

SEPTEMBER 15, 2020

## WHAT'S INSIDE

- 2 Sharpen Your Judgment**  
Hostile work environment?  
Worker was followed, stared at
- 3 Employment Law Update**  
Worker with PTSD who threatened  
colleague wasn't discriminated  
against
- 4 Answers to  
Tough HR Questions**  
Must we post notices on site  
when workers aren't there?
- 6 What Would You Do?**  
Too many sick days causing  
problems: What can HR do?

## 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 *SuccessFuel* Network, provides the latest HR 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.

# COVID-19 culture tweaks: 5 key steps for uncertain times

## ■ *Emphasizing work-life balance, flexibility*

Companies and employees alike have been dealing with working through a global pandemic for six months now.

Many have mastered video calls and other remote work idiosyncrasies, but that doesn't mean employers should expect workers to be completely adjusted to this new normal.

### Working parents

In fact, a lot of people are struggling to strike a balance between work and responsibilities at home, and it's only getting trickier as we head into the fall.

Parents are stressed right now, with so much uncertainty surrounding

schools. They may have to assist with virtual learning for months, which begs the question: Will they have to choose between their child and their job?

It's employers' responsibility to ensure their employees don't have to make this choice. If companies focus on providing necessary support now, not only will this create a more positive workplace culture, but you'll be able to retain top talent.

### Creating a plan

HR pros should treat this as a crisis, and begin creating a plan right away. It's not enough to simply continue

*(Please see COVID-19 ... on Page 2)*

## EEOC resumes right-to-sue investigations

### ■ *Agency begins issue notices again, allowing employees to sue employers*

Employees who've filed charges with the Equal Employment Opportunity Commission (EEOC) – such as discrimination, harassment or retaliation allegations – will now be able to continue the proceedings.

The EEOC had put a pause on issuing notices to employers back in March due to the pandemic, but have now resumed.

### Major backlog

Over the past eight weeks, the EEOC has worked through the five-month

backlog of charges and started issuing notices, either dismissing the allegations or giving employees the go-ahead to move forward with a lawsuit.

Because of the EEOC resuming notices after such a long period of time, employers can expect to see a sudden spike in employee lawsuits. This could also potentially overburden the courts.

The agency started reviewing charges back in early August, meaning employers can expect notices to arrive any day now.

*Click: [bit.ly/EEOC564](https://bit.ly/EEOC564)*

# COVID-19 ...

(continued from Page 1)

offering remote work options. Companies are going to have to make a major culture shift in order to ease employees' pandemic stress.

Here's how HR experts say you can shift workplace attitudes and best support employees during this time.

1. **Life comes first.** It's so important for employers to express the idea that, right now, life comes before work.

Before the pandemic, a work-life balance was hard to find for most people. Now, with people working from their kitchens and getting bombarded with emails at all hours, it's more crucial than ever to stress the importance of taking a step back.

Employers should encourage workers to step away when they need to and take care of family issues.

If your company usually operates as a traditional nine-to-five business, encouraging sporadic breaks can

feel strange. However, it's what's necessary to keep your employees as productive as possible.

2. **Flexible work hours.** Going along with encouraging breaks, managers should be open to flexible hours whenever possible.

Employees still need to be available for scheduled meetings and meet deadlines, but apart from that, try allowing staff members to set whatever hours work for them.

Express to your workers that it's OK for them not to return calls or emails immediately, and that they're not expected to be working constantly from the morning to the evening.

3. **Sharing stories.** It's important to cultivate an environment where employees feel comfortable sharing what's going on in their personal lives. Managers should encourage workers to let them know what's going on, so they can work to find a solution together.

It could also help for employees to connect with each other and swap tips for how they're coping. A high-trust, communicative culture will do wonders for productivity and stress.

4. **Casual and comfortable.** Accept the fact that there will be hiccups with remote work. Kids and pets might make surprise appearances during video calls, and parents may have to abruptly leave scheduled meetings.

By learning to go with the flow and telling workers that interruptions are natural, they'll be able to relax.

5. **What employees need.** Most importantly, ask your people directly what kind of support they need. Some people might have special requests you never would've guessed.

