

July 15, 2020

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## HRMORNING

### Keep Up To Date with the Latest HR News

With HRMorning arriving in your inbox, you will never miss critical stories on labor laws, benefits, retention and onboarding strategies.

HRMorning, part of the Catalyst Media Network, provides the latest HR and benefits and employment law news for HR professionals in the trenches of small-to-medium-sized businesses. Rather than simply regurgitating the day's headlines, HRMorning delivers actionable insights, helping HR execs understand what HR trends mean to their business.

## New OSHA COVID-19 reporting: Do you know what's required?

### ■ Recordkeeping's being enforced until further notice

All employers must now determine whether employees who have the coronavirus contracted it at work, according to new guidance issued by OSHA.

"To comply with the new enforcement guidance, whenever an employee becomes ill with COVID-19, an employer needs to conduct a mini-investigation," said Annette Idalski, an attorney at Chamberlain Hrdlicka.

OSHA's new guidance, which became effective May 26 and will remain in effect until further notice, requires employers with more than 10 employees to record work-related employee coronavirus cases. This is

a reversal from the agency's April 10 guidance that only required healthcare employers to record cases.

### Recording coronavirus cases

According to OSHA, employers must record cases on its Form 300 ([tinyurl.com/OSHAForm607](https://www.osha-slc.gov/OSHAForm607)) if an employee's illness is:

- diagnosed as the coronavirus, as defined by the Centers for Disease Control and Prevention (CDC)
- work-related
- meets OSHA's recording criteria – death, days away from work,

*(Please turn to OSHA ... Page 2)*

## CORONAVIRUS RELIEF

### Feds ease PPP loan forgiveness rules for employers

The Small Business Administration (SBA) says it will "promptly" release new forgiveness rules and guidance for firms. Why? A new Paycheck Protection Program (PPP) bill that eases some restrictions for small employers is becoming a law.

Originally, the PPP loans could be forgiven if an employer followed the 75/25 rule: 75% of the loan proceeds be used to cover payroll (up to \$100,000 per employee) and expenses for health care, paid sick leave and other benefits. However, the new Paycheck Protection Program Flexibility Act (PPPFA) changes the rule to 60% for payroll costs.

Now, a firm has more time to spend

the PPP loan since the period of the loan has been extended to 24 weeks (previously eight weeks). Firms also have until Dec. 31, 2020 to rehire workers (previously, they had until June 30). However, salaries eligible for forgiveness remain capped at \$100,000.

### Forgiveness application

The SBA released a forgiveness application ([tinyurl.com/PPPapp607](https://www.sba.gov/PPPapp607)) in May that it's now in the process of modifying. The SBA said the PPPFA will provide employers "with more time and flexibility to keep their employees on the payroll."

Info: [tinyurl.com/PPPFA607](https://www.sba.gov/PPPFA607)

## OSHA ...

(continued from Page 1)

medical treatment beyond first aid, or

- a diagnosis considered significant by a healthcare professional.

Because of the difficulty in determining whether employees diagnosed with the coronavirus were exposed at work, an employer must make “reasonable” efforts to come to a determination, says OSHA.

According to Burr & Forman attorney Kathryn Willis, these efforts should include:

- Asking the employee limited questions about how they believe they contracted coronavirus
- Making inquiries about their work and nonwork activities, and
- Investigating their job duties and work environment to consider if other workers in the area tested positive.

However, avoid extensive medical inquiries that could violate an

employee’s right to privacy and the ADA, said Willis.

### When COVID-19’s work-related

According to OSHA, an employee most likely contracted the virus at work (if there’s no alternative explanation) if:

- Multiple cases develop among those who work together
- A worker contracts the coronavirus days after a “lengthy and close” exposure to a co-worker or customer with a confirmed case, or
- Job duties include frequent, close exposure to the general public in a locality with ongoing community transmission.

