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HRMORNING

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Help women workers during COVID-19: 4 best practices

■ *Pandemic drove millions out of workplace*

The coronavirus pandemic hit a lot of employers and employees hard – but studies have found women workers are disproportionately negatively impacted.

Between service job layoffs and the absence of many child care options, about two million women have been driven out of the workforce to stay home with the kids, according to the Bureau of Labor Statistics.

African-American and Latina women have been impacted the most, with a disproportionately high number neither working or actively looking for work.

Employment experts say this mass exodus will hold dire consequences for

women's long-term career prospects and hurt the long-fought battle for equal pay.

Diversity is key

If you're like most employers, you might wonder what you can do about this. But you don't have to stand idly by as women exit the workplace.

Studies have consistently shown that a diverse workforce is incredibly beneficial, with positives ranging from higher efficiency to better problem solving and financial performance.

Not only that, but it's a risky legal

(Please see Women ... on Page 2)

SCOTUS asked to review racial bias case

■ *Circuit courts are split on how to handle single use of slur*

The 5th Circuit recently ruled an African-American employee didn't experience a hostile work environment due to the single use of a slur.

But because other circuit courts have ruled this behavior could constitute a hostile work environment, the plaintiff is asking the Supreme Court to review the case and clear up the split.

Complained for months

Robert Collier worked at Parkland Hospital in Dallas when he was exposed to a racial slur. According to

the lawsuit, the slur was carved into an elevator door. Collier complained to management, but it was months before the slur was removed.

Collier claims his daily exposure to the single slur constituted a hostile work environment. The 5th Circuit disagreed, so Collier's petitioning the Supreme Court to review his case now.

If SCOTUS were to weigh in, it would finally clear up the confusion between circuit courts on how to handle the use of a single slur.

Click: bit.ly/SCOTUS574

Women ...

(continued from Page 1)

move to do nothing about this issue.

If your company is seen as male-dominated, it can lead to gender discrimination claims – and the last thing you want to do is discourage female candidates from applying for or accepting a job.

It's crucial for employers to act now and think of tangible ways they can begin to address this issue before it's too late.

Here are four best practices to ensure your company is supporting women and offering them the tools they need to succeed right now, courtesy of the employment law attorneys of the firm Epstein Becker Green.

1. Evaluate output only

When working remotely, women tend to have family care responsibilities fall on them more

than men. So while your male employees may be able to work uninterrupted all day, female workers may have to get up during meetings to attend to a baby or help older kids with their virtual schoolwork.

Be flexible, and don't hold it against your women workers if they can't attend every Zoom meeting or if they work odd hours. Focus on the work they're producing instead of availability or hours clocked.

2. Conduct exit interviews

The best way to understand what's pushing women out the door is to ask them. Encourage your people to speak candidly about why they're leaving. Many often will speak more freely once they're no longer on the payroll.

To be more proactive, instead of waiting until women have already left, conduct anonymous surveys *before* people start leaving so you have a chance to retain them.

3. Consider a virus leave policy

While paid leave offered under the Families First Coronavirus Response Act (FFCRA) expired, employers can still offer COVID-specific leave for their employees.

Twelve weeks of paid leave to help care for family members can be incredibly helpful for women balancing home and work responsibilities, and can help keep them engaged and contributing.

4. Focus on fixing the system

It's important that the responsibility isn't placed on women to figure out how to help themselves. The system is what's broken – not the way women are handling this.

Instead of spending valuable time training employees on time management, form practices designed to support them in what they need. Women *want* to be able to balance home and work duties – and it's up to you to help them.

Info: bit.ly/helpwomen574

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.

■ Employee not cleared for work gets fired: ADA violation?

HR manager Lynn Rondo looked up from her computer when she saw company attorney Eric Bressler walk into her office.

"Sorry to interrupt, Lynn," Eric said as he took a seat.

"No problem." Lynn said. "It's always nice to see you."

Eric laughed. "You may have spoken too soon. I'm here because Amanda Walker is suing us for violating the ADA."

Tried to come back

Lynn sighed heavily. "We did no such thing."

"Walk me through what happened," Eric replied.

"Amanda was badly injured in a car accident," Lynn started. "We granted her FMLA leave to recover. But when that was up, she still wasn't ready to come back to work yet. Her doctor confirmed she wasn't fit for duty."

"She tried to come back to work anyway, though, right?" Eric asked.

"Yes," Lynn replied. "But I had to listen to her doctor's recommendation and I said no. A few months later, we just couldn't hold her position anymore. We needed to hire someone else."