Regular check-ins are important, too. Some workers might be struggling, but won't speak up unless directly asked. If someone is feeling overwhelmed, work with them to find a solution. One option is to get their assignments covered so they can take a much-needed day off.

*Info: [bit.ly/culture564](https://bit.ly/culture564)*

## Sharpen your JUDGMENT

*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.*

### ■ Hostile work environment? Worker was followed, stared at

HR manager Lynn Rondo was finishing her first cup of coffee when company attorney Eric Bressler knocked on her door.

"Hi, Lynn," he said. "Got a minute?"

Lynn stood. "Sure. I was just going to get more coffee. Walk with me."

Lynn and Eric headed for the break room. "I wanted to talk to you about Cassie Chen," Eric said, face grim. "She's suing us for a hostile work environment."

### Severe and pervasive?

Lynn stopped in her tracks. "You can't be serious!"

Eric frowned. "I know she had some issues with Lou, but I didn't think it would escalate to this."

"Cassie complained to me about Lou," Lynn explained. "Apparently he would stare at her constantly and follow her around during her shift. It made her very uncomfortable."

"Did you talk to Lou?" Eric asked.

"Of course," Lynn replied. "I told him the behavior was unacceptable and he needed to stop. But, Cassie said he still did it." Lynn shook her head. "I feel for Cassie, but I hardly think staring is enough to establish a hostile work environment."

"We'll fight this, then," Eric said.

When Cassie sued for a hostile work environment, the company fought to get the case dismissed. Did it win?

■ *Make your decision, then please go to Page 4 for the court's ruling.*



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# Worker with PTSD who threatened colleague wasn't discriminated against

### ■ Court says employer had right to request fitness-for-duty test

Things get tricky when an employee's disability causes them to violate company policy.

However, a recent ruling proves that employers are allowed to enforce disciplinary measures – even when the employee is ADA-protected.

### ADA violation?

Todd Kurtzhals worked as a police officer in Dunn County, WI. Kurtzhals, who has PTSD, got into an argument with a co-worker and threatened violence.

This went against the department's conduct policy, and Kurtzhals was placed on temporary leave. He was required to undergo a fitness-for-duty test before returning to work.

Kurtzhals sued the department for

disability discrimination, claiming the test was due to his PTSD and not because he got into an altercation with his colleague.

But the 7th Circuit disagreed with Kurtzhals. It said the department was simply following its policies – Kurtzhals was suspended and had to undergo the fitness-for-duty test because of the altercation, not because he had PTSD.

The court also said that a fitness-for-duty test was perfectly reasonable, given that Kurtzhals, as a police officer, is responsible for public safety.

This case shows that medical exams and disability-related inquiries are permitted under the ADA – if they're job-related.

*Cite: Kurtzhals v. County of Dunn, 8/10/20.*

# Company made 'ample effort' to accommodate employee's needs, court says

### ■ Employer offered a number of options, including FMLA leave

When an employee is caring for a sick family member, some scheduling issues can arise.

In a recent case, an employee was terminated when he never returned from FMLA leave. Here's how the company came out on top.

### No adverse employment action

Frank Pierri was a chemist at Medline Industries in Illinois. He was also in charge of caring for his grandfather, who had liver cancer.

Pierri requested accommodations that would allow him to care for his grandfather. The company initially didn't have any issues with this, and offered Pierri several different accommodations, including granting

him one day of leave per week.

Pierri claims his manager didn't like this schedule and "harassed him" about it, leading Pierri to take full-time FMLA leave. He never returned to work, leading to his termination.

He sued for discrimination, but the 7th Circuit ruled in favor of the employer. The court said Medline had made "ample effort" to accommodate Pierri.

In regards to the alleged harassment from the manager, the court said Pierri experienced no adverse employment action, and was only fired when he didn't return to work when he was supposed to.

*Cite: Pierri v. Medline Industries, 8/6/20.*

### ■ Sexual harassment of several workers costs company \$50K

Employers should strive to ensure their employees feel safe at work. When one restaurant allowed harassment to occur, the EEOC stepped in.