### When COVID-19’s not work-related

Cases of coronavirus are likely not work-related, says OSHA, if an employee:

- is the only one in the workplace to contract it and doesn’t have contact with the general public, or
- has frequent and close contact with someone, outside of work, who has COVID-19 and they aren’t a co-worker.

If an employer, after a “good faith” evaluation, still can’t conclude whether a case is work-related, then it doesn’t have to record the illness.

This OSHA guidance “provides a roadmap for employers to make that determination based on reasonable efforts and objective information,” says Ogletree, Deakins, Nash, Smoak & Stewart Attorney Phillip Russell.

### State OSHA rules

OSHA has only filed one citation for a coronavirus-reporting recordkeeping violation thus far. However, employers also need to be aware that half of all states have adopted recordkeeping requirements that are enforced by state OSHA agencies. And some state agencies, such as California’s Cal/OSHA, have more stringent requirements than federal OSHA.

Info: [tinyurl.com/recordOSHA607](https://tinyurl.com/recordOSHA607)

## S HARPEN YOUR B ENEFITS J U D G M E N T

*This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.*

### ■ Did firm mispay her when it changed its pay cycle?

Benefits Manager Betty Murphy was looking over her schedule for the day when Payroll Manager Jessica Samuels came into her office.

“Hi Jessica,” Betty said. “Come on in. I need to talk to you about Bobbi Freeman and our new pay cycle.”

“Sure,” Jessica said. “What do you need to know?”

### ‘First biweekly check was late’

“Well, ever since we changed our pay cycle from weekly to biweekly, Bobbi has been complaining to her supervisor that she hasn’t been paid accurately, even though she hasn’t given specific details. She’s even threatening to sue,” Betty said.

“Bobbi’s hours fluctuate and I think she’s not used to the switchover to a biweekly pay cycle yet,” said Jessica.

“She said her first biweekly check was late, and there was some pay missing,” said Betty.

“Unfortunately, we did run into a few snags with the bank the first week. It was a day late,” Jessica said.

“She says most of her checks were missing hours, and we didn’t give enough notice about the new pay cycle change,” said Betty.

“We announced it weeks before,” said Jessica.

About a month later, Bobbi was terminated for other issues. It was then she decided to sue her former employer, claiming she wasn’t “properly compensated” under the FLSA and state laws.

The company fought the lawsuit. Did it win?

- *Make your decision, then please turn to Page 6 for the court’s ruling.*



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*What's New in Benefits & Compensation* (ISSN 1076-0466), July 15, 2020, Vol. 27 No. 607, is published semi-monthly except once in December (23 times a year).

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# To test or not to test? Firms have options as employees return to work

While the coronavirus antibody testing is becoming much more readily available, the Centers for Disease Control and Prevention (CDC) is cautioning employers against basing employment decisions on whether to “return persons to the workplace” solely on testing.

Following the EEOC’s go-ahead for employers to screen workers for the coronavirus before allowing them to enter the workplace, the CDC has released new guidance for antibody testing ([tinyurl.com/CDCTest607](https://tinyurl.com/CDCTest607)).

While more than 200 antibody tests have flooded the market, the CDC is asking employers to choose tests that are accurate, reliable and, most important, FDA-approved.

## Labs offer return-to-work services

A big reason antibody testing is becoming increasingly accessible is that LabCorp and Quest Diagnostics – which each have thousands of locations across the U.S. – are fast becoming the go-to places for testing.

Both labs use tests that are FDA-approved. LabCorp is using

the Abbott and Roche tests, while Quest is using Abbott and Euroimmun tests. Both are also offering return-to-work programs.

“Lots of different industries are wondering how to get back to work safely,” said Quest Chief Medical Officer Jay Wohlgenuth.

Quest’s Return to Work program ([tinyurl.com/Quest607](https://tinyurl.com/Quest607)) offers on-site temperature checks, antibody or swab testing collection, health questionnaires and digital platforms to access results. The lab also has a plan for small firms. Its self-service model offers self-swab strategies and numerous collection locations.

