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## HRMORNING

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## It's not all roses: 6 major downsides to remote work

### ■ *Employees love it ... but for how much longer?*

Seven months into the coronavirus pandemic, and most employees have adjusted to working from home.

Some have more than adjusted and can't see themselves ever going back into the office.

But many employees are discovering that remote work might not be a good long-term solution.

#### Things to watch for

With all the benefits of working from home (no commute, improved work/life balance, higher productivity) come some pretty big downsides, too.

Here's what employers have to

watch out for, according to Matt Martin, CEO of Clockwise.

1. **More meetings.** Before the pandemic, the average employee attended 62 meetings per month. Not only that, but it takes about eight emails to schedule a meeting.

Now, with the bulk of people working from home, the amount of meetings has increased. That means more time commitments and more back-and-forth to schedule these meetings.

All the hassle of planning and attending remote meetings can lead to

*(Please see Downsides ... on Page 2)*

## CDC updates definition of 'close contact'

### ■ *COVID-19 exposure can happen in shorter period of time*

After a recent investigation into how an employee contracted COVID-19 in the workplace, the CDC changed its definition of "close contact."

Now, the agency defines close contact as "someone who was within six feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period."

#### Brief encounters

Previously, the CDC's definition of close contact was someone who'd spent a *consecutive* 15 minutes within six

feet of an infected person. This changed after a recent COVID-19 case.

A Vermont correctional officer contracted COVID-19 after only having brief contact with infected inmates.

The officer never spent more than a few minutes at a time with the infected people, but his brief encounters added up to a total of 17 minutes.

This change in definition means employers are going to have to be even more vigilant when it comes to workplace distancing measures.

*Click: [bit.ly/contact568](https://bit.ly/contact568)*

# Downsides ...

(continued from Page 1)

decision fatigue and general burnout. Remember, every time an employee gets interrupted, it takes about 15 minutes for them to get back on track.

2. **Longer hours.** Studies show that remote workers tend to be more productive than their in-office peers, but this is likely because those at home work longer hours.

The 2019 Owl Labs State of Remote Work Report found that telecommuters were 43% more likely to work over 40 hours a week.

With all the chaos of the pandemic, many employees are putting in more hours at home, which is a recipe for burnout. In this instance, the lack of home and work separation can be harmful.

3. **Declining mental health.** People are stressed right now; there's no denying it. In a study done back in April, 67% of workers reported higher stress, 57% reported higher

anxiety and 53% said they were emotionally exhausted.

Of course, the main cause of this is the global pandemic and not necessarily remote work. However, even under normal circumstances, working from home has been shown to increase feelings of loneliness and boredom in employees.

4. **Pay and promotion gender gaps.** Many studies showed that COVID-19 disproportionately affected female workers, exacerbating gender inequality issues. In two-parent families where both parents work, women are typically the ones dealing with homeschooling and child care so their husbands can focus on work.

This results in female workers putting in overtime in an attempt to catch up on assignments. Some are dropping out of the workforce altogether. This will negatively impact companies, which thrive on diverse workforces.

5. **Less trust.** Communicating solely via video calls and email makes it hard to build strong relationships and establish trust. Not to mention, studies show it's far easier to convince someone of an idea in person instead of over email.

Organizations thrive on trust and strong bonds between co-workers, so when that's taken away, it's harder for companies to thrive.

6. **More difficult collaboration.** Some research claims that remote workers have a harder time with creativity and problem-solving than their on-site colleagues.

The reason for this? It could be that spontaneous ideas and networking in the office are far more valuable than a lot of people realize – and being at home prevents this spontaneity from happening.

Collaboration between those in the office and those at home becomes more difficult as well, since communication happens solely through video calls and emails. Simple things like exchanging ideas and answering questions become tricky.

Info: [bit.ly/remotework568](https://bit.ly/remotework568)

## 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.*

### ■ ADA discrimination? Worker couldn't get to job, was fired

HR manager Lynn Rondo barely had a chance to set down her things when her phone rang.

"Hello?" She answered.

"Hi, Lynn, it's Eric," Company Attorney Eric Bressler said. "I'm glad I caught you."

"What's wrong?" Lynn asked with a frown.

"Elena Gilbert is suing us," Eric said. "She's saying we violated the ADA when we fired her."

### Stopped coming to work

Lynn let out a sigh. "We had no choice but to fire Elena. She stopped coming into work!"

"But she stopped coming in because her injury prevented her from doing so, right?" Eric asked.

"Elena couldn't drive herself to work after her accident, but she didn't tell me that," Lynn explained. "And instead of asking for some kind of accommodation, she just kept calling out. Elena didn't explain why she was calling out, so all those absences were unexcused."

"So she never informed you she needed an ADA accommodation?" Eric asked.