Sol Mexican Grill, a restaurant located in Washington, D.C., was hit with a sexual harassment lawsuit by the EEOC. According to the suit, a manager harassed several female employees.

The harassment included unwanted sexual comments and propositions, as well as unwanted touching. When the employees complained, the company did nothing. Instead, Sol Mexican Grill reduced the hours of those who complained. Some were even fired, according to the EEOC.

The restaurant settled the lawsuit and will pay \$50,000 in monetary relief. Sol Mexican Grill also must revise its harassment policy and retain an outside consultant to investigate harassment complaints.

*Info: bit.ly/harass564*

### ■ Store owes \$35K after saying it doesn't hire men for sales jobs

A recent EEOC lawsuit shows that sex discrimination in the workplace can go both ways.

Sactacular Holdings, doing business as Adam & Eve, is an adult retail store located in North Carolina that refused to hire a man, according to the EEOC's lawsuit.

A male applicant applied for a sales job at Adam & Eve, but a female employee flat out told him the store didn't hire men for sales positions. Two months later, the man reapplied at a different store, and was told the same thing – the employee said it was "store policy." This so-called policy violates the Civil Rights Act.

Sactacular Holdings agreed to pay \$35,000 in monetary relief, and the company must change its discriminatory policy.

*Info: bit.ly/genderbias564*

## ANSWERS TO TOUGH HR QUESTIONS

HR professionals like you face new questions every day on how to deal with workplace conflict and employment law. In this section, experts answer those real-life questions.

### Must we post notices on site when workers aren't there?

**Q:** Our entire workforce is working remotely right now. Do we still need to post notices on site?

**A:** Yes, employers must still post required notices in the physical workplace, even if employees aren't currently there, says employment law attorney and partner Kevin Troutman, of the firm Fisher Phillips.

But employers must also take into account the pandemic, which means sending electronic notices to workers, too.

Currently, there are several new posting requirements, such as information about the Families First Coronavirus Response Act (FFCRA).

Employers should read the DOL's guidance, but the agency suggests companies directly email notices to employees, or post the information on an internal website.

### Do workers need a doc's note to take FFCRA leave?

**Q:** If an employee was exposed to the coronavirus or has

symptoms and is still awaiting a diagnosis, do they need a doctor's note to take paid leave through the Families First Coronavirus Response Act (FFCRA)?

**A:** No, an employee doesn't need a doctor to sign off on FFCRA leave in order to take it, says employment law attorney Lindsey White of the firm Shawe Rosenthal LLP.

The DOL says in order for an employee to request FFCRA leave, they must state the following, verbally or in writing:

- their name
- the dates they need time off
- the reason for needing to take leave, and
- an explanation of why the employee is unable to work.

### How should we notify staff a colleague has COVID-19?

**Q:** We've had a worker test positive for the coronavirus. Do we have to notify all employees, or just the ones possibly exposed? And what's the best way to tell them?

**A:** As soon as you hear an employee is infected with the

virus, it's crucial to immediately attempt to retrace the person's actions before their diagnosis, according to the CDC and OSHA. Find out where in the workplace they were, and who they came in contact with.

The CDC says that COVID-19 exposure occurs when someone is within six feet of an infected person for 15 minutes or longer. You'll want to notify any employees this applies to.

It's important to note that COVID-19-positive people can be contagious up to 48 hours before symptoms appear – so keep that in mind when you're deciding which employees were put at risk of exposure.

Employers should alert those who were exposed as soon as possible, to prevent further spread. However, you can't identify which employee contracted the virus.

Give exposed employees only the information that's necessary, and have them self-isolate and monitor their symptoms for 14 days.

*If you have an HR-related question, email it to Rachel Mucha at: [rmucha@HRMorning.com](mailto:rmucha@HRMorning.com)*

### Sharpen your judgment...

## THE DECISION

(See case on Page 2)

No, the company lost. A district court initially dismissed the case, but the 9th Circuit reversed this decision.

The company argued that Lou's conduct wasn't severe and pervasive enough to constitute a hostile work environment. It also claimed the company acted appropriately by telling Lou his conduct was unacceptable.