"Sounds like your hands were tied," Eric said. "But Amanda said we should've tried to accommodate her before firing her."

When Amanda sued for the ADA violation, the company fought to get the suit 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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4th Circuit: Lower pay and demotion wasn't sex discrimination

■ Similarly situated worker with higher pay had more experience

When an employee discovered she was earning less than her male counterpart, she filed a complaint and sued her employer.

But when a court examined the case, it noticed a key difference between her and the higher-earning worker. Here's what happened.

Left meeting without permission

Sharon Davis worked as a treasurer for the town of Tazewell, Virginia. She soon discovered her salary was lower than a similarly situated male employee. Davis complained several times about this.

After Davis left an important meeting without permission, she was demoted. Davis sued, claiming her lower salary and eventual demotion proved her employer's "discriminatory

animus toward women." The town claimed her demotion was the result of frequent salary complaints and the unauthorized meeting departure.

A district court ruled in favor of the town, and the 4th Circuit agreed. It said the male employee who earned more than Davis had previous government experience, while she did not. This is a non-discriminatory reason for the pay difference.

Furthermore, the 4th Circuit accepted the town's reasoning for demoting Davis – the constant complaints and skipping the meeting were unacceptable.

This case is an important reminder that pay differences can be justified with good, tangible reasoning.

Cite: Davis v. Town of Tazewell, Virginia, 1/21/21.

Despite 'offensive' comments about age and gender, worker's firing wasn't due to bias

■ Court says employee was fired for poor job performance

Sometimes a few offhand comments from managers can be enough to prove discrimination.

But when an employee also has a history of poor performance, it gets harder to prove bias played a role in the termination.

Couldn't keep up

Fredricka Wright worked for UPS as an unloader for only a month before she was fired for failing to keep up with the required number of packages she was supposed to handle.

But Wright sued, claiming she was really fired because of age and gender discrimination. She alleged her manager asked her about her age and made rude comments to her

about the makeup she wore to work.

A district court granted summary judgment to UPS, and the 5th Circuit upheld this ruling.

The court said that UPS had provided a legitimate reason for Wright's termination: She couldn't keep up.

The 5th Circuit also said that while the manager's comments were "offensive and boorish," it was an isolated incident. The comments weren't severe enough to back up a discrimination claim, it said.

In this instance, having a non-discriminatory reason for a firing protected the company in court.

Cite: Wright v. UPS Inc., 1/22/21.

■ Sexual harassment, retaliation costs restaurant \$200K

When a worker reports harassment, an employer is supposed to investigate that claim – not fire her for it.

Two Detroit restaurants, Georgina's and Anthony's Little G's, were sued by the EEOC for permitting sexual harassment and retaliating against the victim.

According to the lawsuit, the restaurant owner repeatedly made lewd comments to a sous chef, and touched and kissed her without consent. The chef complained to a manager, who immediately reduced her hours. Minutes later, the owner fired her for the complaint. This is a violation of the Civil Rights Act.

The restaurants will pay \$200,000 to settle the suit, and also agreed to conduct in-depth sexual harassment and retaliation training.

Info: bit.ly/sexharass574

■ Biz fired worker for perceived disability, owes \$85K now

Firing an employee because you're scared their disability is a liability is a violation of the ADA, as one employer recently found out.

Pirtek USA, a power company based on Rockledge, FL, was sued by the EEOC for disability discrimination.

The company had an employee hospitalized with pancreatitis and pneumonia. The employee eventually recovered, and his doctor cleared him to return to work.

However, the company worried the employee was a "liability" and would get injured on the job, so it discharged him. This is a violation of the ADA – a company can't fire a worker due to a perceived disability.

Pirtek will pay \$85,000 to settle the EEOC's lawsuit. The company has also agreed to a three-year consent decree requiring anti-discrimination training and policies.

Info: bit.ly/disabled574

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.

What are the new COVID-19 guidelines from OSHA?

Q: President Biden signed an Executive Order for OSHA to come up with stricter COVID guidelines. What are employers required to do now?

A: OSHA now calls for employers to implement COVID-19 prevention programs in the workplace. Here's what yours should include:

- an assigned workplace program coordinator
- contact tracing protocols to identify where and how workers contracted COVID
- records of all infections
- measures to limit the spread of the virus in the workplace, and
- guidance on screening and testing.

For the full list of program requirements, click: bit.ly/newOSHA574

What's the best way to handle a crying employee?

Q: I recently had a Zoom meeting with an employee who fell

short on a project (and a few others). In the grand scheme of things, the mistake wasn't a big deal and I tried to be as gentle as possible. However, she still started crying. I wasn't sure how to address it, so I moved on and didn't acknowledge the tears. Was this the right call?