"No!" Lynn replied. "She didn't say anything. What, am I supposed to be psychic here?"

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

When Elena sued for ADA 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.*

### What's Working in HUMAN RESOURCES

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# Worker's offer letter discussed 5-year term: Was it a contract?

## ■ 2nd Circuit rules that employment wasn't guaranteed

Is an offer letter a legally binding employment contract?

One employee thought his offer letter guaranteed him five years of employment with his company, but the 2nd Circuit ruled that wasn't the case. Here's what happened.

### Breach of contract?

Steven Hodge was hired at Abaco LLC in New York. His signed offer letter discussed how the employer "anticipated" Hodge's employment with the company would be for a "minimum of five years."

The letter did include a disclaimer that the company had the right to terminate Hodge for just cause at any point. He was with the company for just under a year when he was let go.

Hodge sued the company,

claiming a breach of contract. He claimed the signed offer letter acted as an employment contract, and he should've been guaranteed five years with the company.

But the 2nd Circuit ruled against Hodge, finding no breach of contract. The court said the company's "anticipation" of five years of employment wasn't a promise or guarantee.

Furthermore, in New York, employers have the right to terminate workers at will – which the company mentioned in Hodge's offer letter.

This case is a good reminder for employers to carefully craft offer letters and to not make any "guarantees."

*Cite: Hodge v. Abaco LLC, 10/9/20.*

# Court: Worker fired for bad performance reviews may have been forced out due to age

## ■ Executive said she was told to 'manage out' older employees

At first glance, nothing seems fishy about a poorly performing employee being fired.

But when a court looked more closely at the worker's performance reviews, it found evidence of bias.

### Set up to fail?

Ronald Pineda worked at Abbott Laboratories in California. He began to receive poor performance reviews and was eventually fired.

Pineda sued the company, claiming he was really fired because of his age, but a district court dismissed his case, citing the performance reviews.

But on appeal, the 9th Circuit reversed this decision. It said too

much weight was given to these performance reviews, which upon closer examination, were subjective.

The 9th Circuit also pointed out the testimony of an executive, who claimed she was told to "manage out" older employees by creating performance problems and assigning them "unattainable goals." Pineda was set up to fail, the court said.

Both the reviews and the exec's testimony were enough for the court to wonder if age was the real reason Pineda was fired.

Regardless of the circumstances, employers must proceed with caution when firing protected workers.

*Cite: Pineda v. Abbott Laboratories, 10/20/20.*

## ■ Refusal to consider deaf candidate costs firm \$77K

One company ended the hiring process upon discovering a disabled candidate needed an accommodation, and the EEOC filed a lawsuit.

Conduent Business Solutions, located in New Jersey, was sued by the EEOC for disability discrimination when it refused to interview a deaf candidate.

The deaf candidate applied for the job, and Conduent was interested in interviewing him. However, when the company discovered he was deaf and would need a sign language interpreter, it eliminated him from consideration. This is a violation of the ADA.

Conduent will pay \$77,500 to settle the lawsuit. It also must adjust its reasonable accommodation policy and ADA training.

*Info: bit.ly/ADA568*

## ■ Company owes \$20K for firing an 'old lady'

It's illegal to fire an employee because they're 40 or older, but that doesn't mean some companies won't try to do it anyway.

Florida store Jumbo Supermarket was sued by the EEOC when a 57-year-old employee was fired and replaced by a much younger one.

The lawsuit alleges the older employee arrived for her shift, only to discover she had been replaced by someone 20 years her junior. While firing the employee, her manager said, "Look, old lady, we have to give opportunities to new people ... it is time for you to rest."

This is a violation of the Age Discrimination in Employment Act (ADEA).

Jumbo Supermarket will pay \$20,000 to settle the suit, retrain its staff on anti-discrimination policies and establish a hotline for discrimination complaints.

*Info: bit.ly/ADEA568*

## 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.

### Can we compel our employees to get flu shots?

**Q:** In light of the pandemic and flu season concerns, can we require all of our employees to get flu shots, regardless of their personal beliefs or medical conditions?

**A:** No, you can't make every single employee get a flu shot, says employment law attorney Melissa Torres of Akerman LLP.

There's always going to be people who have certain exemptions. For example, an employee might have an ADA-qualifying condition that prevents them from getting the flu shot. In this case, an exemption to the policy would be a reasonable accommodation under the ADA.

Employees whose religious beliefs prevent them from getting the flu shot would also be exempt. As long as they can prove their beliefs are sincerely held, not getting the shot would also be considered a reasonable accommodation.

Instead of requiring your employees to get a flu shot this year, the safer route would be to simply encourage them to

get it – even considering the simultaneous pandemic.

