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HRMORNING

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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.

Increase diversity naturally with these 7 recruiting tactics

■ Broaden your talent pool throughout the process

Workplace diversity has become a top priority for many companies, with a lot of hiring managers focusing on attracting a diverse talent pool.

After all, you can't hire more diverse talent if you don't have a diverse range of candidates, right?

But experts say you can't stop at having a broad talent pool.

Common barriers

Diversity needs to be top of mind at every step of the hiring process, from sourcing to screening to interviewing.

And a recent report from WayUp, a jobsite and resource center for recent

college grads, identified common barriers to hiring diverse candidates.

Here are seven tactics to break these barriers, help eliminate bias and increase diversity in the hiring process:

1. **Remove GPA requirements.** Some entry-level job postings include a minimum GPA requirement as a way to evaluate new grads without experience. This practice, however, particularly hurts minority candidates.

Data shows that African-American, Hispanic and Native American students are more likely to work long hours in college, which can cause GPAs to

(Please see Diversity ... on Page 2)

DOL: New independent contractor test

■ Proposed regulations would focus on two 'core factors'

The Department of Labor (DOL) recently announced its intent to revise the FLSA's independent contractor (IC) test.

An "economic reality" aspect would be added to the test, which would examine two "core factors".

Additional guideposts

- The core factors include:
- the degree of a worker's control over their work, and
 - the worker's opportunity for earnings

based on initiative and investment.

This is only one portion of the proposed IC test. Three other factors serve as "additional guideposts" in employer analysis.

They include:

- amount of skill required
- the degree of permanence in the working relationship between the employer and worker, and
- whether the work is part of an "integrated production unit."

Click: bit.ly/ICtest566

Diversity ...

(continued from Page 1)

be lower than students who didn't have work responsibilities. It's also important to note that high GPAs don't guarantee high job performance.

2. Offer relocation stipends.

WayUp's report found that African-American candidates are twice as likely to turn down a job if relocation is required and no financial support is offered. They're also less likely to ever apply for the job in the first place.

Many hiring managers make the mistake of assuming any candidate has the means to relocate for a job, but that's not true. Offering relocation stipends will really help broaden your talent pool.

3. Give interview flexibility.

Another barrier to diverse candidates is a company's lack of flexibility when scheduling interviews. Minority candidates in particular may not be able to take off from work to go to an interview. It'd be in employers' best

interest to share a calendar with several interview options so the candidate can pick what's best for them.

4. **Stop unpaid internships.** It's a simple fact that many people can't afford to work for free – especially minority interns. WayUp's report found the average cost of an unpaid internship for students is \$6,800.

If you're having trouble landing diverse candidates for your internships, you should reevaluate your pay structure. Getting a diverse talent pool could be as simple as bumping up the compensation.

5. Watch the language in job posts.

It's incredibly easy for unconscious bias to sneak into the way you write job posts. And the certain language used can deter certain candidates from even applying. Asking for talent who will "fit right in" to the culture can unknowingly discourage diversity.

It can also help to include mission statements in your job postings. Show candidates you have a commitment to diversity, and you can also highlight possible career trajectories candidates could take at your company.

6. **Examine the schools you recruit from.** Does your company often source students from the same handful of colleges? This is majorly hurting your diverse recruiting efforts. By targeting the same type of students, you're missing out on a huge opportunity.

This doesn't mean employers should only focus on recruiting from historically Black colleges and universities (HBCUs), but should take a more holistic approach and target a variety of different schools.

7. Ditch technical assessments.

These are often the biggest culprit in unconscious bias. Similar to standardized tests, technical assessments don't guarantee an accurate evaluation of performance. Many candidates get test anxiety, and these assessments exclude those who don't have access to training and means to prepare for them.

Info: bit.ly/diversity566

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.

■ Reassigned worker claims race, gender discrimination

HR manager Lynn Rondo felt a headache coming on as she studied the company's restructuring plan.

"Hi, Lynn," Company Attorney Eric Bressler said as he knocked on her door. "Am I interrupting?"

"Not at all," Lynn said, looking away from her computer screen. "I need a break from thinking about this reorg."

Eric grimaced. "Sorry, but that's what I needed to talk to you about. Leslie Claremont is suing us. She says we stuck her with a bad new assignment because of her race and gender."

Main duties stayed the same

Lynn sighed. "She can't be serious. Yes, we gave her a reassignment, but it was because of the restructuring. Everyone got shuffled around," Lynn said. "Besides, her main duties were pretty much the same. So was her pay."

"I'm with you on this," Eric agreed. "But Leslie is insisting she got the worst reassignment of anyone. It wouldn't be too hard for her to blame it on her race and gender in a courtroom."

"I'm confident we can fight this one," Lynn said. "This reassignment wasn't discriminatory."