A: It depends on how much she was crying, says management expert and author of *Ask A Manager* blog Alison Green.

If she was just a little teary-eyed, you did the right thing by not mentioning it and continuing on. Some people are just criers and don't want you to draw attention to their reaction. It's still a good idea to check in on her later or the next day, just to confirm everything's OK.

If the crying was very noticeable, though, you shouldn't ignore it. It's very hard to move on with the meeting while someone is audibly crying, and it makes it more uncomfortable not to acknowledge it.

In the future, if this happens again, you should make an excuse to end the meeting and call her one-on-one to see what's going on.

Do we still need a traditional office space?

Q: The pandemic has brought to light the benefits of remote work, and we want to extend it even after the crisis is over. Should we still hang onto our office space, then?

A: While a lot of people have gotten comfortable working from home, there's still a lot to consider before getting rid of your office space completely, says employment law attorney Kirk Stange of the firm Stange Law Firm PC. It's important not to make any hasty decisions.

A temporary or shared office space could be a good solution for your business, just in case you do need a physical space in the future.

If you're hesitant to get rid of your space completely, you could always downsize to a smaller office and see how that goes. Explore short-term lease options as well, so you're not locked into something for too long if it doesn't work out.

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 Amanda's case.

Amanda's attorney argued that the company violated the ADA because it dismissed her because of her disability. The company also didn't engage in the interactive process to find any reasonable accommodations.

But the court disagreed. It said that Amanda's own doctor wouldn't clear her to return to work, with or without an accommodation. The employer deferred to the doctor's judgment. It didn't have to go through the interactive process because Amanda wasn't cleared for any

type of work, the court said. Since she wasn't permitted to return to work, Amanda wasn't protected under the ADA. The company did nothing wrong by eventually replacing her, the court ruled.

■ Analysis: Follow doctor's orders

This case shows the importance of having a doctor evaluate an injured employee – even when the employee insists they're OK to work. As this company learned, Amanda wasn't cleared to work, meaning she wasn't even qualified under the ADA.

When dealing with a complicated employee health situation, always defer to what the doctor says.

Cite: McAllister v. Innovation Ventures, U.S. Ct. of App. 7th Circ., No. 20-1779, 12/30/20. *Fictionalized for dramatic effect.*

Helped employees stay connected to each other during pandemic

■ *Expanding child care, financial benefits was key*

As the COVID-19 crisis accelerated, we realized our lives were about to change radically.

At the time, some of our greatest challenges included:

- keeping employees engaged and informed
- being supportive of employees' families, and
- supporting employees' efforts to help their communities.

New procedures

We established COVID-19 travel and work-from-home procedures, always maintaining an employee-first focus.

We quickly repositioned and created new vehicles for communications, employee engagement and information-sharing to adapt to the new environment.

Once we had a framework in place, we convened a cross-functional core team and asked for new ideas to help employees stay connected to each other and to their communities.

Thought differently

We pushed ourselves to think differently and open up new avenues for engagement by:

- creating a talk show to showcase leaders and employees sharing information and ideas (98% of attendees reported feeling very informed)
- developing weekly news digest emails and posting 170 articles, memos and guidance documents to the COVID-19 internal hub, and
- hosting a virtual awards show that recognized outstanding achievements for the year (the

kudos that came over chat and in the presentation were extremely motivating).

Expanded benefits

Because helping our neighbors is part of our company culture, we decided to temporarily extend volunteerism paid time off benefits up to four weeks and offer company-matched donations to humanitarian causes to magnify employees' efforts.

We expanded employee benefits including crisis, student and child care support, mental health offerings, financial resources and home office equipment reimbursement.

Recognizing our employees' families were also adversely impacted professionally as a result of COVID-19, we launched a job search program to support family members.

With military units being deployed to respond to the pandemic in many areas of the country, we doubled paid military leave from two weeks to four weeks for our service member employees.

And we continue to make up any difference between their military pay and regular pay for up to two years.

Times of crisis

As employers, we have a rare responsibility to bring new ideas forward during times of crisis. It's important to pull out all the stops and provide things we wouldn't normally.

We think, if not now, when?

(Moyra Knight, VP of corporate communications, Astellas U.S., Northbrook, IL)

REAL PROBLEM REAL SOLUTION

■ **Oops! 9-to-5 not a good idea for remote work**

When the COVID-19 pandemic hit we quickly moved almost all of our employees to working from home right away.