LabCorp’s return-to-work program ([tinyurl.com/LabCorp-607](https://tinyurl.com/LabCorp-607)) offers employee check-in health questionnaires, temperature screens, and both on-site and off-site COVID-19 test collection.

Its service also gives employers access to its Euroimmun fingerstick antibody test – a convenient way to test large numbers of employees as part of a return-to-work program.

Info: [tinyurl.com/CDCTest607](https://tinyurl.com/CDCTest607)

## THE COST OF NONCOMPLIANCE

This regular feature highlights recent case settlements, court awards and fines against companies. It serves as a reminder to keep benefits policies in order.

### Tech giant faces \$5.7M glitch after ‘underpaying overtime’

A global IT services provider reclassified some employees as nonexempt, making them eligible for overtime. But workers said it excluded some compensation from its calculations, violating FLSA.

**What happened:** Teaneck, NJ-based Cognizant Technology Solutions reclassified workers and said they’d get base pay, cost of living adjustment, and OT, plus a “Tru Up” bonus to keep total pay the same. But it failed to include Tru Up in calculating OT, resulting in underpayment and violating FLSA.

**Result:** Cognizant agreed to settle the case, paying \$5,726,000, or 51% of estimated damages, to 10 named defendants and an undetermined number of class members opting in by October 2020.

Info: [tinyurl.com/OTglitch607](https://tinyurl.com/OTglitch607)

### FedEx Ground fails to deliver for its workers, owes \$3.3M

A leading delivery service denied deaf and hard-of-hearing workers reasonable accommodations and discriminated against deaf and hard-of-hearing job applicants.

**What happened:** EEOC sued Moon Township, PA-based FedEx Ground for failing to provide reasonable accommodations to its deaf and hard-of-hearing package handlers. The suit also alleged FedEx discriminated against hearing-impaired applicants for those jobs.

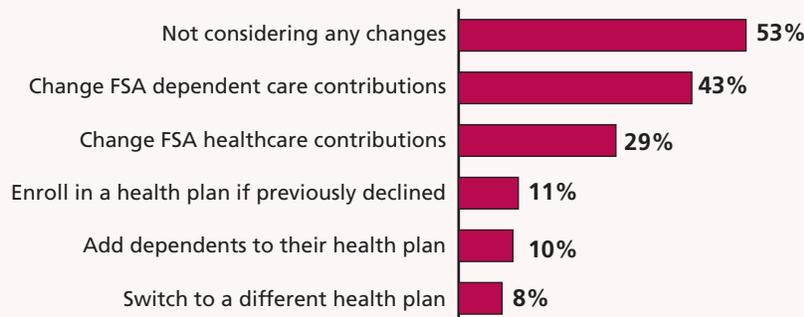
**Result:** FedEx Ground will pay \$3.3 million to 229 people, provide deaf and hard-of-hearing workers with American Sign Language interpreting, captioned videos, and scanning equipment with non-audible cues (such as vibration) and take steps to protect those workers while on the job at its facilities.

Info: [tinyurl.com/FedEx607](https://tinyurl.com/FedEx607)

## IRS is allowing mid-year health plan changes: Are you?

### Mid-year open enrollment

What changes are you allowing employees to make?



Source: Mercer

While allowing mid-year health plan changes could mean higher cost claims, letting workers make FSA changes is less risky – and is a way to be supportive.

## Remote employee expenses: Staying compliant with state, federal regs

Reimbursing remote employees for business expenses is complicated, considering that some states have passed laws requiring employers to pay for certain expenses.

“It’s tricky, but it largely depends on the state you live in,” says Michelman & Robinson Labor Attorney Lara Shotz. Several states, including California, Minnesota and South Dakota, have laws that require work-related expense reimbursements.

Employers in these states need to reimburse remote employees for a computer or laptop, although upgrades to a home internet and additional monitors wouldn’t be reimbursable, she said.

To complicate things further, expenses need to be subtracted from a worker’s weekly paycheck, so if they’re not paid at least minimum wage, that’s an FLSA violation.

