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HRMORNING

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'I work from home or I quit!' How to retain workers now

■ 7 tactics to encourage them to stay

The pandemic changed business drastically, and many employees who have been working from home want to keep it that way – or they'll look for a job elsewhere.

And it's not just a handful of employees. About 30% of remote workers say they'll quit their job if they aren't allowed to continue working from home, according to recent research from LiveCareer.

Another two-thirds of those surveyed said they prefer to work for companies that offer remote options.

Because people value remote work so much, they'll need strong encouragement to return to the physical

office, says Susan Norton, senior HR director at LiveCareer.

Companies should consider benefits that encourage staff to want to stay – and free coffee and snacks just isn't enough.

Best talent strategies

So how can you retain (and recruit) good talent when the pandemic has changed so many employees' expectations? Here's what Norton suggests.

1. **Offer the perks employees want.** LiveCareer asked employees directly

(Please see Workers ... on Page 2)

Only 6% of firms to require COVID vaccines

■ Many still 'unsure' about vaccination mandates, survey finds

According to a recent study by management firm Littler Mendelson, only 6% of employers are planning on requiring their staff to get the COVID-19 vaccination when it becomes widely available.

The amount of respondents that have already mandated the vaccine is even smaller at a measly 1%.

Fear of employee backlash

Having a COVID-19 vaccination requirement is a complicated decision, and a decent amount of employers

(43%) are currently "unsure" about what to do and are still considering a mandate.

So what's causing the hesitation? A majority of companies (79%) are worried about employee backlash to a policy like this – particularly from those who aren't in a protected category, but simply don't want to receive the vaccine.

More than 1,800 HR pros and C-suite leaders were surveyed.

Click: bit.ly/COVIDsurvey575

Workers...

(continued from Page 1)

what perks would help convince them to come back to the office. Here are the top choices:

- pay raise
- free food
- more PTO
- flexible schedule
- improved office space, and
- a casual dress code.

2. **Listen and plan.** With more people getting the COVID-19 vaccine every day, it's the perfect time to begin planning for the future. Explore the ways you can retain your current employees and recruit new ones soon – all with the help of your staff.

Actively listen to your employees and be open to their suggestions regarding future work arrangements. Norton says it's essential to engage in a conversation with your employees and ask them to brainstorm suggestions. It'll show your people

you care about their happiness.

3. **Focus on what you can do.** HR pros are often forced to relay unpopular decisions to a reluctant audience. It's not a fun part of the job, and you're often faced with employee pushback because of it.

So when it comes to informing employees they'll need to come back into the office, be sure to emphasize safety precautions the company has taken. And when talking with leadership, be sure to point out all the positive things that have come from allowing remote work.

4. **Compromise.** Like the workers who want to stay home, there are some employees who are much happier being in the office. You'll have to sell the benefits of both remote work and in-office work to each group.

Highlight the increased productivity that comes from remote work and the increased collaboration that comes with being on site. You might even be able to convince leadership to embrace part-time remote options.

5. **Make on-site work as easy as possible.** Some employees don't want to come back because they need to take care of children or other family members.

In addition to health and safety measures, try incentives to make it easier for people to work on site. Provide childcare programs if you can, or let your employees bring children into the office.

6. **Make on-site work more efficient.** Once you make it easier for people to come into the office, make it more efficient, too. Encourage management to call fewer meetings, and give employees guidance to communicate effectively.

7. **Get creative with benefits.** Incentives are crucial to engage, motivate and retain employees on site.

Some ideas include counting commute time as hours worked and increasing paid time off. Workers may also expect a raise if they aren't allowed to work from home anymore.

Info: bit.ly/retain575

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.

■ Fired five months after taking FMLA leave: Retaliation?

HR manager Lynn Rondo was staring wistfully at beach house rentals, wondering when it'd be safe to travel again, when company attorney Eric Bressler walked into her office.

"Sorry to interrupt your daydreaming," Eric said with a grin as he saw Lynn's computer screen. "We've got an issue. Alyssa Edwards is suing. She said we fired her for taking FMLA leave."

Performance problems?

With a sigh, Lynn closed out of the vacation site and gave Eric her full attention.

