquesne University School of Law and a member of the Pennsylvania bar.



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Rich Henson has spent the past two decades curating and developing HR and Management content to help guide successful leaders forward with confidence. He is a former editor and reporter with The Philadelphia Inquirer.



Michele McGovern

Michele McGovern writes. A lot. In the professional world, she's covered HR, leadership, customer service, sales, crime and passion in 25+ years as a journalist. In the real world, she manages to be a decent wife, mediocre mom, wannabe athlete and consummate pursuer of fun.



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