### ‘Reasonable’ expenses

In 2019, Illinois imposed expense reimbursement on employers, mandating they must reimburse for all “necessary expenditures.” The law’s

modeled after California’s law that requires firms to pay a “reasonable” percentage of workers’ personal cell phone bills when used for work. California courts have consistently ruled firms are required to pay for data plans and internet expenses.

During the pandemic, many firms “are still waiting for more data to come in to figure out what kind of guidance and tools they have to provide,” says Anant Kale, CEO of finance platform AppZen.

But firms have to decide what “reasonable expenses” workers might incur in the coming months, along with dollar limits. Also, they need to establish a percentage of employees’ personal cell phone bills used for work purposes that’s reimbursable.

When drafting policies, “consider allowing employees to submit a request for additional reimbursement if they believe the amount provided is insufficient,” says Maxim Doroshenko Attorney Kathleen McLeod Caminiti. This would help if a dispute should arise, she said.

Info: [tinyurl.com/expense607](https://tinyurl.com/expense607)

### Recruitment video: A way to let employee benefits shine

When considering job opportunities, job seekers always rank a prospective employer’s compensation and benefits as top decision factors. That makes your benefits package and practices a critical piece of your overall company brand.

Producing a recruiting video (YouTube Video Builder and Vimeo are good tools to help you get started) gives Benefits a way to showcase your offerings and attract the very best candidates.

### Catchy, compelling videos

Here are some tips to make your piece of the next recruiting video as powerful as it can be:

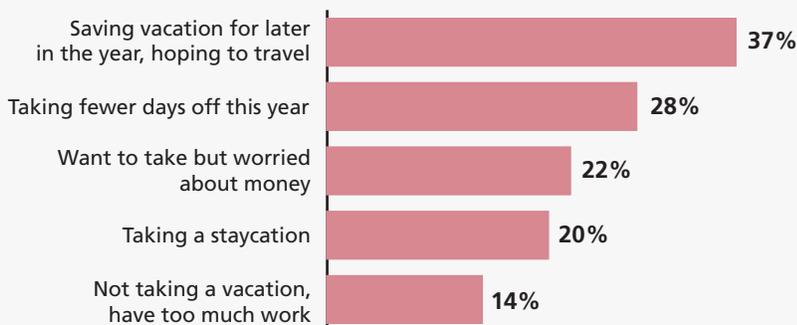
- **Keep it personal.** Let your people tell your story. Instead of a dry list of benefits, ask employees to explain what having specific benefits means to them and their families. That puts a human face to your company and helps prospects understand the value of your package in a way a 50-page plan description never will.
- **Tie benefits to your mission.** There are reasons you decided to offer specific benefits. Some reflect the philosophy and culture that drive your company’s strategy and energizes daily work. Get company leaders involved in the video to help prospective hires understand those connections.
- **Keep your focus.** This is your chance to brag about what your Benefits team usually does quietly or only talks about once a year at open enrollment time. But you can’t let viewers’ attention drift while you get into the weeds about plan options. Talk about the elements you’re most excited about and be sure to provide links to more detailed info, should they want to know more.

Info: [tinyurl.com/video607](https://tinyurl.com/video607)

## Are your employees staying put this summer?

### Employees’ summer vacations

#### How the pandemic has upset their plans



Source: Robert Half

Benefits pros may need to nudge stressed-out workers to carve out time to unplug and recharge this summer to focus on family – and avoid burnout.

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# WHAT WORKED FOR OTHER COMPANIES

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**O**ur readers come from a broad range of companies, both large and small. In this regular section, three of them share success stories you can adapt to fit your needs.

## 1 **Boosted wellness with fertility, elder care perks**

We started thinking about benefits from a more holistic perspective. It's not just about giving employees good medical insurance. It's about looking at all of the different factors that might impact their lives.

Talking to employees, we'd hear things that were really creating stressors and we tried to think about if, as a firm, we could help in any way.