When Leslie sued, claiming she experienced adverse employment actions due to race and gender discrimination, 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.*

HR MORNING'S

What's Working in
HUMAN RESOURCES

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What's Working in Human Resources, (ISSN 1088-3223) October 16, 2020, Vol. 25 No. 566, is published semi-monthly except once in December (23 times a year).

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Court: Employee who advocated for the disabled is ADA-protected

■ 6th Circuit sends reminder of wide range of protected activity

Can employees be protected under the ADA if they aren't disabled themselves?

The 6th Circuit recently decided in certain circumstances, yes. Here's a rundown of the case.

Clashed with school board

Cherryl Kirilenko-Ison was a school nurse for Danville Independent Schools in Kentucky.

She clashed with the school board while voicing her opinion on the best ways to educate and treat two diabetic students.

Kirilenko-Ison and school officials had various disagreements over which activities were appropriate for the students. When the school board failed to extend Kirilenko-Ison's contract after this incident, she sued,

claiming retaliation for engaging in ADA-protected activity.

The school board claimed the decision not to rehire her had nothing to do with her arguments regarding the diabetic students.

A district court dismissed the case, but the 6th Circuit revived it, saying Kirilenko-Ison engaged in "protected activity by challenging the school's deficient administration of a free appropriate public education."

This case reminds us of what courts in the past have ruled: Advocating for members of a protected class is a protected activity. This means that retaliation against advocates is prohibited as well.

Cite: Kirilenko-Ison v. Board of Education of Danville Independent Schools, 9/4/20.

Firing workers for not complying with dress code could constitute religious bias

■ Rainbow heart logo went against workers' religious beliefs

Two employees recently voiced concerns about an employer-mandated dress code, and the EEOC backed up their religious bias claims.

Here's how a uniform requirement resulted in two firings and a lawsuit.

Requested an accommodation

Two employees at a Kroger grocery store in Arkansas were informed they'd need to wear an embroidered rainbow heart logo on their uniforms.

The workers, believing the rainbow heart represented support for the LGBTQ community, refused to comply with the dress code.

They cited their sincerely held religious beliefs that

homosexuality is a sin.

The employees requested a religious accommodation, wanting to cover the rainbow heart with a name tag.

Kroger refused to accommodate the employees, and when they still wouldn't wear the logo, the workers were fired.

The EEOC filed a suit against Kroger on the employees' behalf, citing a violation of the Civil Rights Act. The case is pending.

The EEOC's complaint calls for the company to provide compensation for the fired employees, for "emotional pain and suffering, humiliation and inconvenience."

Cite: EEOC v. The Kroger Co., 9/14/20.

■ Restaurant fired worker for reporting assault, EEOC sues

When a restaurant disregarded an employee's sexual assault complaint and then fired her, the EEOC filed a lawsuit.

A Chipotle in Tampa, FL, retaliated against a manager who reported sexual assault, according to the suit.

When the manager first complained about the sexual harassment, nothing was done. She inquired about the investigation and was assured it was being looked into. Again, nothing happened, and the manager voiced her intent to escalate her complaints to corporate. She was then fired.

The EEOC says this behavior is considered retaliation, and it violates the Civil Rights Act. The agency has sued Chipotle and is seeking back pay and compensatory damages for the fired employee.

Info: bit.ly/retaliate566

■ Walmart owes \$20M for pervasive hiring discrimination

A retail giant had been using a discriminatory hiring test in stores across the country, and the EEOC put a stop to it.

According to a recent lawsuit, Walmart required order filler job applicants to take a physical ability test (PAT). However, this test disproportionately excluded female candidates, who typically cannot lift as much as male applicants, the EEOC said.

This PAT violated the Civil Rights Act, which prohibits employment discrimination based on sex. Employers can only use tests like the PAT if it measures skills necessary to successfully complete job duties, and Walmart couldn't prove it did.

Walmart settled the suit and will pay \$20 million to the female candidates who were rejected. It also must stop using the PAT as a pre-employment requirement immediately.

Info: bit.ly/sexbias556

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.

Are worksite protests protected activity?

Q: We had a small group of off-duty employees come into the workplace to peacefully protest, but they caused quite the disruption, particularly for our customers. Is this demonstration protected under the National Labor Relations Act (NLRA)?

A: The National Labor Relations Board (NLRB) addressed this in a recent memo.

Under the NLRA, employees do have the right to speak out against their working conditions. However, a demonstration like the one described is only considered protected activity if it doesn't cause a large disruption.

For example, the NLRB referenced a similar incident at a Starbucks. The off-duty employees were loud and disruptive, therefore disturbing the employer's operations.

Starbucks customers expect a quiet environment, so the employee demonstration was considered "obstructionist picketing inside the store," the NLRB said.

It's important to note that peaceful protests outside of the

actual worksite are protected activity under the NLRA.

with the employee to determine what remedies to make.

What's the best way to give constructive criticism?