### Are our COVID-19 policies and plans up to date?

**Q:** We saw the CDC updated its definition of “close contact” when it comes to COVID-19 exposure. Should we adjust our workplace safety procedures at all? And if so, how?

**A:** The first thing you should do is adjust your screening protocols, says employment law attorney Karen Buesing of the firm Akerman LLP.

Update your definition of close contact. This means that when you ask your employees if they've been in contact with a COVID-positive person, make sure they know a cumulative 15 minutes counts as “close contact,” the same way a continuous 15 minutes of exposure does.

It's also crucial to ensure employees don't share any equipment such as keyboards or headphones without properly disinfecting everything first, since the virus can be

transmitted through infected surfaces as well as through droplets in the air.

### What should we do about politics in the workplace?

**Q:** A few of our employees are getting into heated political debates in the office. Any tips for the best way to handle this?

**A:** Your best bet is to craft a clear policy forbidding political discussions at work, say employment law attorneys Arielle Eisenberg and Nandini Sane of the firm Cozen O'Connor.

At best, political discussions are big distractions. At worst, they can result in intense arguments and lead to hostile work environment claims. The policy will protect against both of these issues.

But it's important to remember not to encroach on employee's NLRA rights to discuss workplace conditions. and employer policies.

*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 when a court ruled Elena's lawsuit could proceed.

The company argued that Elena hadn't clearly voiced her need for an accommodation. Therefore it didn't have to provide her with one. The company thought Elena's absences were unexcused.

But the court disagreed. It said the company knew Elena had been injured and continually called out of work afterward. The company should've reached out to get more information about Elena's injury and why she hadn't been able to make it into work.

The company failed to participate in the interactive process that the ADA requires, the court said.

#### ■ Analysis: Communication is key

In this case, the employee failed to communicate what she needed, but the company also failed to gather more information on her condition.

While a company isn't expected to grant an accommodation for a disability it doesn't know about, in this case, the company knew the employee had suffered an injury and might've needed an accommodation.

When in doubt, ask the employee what they need before making any termination decisions.

**Cite:** Hazelett v. Walmart Stores, *U.S. Ct. of App. 9th Circ., No. 19-16628, 10/6/20. Fictionalized for dramatic effect.*

# How we saved our recruiters' jobs during the pandemic hiring freeze

■ *Spreadsheets helped us match open jobs with jobless employees*

Like every other company out there, the sudden shutdown from the coronavirus pandemic hit us fast and unexpectedly.

Our budget was slashed, and essentially, we were facing a global hiring freeze with no projected end date. And this meant that all of our recruiters were out of luck.

Layoffs weren't an option because hiring could resume at any moment. We thought about furloughs, but that would damage our employees' trust. Besides, we knew we'd still need to recruit once the crisis had passed.

To survive, we had to reframe jobs and our understanding of the business as a whole.

### Pitching the idea

We had the idea of temporarily reassigning our recruiters to whatever jobs still needed to be done – but that was easier said than done.

We needed resources and support, so we had to get the higher-ups on board. This was a daunting task, so we focused on all the value that would come out of this.

Not only was there the potential to save hundreds of jobs, but finding reassignments for our recruiters would save millions in severance avoidance. Tackling this challenge would keep morale and trust up, as well as save the company money.

### Working together

Once we got the all-clear from the higher-ups, we got into the nitty gritty of making this happen.

We assembled all of our talent acquisition leads around the globe (about 50 people) on a big conference call to work together to save these

jobs. This was incredibly chaotic, as many of us hadn't even met before.

But we pushed through and gathered religiously: two hours a day, three days a week. We discussed how best to reassign our people, but in the end, we came up with a very low-tech solution: two Excel spreadsheets, one listing all the employees who needed jobs, and one listing all the jobs that needed people.

### The match game

We tried our best to make good matches, and took into consideration past experience and also each person's interests.

Sometimes, though, the match just wasn't going to be perfect. We had recruiters doing a lot of tasks they were overqualified for – like filing and matching invoices – but they were all just grateful to still be employed. Some even found these tasks therapeutic.

Not only that, but our recruiters learned more about the jobs they normally find candidates for.

### Saved jobs, money

Seven months in, and this has been a huge success. We managed to save 80% of jobs that would've been lost (400 people!). We saved the company \$9 million in severance avoidance.

Not to mention, this idea earned the lifelong loyalty of the employees' whose jobs we saved.

*(Michael Wright, global head of TA and Shannon Moorman, VP of global creative talent, WPP, as presented at the 2020 ERE Digital Conference)*

## REAL PROBLEM REAL SOLUTION

### ■ Why we expanded benefits to include mental health

When the pandemic first hit, our operations were severely interrupted.

