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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.

## Want permanent remote work? 5 things to consider

### ■ *How it impacts careers, finances & personal lives*

Working from home is the new normal for millions of Americans, and many companies are planning to make the move permanent for a lot of their employees – even after vaccines bring an end to the pandemic.

Whether that's the case at your company, your bosses are giving you an option, or if you want to make the case to them to work remotely, there are important matters to consider.

#### Major impact

Cynthia Spraggs, CEO of completely virtual company Virtira, has been advocating for more remote work for years.

That doesn't mean there aren't drawbacks, though. Spragg says whether companies chose to extend part-time or full-time remote work options, it can have a major impact on careers, finances and personal lives.

There's more to it than getting a home workspace set up properly and adopting a productive mindset, Spragg says. You have to ask, will your work relationships suffer? Family relationships? What about your career trajectory?

Here are five things to discuss with your workers before making the

*(Please see 5 things ... on Page 2)*

## Employers quick to fire Capitol rioters

### ■ *The fast response differs from political activities in the past*

After the insurrection at the Capitol on Jan. 6, authorities raced to identify the rioters – and employers were swift to fire the offenders.

In the past, many employers have opted to stay out of their employees' out-of-work activities, but due to the unprecedented nature of the attack on the Capitol, companies are moving fast to terminate these individuals.

#### Companies condemn riots

For example, one company in Maryland spotted one of their people at

the riots. After firing him, it explained it supports free speech but absolutely doesn't tolerate "dangerous conduct that endangers the health of others."

Back in 2017 during the white supremacist march in Charlottesville, VA, some employers struggled with how to handle employees' participation in that. The Capitol riots seem to have crossed an entirely different line.

Not only are firings happening quickly, but companies are rushing to wholly condemn the riots.

*Click: [bit.ly/Capitol572](https://bit.ly/Capitol572)*

### 5 things ...

(continued from Page 1)

decision to offer remote work on a permanent basis, according to Spragg.

#### Potential salary impacts

If someone is choosing remote work in order to relocate, you need to see if the move will impact their salary.

Some employers base compensation on location, and that means employees moving from a high cost-of-living area to a less expensive one could see their salaries reduced.

Employees will also need to do their homework and see how their take-home pay will be impacted by taxes in their new location.

#### At-home comfort level

Are employees' lives better in the long run working from home? You should also ask them whether they'll

miss their work colleagues and team collaboration in a way that Zoom won't be able to replicate.

Social isolation might catch up to employees eventually and they could need a hybrid work schedule to strike a balance.

The biggest question to ask remote employees is how well they can manage their time at home and whether family dynamics will interfere.

#### Well-thought-out pitches

If an employee needs your assistance making a remote case to higher-ups, encourage them to have specific examples of their excellent performance since working from home due to the pandemic.

If the worker wants to relocate, including any advantages of having the company's presence in a new location can help tip the scales in the employee's favor.

#### Worst-case scenarios

Remind employees to think ahead and prepare for the worst. If layoffs were to happen – or they wanted to leave the company – would they be able to find a new job easily in their new location?

Not to mention, another company might not be on board with remote work, so it's important for people to consider future career options before going completely remote.

#### Promotion prospects

It's important to note that employees who chose to remain off-site could potentially miss out on promotions, since their managers aren't seeing them in the office every day like other workers.

To compensate for this, come up with planned check-ins and best methods for communication to ensure managers don't overlook any great employees who happen to be working from home.

Info: [bit.ly/remot572](https://bit.ly/remot572)

## 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.*

#### ■ Worker fired after ranting about colleague: Retaliation?

HR manager Lynn Rondo was getting a fresh cup of coffee when employee April Ludwig walked into the kitchen.

"Hey, April," Lynn said with a smile. The two women were friendly. "I actually wanted to talk to you again about Roger."

April waved her hand dismissively. "It's OK, it's nothing. I was just blowing off some steam when I complained about those texts he sent me. They really weren't that bad."

Lynn frowned. "Well, since you did report the incident to me, I do have to start a formal investigation," she said.

#### Official complaint?

"What? Why?" April asked. "I wasn't filing a complaint or anything, I was just ranting to you. My friend," she added.

"Well, you might not think it was a big deal," Lynn said. "But I need to look into it, in case he's harassing anyone else."

"Jeez, it wasn't harassment!" April exclaimed. "I really don't want to make a big deal about this. I don't want to take part in your little investigation."

April stormed out before Lynn could say anything else.

Not too long after, April was fired for her refusal to participate in the investigation, and she sued for retaliation. The company fought to get the case dismissed.