Q: We're always looking for tips on how our managers can approach staff with constructive criticism. What tactics should we tell them about?

A: Always deliver feedback with the goal to reinforce or improve performance, says Dominique Jones, chief people officer at Halogen Software.

So tell your managers to:

- **Make sure it's actually constructive.** The intent should be to help the worker develop. Otherwise, the feedback comes across as just criticism.
- **Not wait.** Provide feedback as quickly as possible after the undesired event. Otherwise, the person might not be clear on what needs to improve.
- **Base feedback on observed behavior – not opinions or assumptions.** Address the impact the behavior has on the business and/or team.
- **Make it actionable.** Work

Is it wise to review candidates' social media?

Q: Should we look up a candidate on social media sites before hiring them?

A: A candidate's social media profile offers a glimpse into their personality, communication style and potential fit for your organization, says Evan Lesser, president of GetTalent, a software firm helping employers target job seekers.

This insight is tremendously valuable in a competitive market, and culture fit is one of the most important factors employers should consider in hiring someone.

Candidates may look perfect on paper, but they could be out the door quickly because they're not a good fit for your organization. That not only costs money, but wastes time.

If you have an HR-related question, email it to Rachel Mucha at: rmucha@HRMorning.com

Sharpen your judgment...

THE DECISION

(See case on Page 2)

Yes. The company won when a court dismissed Leslie's case.

Leslie's attorney argued Leslie was saddled with an unappealing job assignment – an adverse employment action – in the restructuring due to her race and gender.

However, the court disagreed. It said Leslie's job reassignment was due solely to the company restructuring, and there was nothing discriminatory about it.

The court went on to say that no adverse employment action actually occurred. Leslie's core job duties remained mostly the same, and her pay wasn't affected at all.

"An adverse employment action is a discriminatory act that affects the terms, conditions or benefits of the plaintiff's employment," the court said. And that wasn't the case here.

■ Analysis: Reassignments aren't always adverse

This case demonstrates that reassignments aren't automatically considered an adverse employment action. To prove that's occurred, the employee must show the new job affected them negatively, whether it be a drastic change in duties or a pay cut.

In this instance, the employee couldn't prove there was anything negative about her reassignment.

Cite: *Passwaters v. Wicomico County, U.S. Ct. of App. 4th Circ., No. 19-2462, 9/10/20. Fictionalized for dramatic effect.*

New tools make it easier to check on productivity of remote teams

■ *We no longer have to constantly monitor or micromanage*

Our remote teams were finding it challenging to work seamlessly together and deliver up-to-date, accurate information to our clients.

But building the infrastructure we needed meant identifying many hurdles and working with our team to overcome them.

Like any remote workplace, we had to find ways to not just survive these challenges – we had to figure out how to turn them into a competitive advantage.

Remote challenges

Some challenges that might seem like business 101 for a company that's all under one roof can become productivity hurdles once everyone is scattered across the country, or like us, across the world.

Some of those include:

- knowing who is working on what
- allocating the right amount of talent and resources to projects
- tracking budgets and sizing for profitability, and
- keeping remote teams on track without using tech to constantly monitor and micromanage.

And those challenges only grew as we scaled up our business.

Tracking progress, productivity

Like any organization, our team has a mix of people.

Some are 100% self-guided individuals who just need to understand the end goal to get going; others need to regularly update us on their progress to feel comfortable.

We needed a remote work monitoring system to track progress,

productivity and hours, so we could check in without being disruptive.

It had to give team members a way to share progress without constant email or message updates.

As we began evaluating software options, we tried to keep the same core questions in mind:

- Is it easy to use?
- Does it remind employees to track their time on a project?
- What are the downsides to a given solution?

- Will it slow down their computers?

Mimics the office

In the end, we selected the Hubstaff Time Tracking and Productivity Monitoring Tool.

In addition to automatic time and productivity tracking, the software tracks employees' use of apps and the URLs they visit.

We use the optional screenshot function to track where team members are in a project.

Screenshots happen at random or scheduled intervals and are displayed on a dashboard so we can track remote workers' progress.

It sort of mimics an open office environment where you might get a glimpse of what someone is working on, then offer your input or jump in to help.

With more than a dozen reports available, we are able to make quicker decisions and more accurately set project budgets.

And now, everyone stays on track and keeps managers in the loop.

(William Lipovsky, CEO, First Quarter Finance, Lincoln, NE)

REAL PROBLEM REAL SOLUTION

■ Shifting travel policies during the pandemic

Business travel plays a large role in our company's operations.

For our employees, flying to and from a client's city used to be an everyday occurrence.

And it wasn't uncommon to need to engage with colleagues in other states. Employees would jump on a plane, do a quick day trip and then come back.

Now, due to the coronavirus, many of those previously in-person engagements are happening virtually. We've had to majorly shift our travel policies as the health outlook has shifted.