But the 9th Circuit disagreed. It said Lou's harassment was more than offhand comments and teasing, and it could possibly be considered severe and pervasive.

The court also pointed out there was some doubt as to whether the company's response to the harassment was

"prompt and effective." The 9th Circuit said the company merely counseled Lou about his actions, but it was unclear whether it expressed "strong disapproval."

### ■ Analysis: Respond appropriately to harassment

This case shows that not only is it important to take sexual harassment complaints seriously, but to respond appropriately to them.

The company addressed the issue with the accused harasser, yet that didn't stop the behavior. The harassment continued, and it became "severe and pervasive."

All harassment complaints, no matter how big or small, should be taken seriously and handled swiftly.

**Cite:** *Simmons v. Safeway, Inc. U.S. Ct. of App. 9th Circ., No. 19-35715, 8/5/20. Fictionalized for dramatic effect.*

# Why we reevaluated our benefits package during the pandemic

■ *Child care assistance has now become a top priority*

It's no secret that a lot of employees are struggling to work through this pandemic. And one group that's particularly having difficulties is working parents.

Balancing work, child care and schooling assistance is overwhelming. And with no one knowing how much longer the pandemic will continue, we can't assume these problems will go away any time soon.

We decided it was absolutely essential for us to reevaluate the benefits we offer our employees.

### Reallocation of benefits

While taking a closer look at our benefits, we realized the pandemic made so many of them obsolete.

Perks we offered – such as gym memberships, free food in the office and transportation stipends – quickly became irrelevant with everyone working from home.

Not only that, but we identified new needs as well. The pandemic made it clear that help with child care is a necessity for so many employees, who are struggling to juggle parenting and remote work.

That's the main reason we decided to develop a one-stop-shop benefit for child care and education. And we provided our employees with unlimited access.

### Engagement and education

We created a virtual learning platform focused on child engagement and education. This way, the child can stay occupied with something that also helps them learn.

Here's how it works: Parents can sign their children on to one of our

many education programs – which will keep the child busy for several hours – during which the parent can focus on their own work.

Our lessons are designed for children between the ages of three and 11, and can be used to supplement online schooling – which often only lasts for around four hours a day.

Whether it be a science, technology or arts program, the child will stay fully engaged for the duration of the lesson. We've never had a kid walk away from the screen.

We offer one-on-one learning, as well as education in group settings. There are also more academic-focused courses, such as math and language

arts, for parents worried their kids may be falling behind.

### Much-needed perk

When it comes down to it, parents just need options right now – and we feel this benefit effectively handles the issue of at-home child care and assistance with education.

We suspected this would be an attractive benefit to our employees, and we were right. So many take advantage of these programs, and it allows them several uninterrupted hours to focus on their own work.

And, we intend to offer this benefit long after the pandemic passes. This has taught us all that child care is just as important as other staple benefits, such as healthcare.

Working parents have wanted options like this for a long time – and we know this will be handy in attracting talent in the future as well.

*(Kayla Lebovits, CEO & founder, Bundle, New York)*

## REAL PROBLEM REAL SOLUTION

### ■ How we solved a ton of COVID-19 issues on the fly

Like so many companies out there, the coronavirus pandemic hit us hard and unexpectedly. Right off the bat, we experienced a lot of challenges.

We had to figure out the best way to communicate with our remote staff. We had to think of what to do with employees who couldn't do their jobs from home, but also were at risk and couldn't come into the office.

And, unfortunately, we had to figure out ways we could cut our budget to keep the business afloat.

It was a lot to tackle, but we took it all one step at a time.

### Constant problem-solving

The first thing we did was create a schedule so we could routinely check in with all of our remote workers. We didn't want anyone falling through the cracks.

Next, we dealt with the employees who couldn't work remotely. Some of them went to work at our less crowded locations. Others took temporary positions they could do from home.

A few of our employees even decided to take leave – which we were more than happy to grant. We worked with a temp agency to fill those positions.

As far as budget issues, we've managed to avoid laying off anyone. We've had to furlough some people, but we're working hard to bring them back as soon as possible.