Did the company 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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# Male candidate hired over experienced female: Court says no gender bias

## ■ External candidate was more qualified than current employee

When an employee applied for a promotion and was passed over for an external male candidate, she sued for gender bias.

But after reviewing the reasoning behind the decision, a court ruled there was no discrimination.

### Preselected hire?

Pamela Harris worked as a seasonal landscaper for the City of Akron in Ohio. When there was an opening for a year-round position, Harris applied.

However, Harris was quickly rejected for the position and told that the decision had already been made to hire an external male candidate.

Harris sued, claiming the preselection of this male candidate was gender bias, but the 6th Circuit

ruled in favor of the city.

The court said the city was able to show the male candidate was hired due to his qualifications, not his gender.

Not only did the external candidate have experience working for a landscaping company, but he scored higher on a skills exam than Harris.

Furthermore, Harris's performance reviews in the past were just mediocre, making her not the strongest candidate for the job. Gender bias was not a factor in this hiring decision, the court ruled.

This case goes to show companies can defeat bias lawsuits by having tangible evidence and strong reasoning to back up all hiring decisions.

*Cite: Harris v. City of Akron, Ohio, 12/15/20.*

# 8th Circuit: Employee laid off due to reduction in workforce, not race

## ■ Lack of seniority reason behind job loss, court said

Mass layoffs can cause legal issues for employers, especially if the workers laid off were members of a protected class.

But in a recent case, a court ruled that race had nothing to do with one employee's layoff.

### Experience level was factor

Robert Gipson worked as an engineer for Dassault Flacon Jet Corp. in Arkansas. After previously being denied a promotion, Gipson was eventually laid off during a reduction in workforce.

Gipson sued the company, claiming his denied promotion and layoff were a result of racial bias.

However, a district court ruled in favor of Dassault, and the 8th Circuit upheld the ruling.

The company claimed Gipson's layoff was due to his lack of seniority, not his race.

Dassault was able to show white employees with the same level of experience as Gipson were also laid off.

The 8th Circuit agreed with the employer that race didn't appear to be a factor in the decision, because the company was able to provide legitimate, non-discriminatory reasons for Gipson's termination.

*Cite: Gipson v. Dassault Flacon Jet Corp., 12/22/20.*

## ■ Biz owes \$160K for refusing pregnant worker light duty

The EEOC gave one company an expensive reminder that when a pregnant employee requests a reasonable accommodation, it must grant it.

American Medical Response Ambulance Service (AMR), based in Spokane, WA, was sued by the EEOC when it failed to accommodate a pregnant employee.

The worker asked for light duty towards the end of her pregnancy, having a doctor's note to back up this request. Light duty tasks were available, and had been given to injured employees in the past. However, AMR refused the employee's request.

The employer directed the worker to either take unpaid leave or to work with no restrictions. This is a violation of the Pregnancy Discrimination Act.

AMR will pay \$162,500 to the employee to settle the suit. The company also agreed to conduct anti-discrimination training.

*Info: [bit.ly/pregnancy572](http://bit.ly/pregnancy572)*

## ■ Sex discrimination, harassment costs firm \$80K

When one female employee was being subjected to a hostile work environment, the EEOC stepped in.

According to a recent lawsuit, Pittsburgh-based steel-fabrication company Moore & Morford discriminated against, harassed, then eventually fired an employee due to her sex.

Male employees at Moore & Morford allegedly called a female welder offensive names, threatened her safety, and said women "don't belong on the floor." When the employee reported this conduct, her supervisor retaliated by grabbing her and forcing her to clean bathrooms. She was then fired.

The company will pay \$80,000 to the employee to settle the suit.

*Info: [bit.ly/sexbias572](http://bit.ly/sexbias572)*

## 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.

### Should travel between office & remote location be paid?

**Q:** We have an employee who works a few hours in the office, then the rest of the day from home. Are they on the clock during their travel time home?

**A:** The DOL recently addressed this question in an opinion letter, and both scenarios it presented, the answer was no.

For example, say your employee started the day working in the office, had a mid-day doctor appointment, then worked the remainder of the day from home. The DOL decided that under the FLSA, this time isn't compensable.

In this scenario, the employee is partaking in off-duty activity and normal commuting, the DOL said. This type of travel doesn't count as "worksite-to-worksite" travel.

### Are employees still entitled to FFCRA leave in 2021?

**Q:** Leave under the Families First Coronavirus Response Act (FFCRA) expired at the end of 2020. But are we obligated to

let them use any remaining leave left over from last year?