Playing it safe and smart

Right now, we're only allowing essential travel, and it must be approved by leadership.

Previously, an employee's direct manager could approve travel, but we realized that wasn't realistic here. We needed everyone on the exact same page.

If travel is approved, we look at state restrictions and follow guidelines from the CDC, WHO and our travel management partners.

We're also continuously creating new employee resources and adding policies to accommodate changes.

The way our travel program looks today is different than it looked three months ago, and it'll probably look different three months from now, too.

As the coronavirus continues to change in various localities, regions and countries, it's important that we stay on top of the situation.

We'll always keep evolving our travel policies and procedures to account for the complexity of the situation, with employee safety being our top priority.

(Jerry Underwood, global travel manager, Columbia Sportswear, Portland, OR)

Case Study:
**WHAT
WORKED,
WHAT
DIDN'T**

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.

Office pranks: Fun way to blow off steam, or too distracting?

The Scenario

HR manager Stu Capper was on his way to his office when he heard a loud gasp. He turned to find the source, and saw employee Grace Howard shaking her head.

"Everything OK, Grace?" Stu asked, wandering over to her desk.

"Yeah," she replied with a shaky laugh. "Joe got me again, that's all. I'll have to get him back."

Stu walked closer and saw there was a giant rubber spider on Grace's keyboard. "Ah. Not a very creative prank, huh?"

Before Grace could answer, Stu heard a blood-curdling scream come from a nearby cube. He rushed over.

"Dana? Are you alright?"

"No!" She yelled, hand pressed over her heart. Stu noticed she also had a rubber spider lying on her desk. "This thing nearly gave me a heart attack! I'm so sick of Joe's pranks!"

Harmless fun?

Stu frowned. "Does he do this kind of thing a lot?"

"All the time!" Dana insisted. "I can't stand it anymore."

"Whoa," Grace said, walking over to Dana's desk. "It's not a big deal. It's just little things like this every once in a while. It's harmless fun."

"No," Dana said. "It's gone too far, and I've had enough!"

"OK, let's calm down ... " Stu said.

If you were Stu, what would you do next?

Reader Responses

1 Dan Whitehead, controller, Montezuma Water Company, Dolores, CO

What Dan would do: I'd talk with Joe to let him know not everyone thinks his pranks are funny. I'd ask him to tone it down and decrease the frequency of his jokes, as well as to make sure any recipients of his future pranks actually want to be a part of them. If Joe didn't listen, I'd have to carry out formal disciplinary action.

Reason: Little jokes around the office can help ease stress and strengthen bonds between co-workers, but it becomes a problem when some are offended by the pranks. Humor is subjective and everyone has a different idea of what's acceptable in the workplace – so Joe would have to learn how to respect this, or the jokes would have to stop altogether.

2 Elizabeth Brady, HR coordinator, Medical Teams International, Portland, OR

What Elizabeth would do: I'd sit down with Dana and any other employees who were getting annoyed with Joe's pranks. If they were open to it, I'd have Joe join us so everyone could communicate exactly what the issue was. If the employees weren't interested in a sit-down, I'd make a general announcement to everyone, reminding them about how important courtesy in the workplace is. I'd have to speak to Joe specifically if his pranking continued to be an issue.

Reason: Personalities are going to clash in the workplace, and mediation sessions can often be helpful – but this only works if both parties are receptive. If Joe and Dana don't want to discuss the problem together, a gentle reminder could be enough to do the trick. Of course, it's important to monitor the situation from here.

HR OUTLOOK

■ 5 common interview questions it's time to drop

Hiring has shifted a lot in recent years, and one thing that's changed is the candidates have more control. With more options, some applicants have the luxury of being picky.

This means employers have to really work on dazzling their candidates and improving the overall experience of the interview.

What not to ask

One thing that's essential to get right? The questions. If your questions are off, you could end up losing a great prospective employee.

A recent study by Resume.io reveals candidates' most hated questions. Here are the things you'll want to avoid asking:

1. **"Convince me to buy this pen."** Nothing causes more stress than being forced to perform without warning. This type of on-the-spot challenge can rattle even the most prepared and talented candidate.

2. **"Where do you see yourself in five years?"** Not only do many candidates feel uncomfortable divulging goals and plans to a stranger, but this question is posed to women more often than men, which raises unconscious bias issues.

3. **"Why should we hire you?"** This question causes candidates unnecessary stress, since the purpose of the entire interview is for the employer to gauge whether they want to hire the candidate.

4. **"Describe a time you failed and how you recovered."** People want to showcase their best sides in interviews, and this one can be tricky to spin in a good light. It's best to skip it.

5. **"Why do you want this job?"** Often, candidates want the job simply because they have bills to pay. This question makes many applicants uncomfortable, and it forces some to come up with a lie.

Info: bit.ly/questions566