"That's ridiculous," Lynn said. "Alyssa wasn't fired for taking leave. Her performance wasn't up to snuff, it's as simple as that."

Eric referenced his notes. "Alyssa was fired five months after returning to work," he said. "While that's not exactly damning, the timing is a little close for comfort. She might be able to make a case."

"Her performance had been declining for a while," Lynn said. "This was overdue. Besides, this isn't the first time Alyssa took FMLA leave. She's taken it twice and the past, and we never retaliated against her for it."

"I'm confident we can fight this, then," Eric concluded.

When Alyssa sued for FMLA 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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2nd Circuit: Employee fired for mismanagement, not race

■ *Denied opportunities didn't amount to discrimination, court said*

A college professor was treated differently than her peers, and she was convinced her race had something to do with it.

But when a court reviewed her case, it found her claims weren't strong enough – and her subsequent firing was for an entirely different reason.

Legitimate reason

Hongmian Gong worked as a professor at the City University of New York (CUNY) when she lost her position. The university claimed Gong was let go because she mismanaged student funds, but Gong believed her race played a role in her dismissal.

Gong claimed she was denied professorship opportunities because of her race. She was also forced to hold

evening office hours for her students when none of her white peers were required to do so. This constituted a hostile work environment that culminated in her termination, Gong said.

But the 2nd Circuit disagreed. It said her mismanagement of the student funds was a legitimate reason for CUNY to fire her, which had nothing to do with her race.

The court went on to say that the two examples she gave of race discrimination were “too few, too far apart and too mild” to constitute a hostile working environment.

This case acts as a reminder that bias claims can be defeated with solid reasons behind firings.

Cite: Gong v. City University of New York, 2/3/21.

School referee's gender bias claim failed because she wasn't considered an employee

■ *Her employer assigned her to games while the school paid her*

When a school basketball referee suspected she was being discriminated against because of her gender, she sued her employer.

But as the 2nd Circuit examined her case, it found her employer wasn't responsible for the behavior she highlighted in her lawsuit.

Two separate employers

Ginger Girard worked as a high school basketball referee in Connecticut. She filed complaints about her pay, saying she was paid less because she was a woman.

After her reports, Girard was assigned to low-level games, which Girard claimed was retaliation for her gender bias complaints.

Girard eventually filed a discrimination and retaliation lawsuit against her employer, the International Association of Approved Basketball Officials, but the 2nd Circuit dismissed her case.

The court said that while her employer was responsible for assigning her to games, the school was the one responsible for her pay. Girard wasn't even technically an employee of the school, so the lawsuit was moot, the court reasoned.

Experiencing discrimination from one company and retaliation from the other just didn't add up.

Cite: Girard v. International Assoc. of Approved Basketball Officials, Inc., 1/22/21.

■ Refusal to accommodate worker costs biz \$160K

When a disabled employee requests a reasonable accommodation, employers must grant it. And if they don't, the EEOC will get involved.

Gentiva Health Services, doing business as Kindred at Home in Atlanta, was sued by the EEOC for an ADA violation.

An employee requested to work from home for three weeks after their disability required them to temporarily stay off their feet. The company granted this request for a week, but then reversed the decision and placed the employee on unpaid leave – even though she could still perform essential job functions from home.

To settle the lawsuit, Gentiva Health Services will pay \$160,000 to the employee. The company also agreed to regular ADA training, monitoring and reporting.

Info: bit.ly/ADA575

■ Hotel settles unequal pay lawsuit for \$400K

It's illegal to pay an employee less because of their gender – but that didn't stop one employer from trying to get away from it.

A Courtyard by Marriott hotel in Monroe, LA, was sued by the EEOC when it paid a female employee much less than her male counterpart, violating the Equal Pay Act.

The woman worker was paid only \$11 an hour while her male colleague earned over \$15 an hour.

When the hotel was caught and ordered to correct the pay discrepancy, it reduced the male worker's salary instead of raising the female's, which is a violation of the Equal Pay Act as well.

Now, the hotel owes \$400,000 to settle the lawsuit and must conduct training on equal pay.

Info: bit.ly/equalpay575

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 if an employee posted something bad years ago?

Q: Someone drew our attention to an employee's social media posts from a few years back. Some of the posts are pretty crass and offensive. Should we fire them now for the content of their old posts?