Employees were concerned about family planning. At the same time, we noticed that some were overwhelmed

by an aging loved one's needs, especially when caregiving while working a full-time job.

We expanded our wellness-focused benefits by offering our almost 300 employees help with family planning and caregiver support. We provide access to a network of fertility experts through Nubundle, plus care management and personal assistance services to help aging loved ones thrive at home through Homethrive.

### Being Well initiative

These additional benefits are part of our

Being Well initiative, which was launched last year and includes a host of other wellness offerings.

Staff are given resources, activities and training workshops on topics ranging from substance abuse and stress management to meditation and sleep programs.

Several members of our staff have expressed how these services opened them up to a world of support resources they didn't know existed.

*(Sonia Menon, Chief Operating Officer, Neal, Gerber & Eisenberg LLP, Chicago)*

**REAL  
PROBLEMS  
REAL  
SOLUTIONS**

## 2 **Strategizing for an eventual return to work**

We've been strategizing for the eventual return to work for months, meeting twice a week. While our goals have remained the same, the process to achieve them has definitely changed.

We're considering many aspects of our employees' return strategy, including temperature checks, masks and gloves, and returning in phases. We may offer hoteling, a process by which employees reserve office space on certain days instead of being assigned to a specific work area.

Employees have been responding to weekly questionnaires about their potential exposure to the coronavirus. So far, one employee and one independent contractor have tested positive.

### Hand-sanitizing stations

Meanwhile, hand-sanitizing stations have been placed throughout the office, which has been disinfected. We're also asking employees what they expect when they return. They're concerned about PPE, physical distancing and how they can be sure

they're safe if they come in contact with someone who's been infected.

We're keeping it human too by engaging returning staff in conversations to help alleviate their anxieties. Regardless of how states allow people to return, we won't budge until employees feel ready.

It's a process. There are going to be changes. Be frank with people. Show empathy and have some fun. It doesn't all have to be serious.

*(Kirt Walker, Vice President of HR, Yoh, Philadelphia)*

## 3 **Support for parents with school, camp closures**

With the coronavirus forcing school closures and camp closures this summer, many working parents are struggling to balance caring for their children while working. These changing times called for us to refocus on what's important for our workforce. So we added a new benefit I was already using with my own children.

Employees receive a monthly credit to access live online classes on

*Outschool.com*, an online education platform for children ages 3 to 18.

There are thousands of classes available to kids at all hours of the day. This provides working parents with an uninterrupted opportunity to join a business call knowing their kids' time is being spent more meaningfully.

### Educational benefits

Our mission, as a next-generation benefits provider, is to deliver a better benefits experience. I see changes to the employee benefits sector. A gym membership may evolve to become an

online yoga class. Instead of employers investing in office spaces, we'll likely see firms helping support better home office technology for their employees.

During this unprecedented time, it's critical employers recognize the additional hardships working parents are facing and consider new types of benefits to support them. We may see educational benefits for employees' children and more companies offering FMLA.

*(Rachel Lyubovitzky, CEO, EverythingBenefits, New Providence, NJ)*

## RECALLING WORKERS

### Employees refusing to come back?

As states ease restrictions put in place by the coronavirus stay-at-home orders, firms are grappling with the best way to recall their employees.

But many employers have reported seeing resistance from furloughed employees who don't want to return. In fact, only 32% of employers reported they were experiencing "considerable employee cooperation" in recalls, according to a recent Dykema survey.

#### Resistance from workers

Some employers (28%) said they're getting resistance from workers' desire to continue receiving the additional \$600 per week in unemployment pay made available through the coronavirus-relief CARES Act.

"Many are receiving more compensation staying at home and collecting unemployment than they'd make returning to work," said Dykema Attorney Elisa Lintemuth. Employees may be more willing to return when the emergency funds expire on July 31, 2020.

#### Wants to stay on unemployment

But if an employee refuses to return because they prefer to receive

unemployment benefits, they may be deemed to have resigned. "This is a big deal because all states have some version of a rule requiring workers to be willing and able to work in order to continue to receive unemployment benefits," said Lintemuth.