**A:** No, you aren't obligated to let employees use remaining FFCRA leave in 2021, according to recent DOL guidance.

However, employers can voluntarily extend FFCRA leave until March 31, allowing workers to use existing leave balances from 2020.

Also, another important update from the DOL: Employers are required to compensate employees for FFCRA leave taken in 2020 if it hasn't yet been paid.

Employees will be able to file a lawsuit for unpaid FFCRA leave for up to two years after the violation.

The DOL is expected to release more clarification soon.

### Everyone liked this candidate but me: Should I speak up?

**Q:** Recently, I was part of an interview panel, and we interviewed a candidate who was on his second round. All of my colleagues loved him, but I had some concerns about his knowledge and experience.

Everyone else wants him to move on to the third and final round of interviews, but I don't think he should. Is it worth speaking up about, or am I off-base with my assessment here?

**A:** Yes, it's definitely worth saying something even though it goes against the grain, says management expert and author of *Ask A Manager* blog Alison Green.

You were included in this panel for a reason – to give your opinion. I understand your hesitance to be the one naysayer, but a differing perspective can actually be helpful, and you may raise issues the others hadn't thought about. This could lead to constructive discussion about the candidate's qualifications.

By speaking up, you may even find that others on the panel actually share your opinion, but like you, didn't want to be the only differing opinion.

If it's not too late, tell your colleagues your thoughts. And if it is, be sure to speak up in the future.

*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 decided April's case should be heard by a jury.

The company argued that April was fired for her refusal to participate in a workplace investigation – an investigation she triggered by reporting her colleague for the texts he sent her.

It went on to say that since April didn't consider the text messages harassment and didn't wish to file a formal complaint, she wasn't protected anyway, so firing her couldn't be considered retaliation.

But the court was unsure. It pointed out the company

made contradictory statements by saying April's report wasn't protected activity – but it was enough to trigger a harassment investigation. Because of the confusion, the court ruled April's case can advance and be heard by a jury.

### ■ Analysis: Assume activity is protected

While it's true not all employee activity is protected, when a worker mentions something that could be considered harassment or discrimination, it's best to assume that activity is protected, just to be safe.

Even if the employee's report is doubtful, begin the investigation and document everything – and avoid retaliation "red flags" like suddenly highlighting the employee's performance problems.

**Cite:** *Tenpenny v. Prime Now, U.S. Dist. Ct. M.D. TN, No. 19-cv-00420, 12/7/20. Fictionalized for dramatic effect.*

# How we boosted retention, morale for staff with grueling schedules

■ *We continually ask our employees how we can do better*

**W**e have a very unique department at our company, and in turn, were facing a big problem.

One of the positions we have requires staff to work shifts lasting nearly 24 hours.

That kind of schedule itself is extremely hard on employees. And because of it, the job naturally has a high turnover rate.

Besides retention issues, it was hard for our employees to be happy and engaged at work when they were putting in such long days.

Not to mention they had to watch other departments – which work typical eight-hour days – leave and get home in time for dinner.

We knew something had to change if we wanted a chance at retaining more employees and building morale.

### First steps

Before we took action with our current employees, we decided to be proactive with future hires.

We made sure our job description clearly stated the long hours required. We'd remind candidates in their interviews, and then once more when we were making the final job offer.

Complete transparency about the demands of the position was the first step in tackling this issue – we needed to ensure that new people coming on really understood what the grueling schedule would be like.

Next, we turned our focus to our current employees.

We started off with a big group meeting and reminded them of several things:

- the important role their department

plays in the company's overall success

- the appreciation we have for the challenges they face when it comes to their long schedules, and
- the annual bonus structure in place to reward them for their hard work.

We then moved on to asking the employees what we could do to increase their satisfaction at work.

### Implementing staff suggestions

Our employees were happy to share their ideas, and we immediately met with management to discuss how we could implement them.

Here are a few things we ended up doing:

- started a catered lunch once a month for this department
- gave employees praise and special recognition at company events, and
- began posting vacant positions internally first,

so staff in this department had the chance to transfer to a less demanding job.

### Continuous communication

All of these changes definitely helped boost morale and retention for employees in this department.

Of course, this is an ongoing issue due to the nature of the work, so we continuously ask our employees how we can do better in weekly meetings.

We also stay in contact with other companies that have a department like ours and bounce ideas off each other. It's a consistent effort to do better.

*(Barb Irving, HR director, Mooseheart Child City and School, Mooseheart, IL)*

## REAL PROBLEM REAL SOLUTION

### ■ Fixed communication with dispersed team

Our company had people working all over the place – and naturally, that was creating communication problems due to different work schedules and time zones.