A: Since most employment in the U.S. is at-will, technically you can fire an employee for almost anything – but that doesn't mean you should, says HR expert and author of *Go To Greg* blog Greg Giangrande.

You should think carefully before firing an employee for something said in the past. You'd be hard-pressed to find someone who *hasn't* said something cringe-worthy years ago. Generally, I think people need to be more forgiving of past indiscretions.

Of course, if the past social media posts are wildly offensive, that's a different story.

Also, if you can find more recent posts from this person that are questionable, that could demonstrate an offensive pattern, and you probably don't want this person working for

you. Clients and other important people could find these posts, which could be detrimental for business.

How do I respond to this worker's raise request?

Q: I have an employee whose performance hasn't been great. In fact, we discussed an informal performance improvement plan. To my surprise, this person has requested a raise! I'm so stunned I have no clue how to respond to this.

A: Focus on being clear, and don't worry about potentially upsetting the employee, says management expert and author of *Ask A Manager* blog Alison Green.

Say something along the lines of, "Right now, we need to be focused on getting your performance where it needs to be before we talk about money."

Make it clear that if this employee wants a raise, they'll need to boost their performance and sustain it for a certain length of time before you'll consider increasing their pay.

How should we go about increasing diversity?

Q: We want a more diverse staff, but aren't sure where to start. What's the best way to go about it?

A: There's no one-size-fits-all plan for diverse hiring, but here are some strategies you'll definitely want to use, says Jennifer Tardy, diversity recruitment expert.

Some basic steps include making sure your higher-ups are on board with increased diversity, and ensuring your interview panel is as diverse as possible to reduce chances of unconscious bias.

One thing some HR pros don't always think about is who is in their own personal network. If your own network isn't diverse, that reduces the chances of diverse candidates seeing the job postings.

Another tip is to ensure everyone is on the same page with diversity efforts – from recruiters to HR pros to hiring managers.

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 the case.

Alyssa's attorney tried to argue the timing of her termination alone proved the company retaliated against her for taking FMLA leave. The company claimed Alyssa had performance issues for a while, but the attorney pointed out it waited until she took FMLA leave to fire her. The timing is suspicious, the attorney said.

But the court disagreed. It said that five months between Alyssa's return from FMLA leave and her firing was too long to suggest the two were connected. The court sided with the company, agreeing that performance

problems appeared to be the real reason behind Alyssa's termination. There was no FMLA retaliation, the court said.

■ Analysis: Timing matters

This case shows how an employee who took FMLA leave isn't protected from termination forever. After a few months, a worker's case for retaliation grows weaker and weaker. And as this court established, five months is likely enough time to prove there was no correlation between leave and a firing.

Employers need to be mindful of the timing of terminations, especially when employees have taken protected leave. If this company had fired Alyssa sooner, the court may have ruled differently.

Cite: *Strong v. Quest Diagnostic Clinical Labs, U.S. Dist. Ct. IL, N.D., No. 19-cv-4519, 2/2/21. Fictionalized for dramatic effect.*

Unlimited vacation time is just one way our benefits reflect our culture

■ *Our benefits strategy is driven by our core values*

We base our vacation policies on trust and don't track how much time our employees take off.

For some companies, moving toward unlimited vacation time is a way to reduce the burden of tracking time off and rolling over unused vacation from year to year.

And that's a big part of the benefit of having an unlimited vacation policy in the first place – we don't have to waste time on administrative tracking of PTO.

That lets us use our time on more strategic people initiatives. Besides, we've found that hours worked don't usually correlate with performance for knowledge workers.

Powerful tool

For most of our employees, the unlimited vacation policy is less about spending weeks at the beach and more about managing their lives more effectively.

Usually, our people are taking an afternoon off to see their kid in a school play. Or someone might be taking care of a family member with a chronic illness.

The flexibility of unlimited PTO lets them stop worrying about using up all their vacation time so they can get their loved ones to regular doctor's appointments.

In our experience, people are simply more committed to their jobs when they don't feel "nickel and dimed" with limited, closely tracked time off.

That's especially true when that time off means they don't have to choose between work and taking care of themselves or fulfilling their other obligations in life.