If an employee refuses a recall, they may be disqualified from receiving further unemployment compensation. And an employer can report that employee to their state's unemployment office.

#### Fear of the coronavirus

An employee who refuses to return out of a fear of exposure to the coronavirus isn't currently entitled to job-protected leave and may also be deemed to have resigned.

"But, as with all things COVID, the details are not simple," said Lintemuth.

The EEOC has recently provided helpful guidance for employers ([tinyurl.com/EEOC607](https://www.eeoc.gov/press-releases/2020/07/2020-07-20)) facing these kinds of concerns.

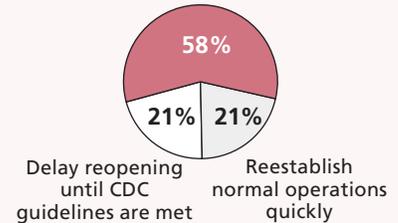
If an employee cites an underlying medical condition as the basis for a request to return to work later or to work from home, employers should consider these requests on a case-by-

## WHAT BENEFITS EXECS SAID

### Return to work

What's your reopening plan?

Phase in reopening over a month



Source: Dykema

Many firms are looking to local authorities for guidance as they reopen, even though experts say abiding by the CDC guidelines ([tinyurl.com/CDCchart607](https://www.cdc.gov/chart607)) conveys an important message to employees.

(Each issue of WNB&C contains a current survey to give benefits officers insight into what their peers nationwide are thinking and doing.)

case basis. They need to determine if there are specific individual factors that show some health risks, such as obesity, diabetes or asthma.

Like similar scenarios not involving the coronavirus, employers must determine whether the employee asking to continue working from home has a disability. If so, employers will need to make a reasonable effort to accommodate employees with additional PPE or workplace distancing, under the ADA.

Info: [tinyurl.com/refuse607](https://www.tinyurl.com/refuse607)

## SHARPEN YOUR JUDGMENT – THE DECISION

(See case on Page 2.)

No, the company didn't win. The employee's case against the company will proceed to trial.

A judge said the worker's claims that she didn't receive all her wages after the employer switched from a weekly payroll cycle to a biweekly cycle were valid. That meant she could bring a lawsuit against the employer under both the FLSA and state wage laws for failure to pay timely wages.

The company argued that the employee couldn't point to any specific missing hours or wages in the paychecks she received after the pay period changed.

However, the employee said the first paycheck she received after the firm changed its pay cycle was inaccurate and didn't include all wages she'd earned. That was specific enough for her to make a valid argument that the firm

violated prompt payment requirements of the FLSA and state law. The court agreed, and now the firm's in for a long legal battle to defend itself against the charges.

### Analysis: Ensure pay errors are handled promptly

Changing your payroll cycle must be done carefully to avoid any problems or compliance issues. Some states have specific laws dictating how quickly employees must be paid for their work, so it's key to understand the potential legal impact before proceeding.

It's also important to give employees plenty of advance notice in writing about any pending pay cycle changes. That way, you'll have time to answer their questions and address their concerns, so they won't be caught off guard later.

Cite: *Sarit v. Westside Tomato Inc.*, No. 18-CV-11524 (RA), U.S. D.C., S.D. New York, 4/16/20. Note: Dramatized for effect.

# The coronavirus crisis didn't interfere with our employee open enrollment

## Created webinars with vendor presentations

One of the greatest challenges for our benefits department is always preparing for open enrollment. Ours is in April.

Because the coronavirus crisis exploded as we were preparing for it, it was even harder this year. We were unable to meet with our employees in person due to stay-at-home orders.

Normally, employees would have access to face-to-face sessions in the office. Plus, we have our university's computer labs for open enrollment assistance, Spanish language interpreters, benefit booklets, etc.

But we figured it out.

### Online open enrollment

In March and April, we hosted online open enrollment sessions through webinars, which included vendor presentations and videos we created in house.