All of our employees became remote overnight, and we knew that balancing work, home life and the stress of the coronavirus pandemic was going to be a lot.

We were right to worry: 53% of adults have experienced a negative impact on their mental health due to the pandemic. We didn't want our employees to feel this way.

Our company is always looking for ways to make it a great place to work, so we decided to overhaul our benefits.

### Virtual webinars

Mostly, we wanted each employee to feel welcomed and valued at work.

So we expanded our benefits package to include education, wellness, family planning and recognition initiatives.

A big part of our new wellness plan was focused on mental health. We began offering free virtual and in-person counseling for all.

We're also debuting mental health awareness webinars, which help employees identify mental health symptoms and offer support.

With all these tools available to our people (and with a lot of them accessible virtually), it makes it easier than ever for employees to get the mental health support they need.

We've had great feedback from our employees, who are eager to take advantage of the new wellness benefits.

Not only that, but we're more appealing to new talent – and benefits like this make us look like a great place to work.

*(Sue Petersen, VP of HR, Noodles & Company, Broomfield, CO)*

## 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.

# Managers will push back against new hiring processes: Now what?

## The Scenario

HR Manager Stu Capper let out a frustrated sigh as his inbox dinged. Yet another slew of applications had come in for the open job.

"Everything OK, Stu?" Department manager Jenna Dawson poked her head into his office.

"Yeah, I'm just a bit overwhelmed," Stu replied as Jenna walked in. "I have so many candidates to sort through to find your new team member."

"Well, I can help you weed some out," Jenna said. "But I've been pretty slammed lately."

Stu nodded. "You know, this has really got me thinking we might want to make a few tweaks to our processes here."

"What kind of tweaks?" Jenna asked.

## Open to new ideas?

"Well, ever since our company expanded, hiring is a lot for one manager and one HR pro to handle," Stu explained. "We might want to consider digitization or bringing more people into the hiring process."

"Well, I'm open to new ideas," Jenna said. "But managers like Kim and Lonny might not be. You know how they are with change."

"Yeah," Stu agreed. "They're pretty stubborn. And this would only work if everyone was on the same page."

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

## Reader Responses

**1 Steve Zelenka, HR manager, Bertucci Contracting Company LLC, Jefferson, LA**

*What Steve would do:* I'd bring in an outside expert to consult and help us bring more structure to the process. We could consolidate our system and designate certain employees to handle each step of the hiring process. For example, someone in the Payroll department could be in charge of dealing with I-9 and E-Verify paperwork for new hires.

*Reason:* Assigning someone to each step of the hiring process would help to alleviate some of the burden from HR and hiring managers. And by assigning knowledgeable people to handle things (such as the Payroll person to handle I-9s and E-Verify) we can be confident things are being dealt with correctly. Having clear

protocols and responsibilities will prevent anything from falling through the cracks and give us a smoother process overall.

**2 Russ Davidson, CFO, Warmerdam Packing, Hanford, CA**

*What Russ would do:* I'd begin working on a digital shift right away, finding out which software would work best for us. Then I'd make sure we got all our managers on board. We'd gather everyone and break down the decision-making process, clearly communicating how the change would make everyone's life easier.

*Reason:* There's always going to be some resistance when instituting change, so it's best to deal with it directly. We have to be up front with our managers and answer all their questions, as well as having a training and transition plan in place. Change won't be so overwhelming if our team can see we have a clear plan.

## HR OUTLOOK

### ■ 5 steps to a positive, supportive work culture

The global pandemic has sent most employees home, but that doesn't mean people aren't working hard. Business has kept carrying on, and employees are toughing it out.

But working through a pandemic is extremely draining, and your staff needs a supportive work culture now more than ever.

### The right direction

If employers want to boost morale, productivity and engagement, they'll have to steer everyone in the right direction.

Here's how Kailynn Bowling of *Inc.com* says you can do just that:

1. **Fair compensation.** Offering competitive pay is a given, but employers have to go even further. Make sure employees know what goals they're supposed to reach to receive raises and bonuses.

2. **Effective communication.** Since you're not seeing your staff every day, it's crucial to master digital communication. Not only that, but it's better to err on the side of over-communication rather than under.

3. **Transparency.** Now isn't the time to skirt the truth. If the pandemic is negatively affecting the business, be up front with your employees about it. Even if the news is bad, they'll appreciate the honesty.

4. **Team-building fun.** Things might be stressful right now, but fun is still important. A few fun team-building initiatives could be having an interesting guest speaker at your next meeting or delivering beverages to your employees for a Friday happy hour.

5. **Respectful debates.** Supportive culture isn't just about everyone agreeing with each other. Having healthy debates and productive disagreements will help, not harm, team-building.

*Info:* [bit.ly/culture568](https://bit.ly/culture568)