Like most companies around the world that did this, we navigated the situation day-by-day. Some days, hour-by-hour. We recognized the fluidity of the situation and were ready to change policies on a dime.

But along with these changes, we still tried to keep things as normal as possible for employees to help them transition into this new and very different work situation.

For one, we made a rule that there would be no meetings before 9 a.m., between 12 and 1 p.m. and after 5 p.m.

We didn't want to infringe upon employees' personal time alone or with their families.

Early and late work better

What a big mistake!

Many employees had to care for other family members or help their children with virtual school during those hours, making the traditional 9-to-5 schedule unrealistic.

They told us it was making things more difficult and they actually preferred working and meeting at the odd hours we tried to restrict.

We weren't sure how this was going to work, and we had some reservations about it. But of course we listened to what our people wanted.

Most teams or groups that had to meet found times that worked best for them – sometimes early in the morning, sometimes late at night. Bottom line: The work still got done, and employees can better balance their personal lives, too.

So far it has worked out great.

(Jeff Cates, CEO, Achievers, Toronto, ON, Canada)

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 struggling with mask wearing wants to return to remote

The Scenario

The phone in HR manager Stu Capper's office blipped. Someone in the building was ringing his extension.

"This is Stu," he answered.

"Stu, hi, it's Carla Messing from Payroll and Accounting," the caller said.

"Hey Carla, how are things going since your department came back to the office full-time?" Stu asked.

"That's what I want to talk to you about," Carla said. "I'm having a hard time with the mask requirement."

Breathing issues

"What kind of problem are you having?" Stu asked.

"I understand why everybody in the office has to wear a mask, but I start having a lot of trouble breathing. Then it's hard to get anything done," Carla said.

Stu started wondering if this was an ADA issue. "It's very important for you to be able to do your job. Is there anything we might be able to do for you?" he asked.

"I was a lot more productive when we were working from home (WFH) because I didn't have to worry about putting on a mask all the time," she said.

"Is there any chance I could be allowed to work from home again until this whole coronavirus business goes away?"

If you were Stu, what steps would you take next?

Reader Responses

1 Jim Brown, HR director, Monroe County Community Mental Health Authority, Monroe, MI

What Jim would do: I'd ask Carla if her breathing difficulties are due to a health condition. Depending on the answer, I might advise trying another type of mask. We could also discuss moving her desk to an isolated location so she doesn't have to wear a mask all the time. I may consider her request to work from home.

Reason: It's important for her to consult her doctor as soon as possible about any potential medical issue. Does her doctor think she can use a different kind of mask? Does her doctor say she shouldn't wear a mask? If there's a true medical exception, remote work might be the best choice if she can reasonably perform her job in that setting. Ultimately, I want

Carla to help me come up with a solution for her problem.

2 Larry Denson, HR director, Hoffinger Industries Inc., West Helena, AR

What Larry would do: Assuming there are no ADA accommodations that need to be made, I'd recommend that Carla use a face shield – which we will provide. I'd also tell her about products that make masks more comfortable to wear, such as plastic or silicone face brackets you wear under your mask. Although they prop the mask up and away from your mouth, they still ensure the mask stays sealed around the edges.

Reason: A few of our people have reported feeling smothered while wearing masks in the workplace. Face shields have been an effective coronavirus PPE alternative for our employees.

HR OUTLOOK

Older workers are staying longer: What it means for HR

One of the factors that gets workers 65 and older thinking about retirement is fatigue from decades of commuting to work.

However, with a work-from-home "new normal" courtesy of the coronavirus pandemic, commutes take seconds instead of an hour.

Even though many older workers opted to retire at the beginning of last year, the number of age 65+ workers has since rebounded, according to the Bureau of Labor Statistics.

The comfort of working from home may be giving them a second wind to keep working.

Other reasons they're staying

Another reason to keep working: to stay mentally and socially engaged. The curtailment or cancellation of events and activities because of COVID-19 has reduced the possible pursuits for retirees that don't involve work.

Also, data suggests some older workers are still working to bolster their retirement assets.

According to Fidelity Investments, the average Individual Retirement Account balance in the third quarter of 2020 for people over 60 was a little more than \$200,000.

Lots of upside

A workforce delaying retirement can be beneficial to employers. It means less turnover, while keeping an experienced and knowledgeable staff, which can increase company stability and customer satisfaction.

HR can support older workers by reviewing job descriptions with their managers and consider redesigning their jobs to include mentoring or coaching less experienced employees.

Another option is pointing them toward financial education resources that address their needs.

Info: bit.ly/senior574