After each session, we scheduled one-on-one videoconferences for employees who had specific questions.

Employees with less access to technology at home – who couldn't enroll online – received and returned enrollment info and forms in the mail.

And we took extra steps to reach out to all of our employees by phone to remind them about making their open enrollment elections or waiving their options and deadlines.

### Ongoing communications

Our organization has used email for many years as our primary way to send benefits updates to our employees. As we moved to working from home, we scrambled to expand our electronic options very quickly.

But now we effectively hold meetings and communicate with colleagues using Zoom, Microsoft Teams and Ring Central.

It's interesting, though, that most of our essential processes haven't really changed drastically, like how we work with our third-party administrator to process medical insurance claims.

### Lessons learned

We had to learn a number of noncommunications lessons very quickly, too. Our challenges included adjusting to most of our organization working remotely but still needing to work together.

All of those lessons have improved our ability to handle future crises and, really, to adapt and stay productive no matter what.

Here's how we'll do it:

- We'll have as many contingency plans in place as possible.
- We'll try to prepare for the unexpected, which

means staying current on tech, industry trends, processes, etc.

- We won't get caught up in "doing things the old way," instead of figuring out what's needed right now and making it happen.

Will we use remote open enrollment

## We took extra steps to reach out by phone.

next year? We're not sure, but the infrastructure's in place and the lessons we learned have given us that option and more choices even if we aren't forced to use them.

*(Renee Moody, Benefits Manager, University of the Incarnate Word, San Antonio)*

### Case Study:

**WHAT WORKED, WHAT DIDN'T**

## TEST YOUR KNOWLEDGE

### Is your wellness plan able to clear compliance hurdles?

Depending on whether you offer a group or nongroup wellness plan, you must satisfy conditions and compliance requirements.

Do you understand all the differences? Do you know if your existing plan is in compliance with the right requirements?

*Test your knowledge:* Decide whether the following statements are *True* or *False*. Then check your responses against the answers below.

1. All group wellness plans must be tied to other medical benefits.
2. All wellness programs must comply with the same set of federal regulations.
3. All wellness plans must offer employees an incentive to take part only if they also require participants to achieve specific health outcomes.

## ANSWERS

- Answers to the quiz**
1. *True.* They may include blood screenings, disease management and vaccines. Nongroup plans, such as gym memberships or bonuses to nonsmokers, stand apart from and share limited information with insurers and medical providers.
  2. *False.* While all wellness plans must follow ADA, ADA, PDA and GINA regs, group plans have a heavier compliance burden, abiding by ERISA, COBRA, HIPAA, ACA and FLSA laws.
  3. *False.* All wellness programs can offer rewards. But walking, dieting or exercise programs without goals must offer all employees the same rewards. Result-based programs can offer various rewards, including choose-your-own options for achieving health targets.
- Info:** [tinyurl.com/wellness607](http://tinyurl.com/wellness607)

## **EEOC: Firms now get a pre-suit compliance assist**

In line with what new EEOC chair Janet Dhillon called a priority in 2020, the agency began a “robust compliance assistance” program May 29 that aims to settle discrimination claims *before* a lawsuit’s filed.

This six-month pilot program offers hope to firms that’ve gotten hit with EEOC discrimination lawsuits brought by their employees, alleging gender, pregnancy or disability discrimination. Now, the EEOC will submit its assessment of a grievance to the firm to begin a conciliation process.

Info: [tinyurl.com/EEOCpilot607](https://tinyurl.com/EEOCpilot607)

## **Free 12-week summer session for job recruiters**

Grab your favorite summer drink to watch a variety of free, live recruiting skills teleclasses from leading talent acquisition platform Jobvite.

“The Summer to Evolve,” which runs June 17 through Sept. 2, is Jobvite’s 12-week series designed to help recruiters improve their skills.

HR pros can register for individual skills sessions such as candidate screening or writing job descriptions. Other sessions include expert interviews, demos on Jobvite’s recruiting products and Friday “break” sessions with entertainers.