We're a large company, with offices in the U.S. and Canada, and we acquire a lot of other companies, too.

On top of already being scattered, when the pandemic hit, even people who were used to working in the same office were farther apart. It was a major adjustment for everyone.

We needed a better way to keep communication flowing and people connected companywide.

Fortunately, we were able to make some IT improvements that have significantly helped.

### Easily accessible info

First, we started utilizing "Active Directory" in our email program, which automatically populates contact information for employees.

Before, we'd have to track down and ask people for their email addresses. But with Active Directory, it's easier to find anyone we need to.

We also found other ways to make sure we're reaching out to the right people in specific departments or offices.

For example, we uploaded organizational charts with current pictures, job titles, roles, etc, so employees can easily identify who they need to speak with.

Updating our email program and organizational charts has made it much easier to contact people across our company and get things done more efficiently.

*(Melisa Garcia, finance manager, Acuren Inspection Inc., Danbury, CT)*

**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.

### Employee concerned about co-worker's refusal to get vaccine

#### The Scenario

HR Manager Stu Capper had just wrapped up a Zoom meeting when there was a knock on his office door.

"Come in," he said, reaching for his mask.

It was Michelle Garner from the purchasing department. "Hey Stu, I'm not interrupting anything, am I?"

"Nope. What's on your mind?" he replied.

"Will we be required to get the Covid vaccine?" Michelle asked.

#### Safety concern

"Until there are enough shots, it's not going to be available for a while. So we don't have a policy worked out just yet," Stu said.

"Well, what are you going to do about Terry Lockman in my department?" said Michelle. "He's a member of one of those religions that doesn't believe in vaccines."

"Michelle, I can tell you're upset, but let's keep this respectful," Stu calmly said. "The law says we have to make accommodations for people with sincerely-held religious beliefs."

"Stu, I'm worried. What if a bunch of people here get sick with Covid because Terry won't get vaccinated?" Michelle replied.

"I appreciate you letting me know how you feel. I'll see what can be done," he said.

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

#### Reader Responses

**1** Maria Reyes, HR manager, Wallenius Wilhelmsen Solutions, Oxnard, CA

*What Maria would do:* I'd explain to Michelle that we can't force Terry or any other employee to get vaccinated against their will. However, I'd reassure Michelle that our workplace will continue to take COVID precautions even after people begin receiving the vaccine. Social distance, face masks and frequent hand-washing will still be the norm.

*Reason:* Many people think once the vaccine is available, things will go back to normal – but safety measures will still be a part of our lives for a while. By reminding Michelle of this, she'll realize she'll be even safer than she is now, because she and others will have access to the vaccine while still following COVID protocols.

**2** HR manager from a company in the Northeast, name withheld upon request

*What she would do:* I'd tell Michelle that we can't force anyone to get the vaccine against their will. However, to ease her concerns, I'll let her know we'll be having meetings and programs to show our employees the benefits of receiving the COVID vaccine. As a company, we'll focus on vaccinating as many people as possible. We'd also continue to implement COVID safety procedures.

*Reason:* Legally, we can't require employees to get the vaccine. However, if we focus on getting as many people as possible on board with the vaccine, that will help ease people's fears. Likely, there will be far more people getting vaccinated than not. It's important to reiterate that masking and social distancing will continue in the office as well, helping to keep everyone safe.

#### HR OUTLOOK

#### ■ 3 keys for boosting mental health support benefits

COVID-19 has underscored how beneficial it is to have mental health care resources for your workers to keep stress, anxiety and burnout under control.

But are they getting the most of your firm's investment in their wellbeing? Here are some ways to enhance those mental health benefits programs.

#### Expand access

An employee assistance program (EAP) offers support services to participating employees. Employees and their families can request assessments, referrals and counseling.

EAPs can be offered to your part-time employees, an employee's family members and employees covered by a family member's health plan.

#### Create incentives

Remind your people that mental health care is covered by their health plan with an employee engagement and incentive campaign.

One example is a wellness challenge where employees earn points for completing a series of tasks on a wellness portal. The one with the most points wins something like a trial subscription to online counseling provider Talkspace.

#### Ask questions

HR managers need to find honest answers to these questions:

- Are our employees aware we offer mental health care?
- Are they confident there won't be repercussions for using mental health care services?
- Do they have appropriate time off available to attend appointments?

*Info:* [bit.ly/mentalhealth619](https://bit.ly/mentalhealth619)