There are still a lot of things we're figuring out, but we've been able to alleviate a lot of our COVID headaches so far – so we're confident we can handle any other problems that come our way.

*(Heather Britton, director of benefits and wellness, City and County of Denver, Denver)*

## WHAT WOULD YOU DO?

Companies face competing agendas when dealing with their employees. They must find ways to inspire their people to excel, while controlling costs and staying within the law. Here we present a challenging scenario and ask three executives to explain how they'd handle it.

### Too many sick days causing problems: What can HR do?

#### The Scenario

HR manager Stu Capper was attempting to purge his inbox when department manager Iris Blake walked in.

"Hey, Stu, do you have a minute?" she asked.

"Sure, Iris," Stu said, abandoning the emails. "What's up?"

"I'm not sure if you've noticed," Iris began, "but we've had a few employees taking an unusually high number of sick days lately."

#### Productivity taking a hit

Stu frowned. "It's not coronavirus-related, is it?"

"No," Iris said quickly. "It's always just a few random days here and

there, only one at a time. I always ask if they're experiencing COVID-19 symptoms, and they say they haven't."

"Well, things are pretty stressful right now," Stu conceded. "These could be much-needed mental health days."

"I know," Iris said. "And usually, I'd encourage that. But this is happening so often, productivity is starting to take a hit."

"That's not good," Stu admitted.

"I don't want to punish anyone," Iris said. "But maybe we could come up with some way to cut back on these sick days."

"Let's start thinking," Stu agreed.

*If you were Stu, what would you do next?*

#### Reader Responses

**1** Lesa Myers, HR coordinator, Illinois Office of Comptroller, Springfield, IL

*What Lesa would do:* I'd start creating a log of which employees were calling out and how often, then look for our biggest offenders. A pattern would likely emerge. When these employees called out again, I'd send them notices, alerting them how many sick days they had remaining. I'd also ask them to come speak to me if they had an ADA-qualifying reason for so many absences. If not, I'd request they have a doctor's note for future absences.

*Reason:* It's possible the frequently absent employees have a good reason for calling out so often – this gives them the opportunity to share it, and we can work out a better solution. But if this is just absenteeism, sending out the notices will act as a gentle

reminder that their absences are being taken note of, and they should adjust their behavior.

**2** John Stich, fire prevention bureau member, The Lyndon Fire Protection District, Louisville, KY

*What John would do:* I'd see if we could create some kind of incentive for saving sick days, such as a yearly cap. For example, if employees could only carry over a certain number of sick days into the next year, we'd allow them to "cash out" the rest and get paid their straight-time rate for the extra days.

*Reason:* A cash incentive would certainly encourage workers to use their sick days only when they truly needed them. Who wouldn't want to receive some extra money at the end of the year? This would not only put a stop to absenteeism, but it would reward our people for pushing through tough days.

#### HR OUTLOOK

#### ■ The most unique health and wellness benefits

During these difficult times, it's extra important for employers to support workers' mental and physical wellbeing.

Some common ways companies are doing this include greater flexibility and access to counseling. Other employers are taking a more unique approach, though.

#### Engagement and education

Here are the five most unusual health and wellness benefits employers are currently offering, as found in a recent survey.

**1. Virtual grocery store walk-throughs.** This benefit aims to teach employees about nutrition. A dietitian conducts virtual supermarket tours with employees, pointing out healthy choices. The dietitian also offers tips on reading food labels and planning healthy snacks and meals.

**2. A Facebook group for topics other than work.** This provides a way for colleagues to connect outside of work and interact. They can learn about each other's interests and just have fun.

**3. Swapping pet photos.** A simple but effective concept: co-workers post photos of their pets for everyone to enjoy. It's another great way to get employees connecting over something that's not work.

**4. Weekend activities.** Planning weekend outings for employees is a great way to spark fun and connection out of the workplace. Friendly competition and light physical activity can encourage healthy lifestyles.

**5. Virtual child care.** Here's a fun way to keep kids occupied while parents are working: virtual crafts and activities. This is helpful both during the summer months when kids are home, and during this pandemic while a lot of young children are home all day.

*Info:* [bit.ly/benefits564](https://bit.ly/benefits564)