Info: [jobvite.com/summer](https://jobvite.com/summer)

## **COVID-19-related workers’ comp claims: How to avoid**

During the pandemic, firms may be seeing more workers’ compensation claims. In many states, workers’ comp doesn’t typically cover an infectious disease, such as the coronavirus. But it’ll be covered in New York, and other states are considering coverage.

Other claims could be filed by workers getting injured at poor work-from-home setups such as beds, couches, coffee tables, etc. “It’s likely many at-home injuries will be deemed compensable by workers’ comp

courts,” says Hall Estill Attorney Robert Fitz-Patrick. Firms should develop remote policies that guide workers to “create a dedicated work space for work-related tasks,” he says.

Also, consider supplying remote workers with an ergonomic keyboard (to prevent carpal tunnel) and office chair (to reduce back issues).

Info: [tinyurl.com/comp607](https://tinyurl.com/comp607)

## **DOL: New fluctuating workweek rule takes effect**

It’s welcome news for employers as more employees return to work: The DOL’s new fluctuating workweek rule becomes effective Aug. 7, 2020.

As employers stagger work schedules for returning workers, the rule gives them more flexibility when compensating these workers or any with inconsistent schedules. Employers will have the option to pay them at half their regular rates for overtime. Presently, employees receive 1.5 times their regular rate for overtime.

Bonuses (including hazard pay) must be included when calculating overtime pay for these employees.

Info: [tinyurl.com/FWW607](https://tinyurl.com/FWW607)

## **HEROES Act expands FMLA, extends unemployment pay**

The House passed the HEROES Act, the latest coronavirus-relief bill. It lowers the bar for FMLA eligibility, expands paid leave and extends the \$600 per week federal unemployment payments – due to expire July 31 – through the end of 2020.

For employees who need time off because of school and day care closures, the bill would provide two weeks of paid leave at full pay and 12 weeks of paid FMLA leave at two-thirds of regular pay.

The Senate, which plans to add a waiver protecting firms from liability should employees contract the coronavirus on the job, will likely vote on the bill sometime this summer.

Info: [tinyurl.com/HEROES607](https://tinyurl.com/HEROES607)

## HOT WEBSITES

### ■ State return-to-work protocols

Keep up to date on your state’s reopening orders, mask wearing mandates and temperature check requirements by accessing Littler’s Return to Work Initiative (which also includes an interactive map).

Click: [tinyurl.com/Littler607](https://tinyurl.com/Littler607)

### ■ Free ‘safe workplace’ apps

To support firms creating a safe workplace, ServiceNow is offering free access (until Sept. 30, 2020) to its emergency response apps.

Click: [tinyurl.com/ServiceNow607](https://tinyurl.com/ServiceNow607)

### ■ Time’s Up ‘care’ guide

For firms now faced with making tough layoff decisions, Time’s Up – the #MeToo movement’s initiative – has issued a guide meant to help them “care for their people.”

Click: [tinyurl.com/TimesUp607](https://tinyurl.com/TimesUp607)

*If you have a benefits-related question, email it to Lynn Cavanaugh at: [lcavanaugh@hrmorning.com](mailto:lcavanaugh@hrmorning.com)*

## LIGHTER SIDE

### ■ Send any late-night emails? Why it could be a bad idea

You might want to rethink sending any late-night emails to your workers. That’s because a workaholic Wall Street banker blasted his bleary-eyed underling for not promptly responding to his 3 a.m. email, according to a screenshot of the email exchange that was posted on social media.

It seems the unidentified junior banker at PJT Partners apologized for the late reply back at 6:38 a.m. but was sent a “not an excuse” reply by his boss.

Although PJT Partners has responded to the matter by saying, “maintaining a culture of respect, collaboration and a commitment to excellence is our highest priority,” most, including the junior banker, would beg to differ.

Click: [tinyurl.com/email607](https://tinyurl.com/email607)