But, while unlimited PTO is certainly a powerful tool for attracting and retaining talent, it's just as important as a reflection of our overall company culture.

Culture is more than perks

A lot of companies conflate culture with perks. If your "culture" hinges on cold brew coffee, free lunches and a ping pong table, you're in trouble when a company down the street matches these things and throws in free dry cleaning.

We strongly believe that it's important to design company culture with the same focus and discipline as you do the products you bring into the marketplace. And like your products, just offering the same thing as the competition isn't going to cut it.

When you haven't done the work to define a company's culture, you end up relying on a collection of perks to try and stand out from the competition.

Over the long term, it isn't enough to keep those stars on board.

Reflect our values

Instead, we ask, "What benefits do people really value?" We not only provide full health, vision and dental, we also make generous contributions toward health deductibles, commuting costs, retirement and, of course, unlimited PTO.

By starting from a well-defined culture, we have a guidepost for evolving our benefits strategy.

Instead of flashy but empty perks, our benefits reflect our core values.

(Emma Brudner, director of people operations, Lola.com, Boston)

REAL PROBLEM REAL SOLUTION

■ Policies must pass the 'remote work test' now

Like most companies, the pandemic forced us to rebuild for a remote workforce.

And a big part of that was taking a step back to re-evaluate our policies to make sure they all made sense now.

For many of them to be effective, we had to switch to a remote mindset.

'At-home approved'

Now, every new policy and practice we create needs to pass the "Will this work for remote work?" test.

The same goes for established policies and practices. We look at how to adapt them for working from home. If we can't, we eliminate them.

For example, during the pandemic, one of our favorite new hire traditions had fallen by the wayside.

Before, in person, we typically put together a group of several employees from across functions who started around the same time.

They'd do general training together and interact quite a bit, sharing their new employee experiences, which helped them get engaged and make connections.

But for remote work, we had to shift the program for new employees who might not set foot in an office.

So, we get groups together over video and help them do the same kind of training and experience-sharing.

Ensuring all of our policies and practices lend to a remote work environment has helped keep everyone engaged and productive.

(Sameer Chowdhri, global head, Workplace for HR, Facebook, Menlo Park, CA)

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.

Should ill employee working remotely be told to take sick day?

The Scenario

Since the pandemic started, HR manager Stu Capper made a habit of periodically checking in with each remotely-working employee to see how they were doing.

I haven't talked to Dave Parsons in almost a month, he thought, hitting send on an email requesting a virtual call.

Dave responded with a time that was good and it didn't take long for the two to connect via video chat.

"Hey there, Stu. What did you need to talk about?" Dave said. But before Stu could respond, he quickly continued, "Hold on, I have to sneeze."

After waiting for a rapid-fire series of sneezes from Dave to subside, Stu

said, "Just touching base to see how you are. Looks like I called at the right time. How are you feeling?"

Pushing through a cold

"I've had a cold for about two days," said Dave.

"Your eyes look a little puffy. Are you sure it isn't COVID?" Stu asked.

"I don't have a fever. It's just sneezing and a stuffy nose. I'm fine," Dave replied.

"Why not let your manager know you're taking a sick day so you can rest?" Stu asked.

"But Stu, my sick time's almost used up. I had food poisoning, then my procedure," Dave said.

If you were Stu, what would you advise Dave to do?

Reader Responses

1 Jim Thomas, HR director, Reach Inc., Eau Claire, WI

What Jim would do: If illness is affecting Dave's productivity and his sick time and paid time off are *completely* used up, I might suggest taking unpaid time off. If the illness goes on longer than four days, Dave would need to see a doctor. Depending on what the doctor says, I might recommend FMLA or short-term disability leave.

Reason: If an on-site employee was obviously sick, we wouldn't want them coming in. At the same time, we don't want anyone to lose income. A common issue with working remotely is the ability to measure what people are accomplishing. Hopefully in Dave's case, there's some kind of measuring tool – like emails, a spreadsheet or a document

– that shows how productive (or unproductive) he's being with a cold.

2 Nyx Nava, HR manager, Mark of Excellence Pizza Co., Hurst, TX

What Nyx would do: Because he's working remotely, and not risking making his co-workers sick too, I'd allow Dave to keep working. If Dave's salaried, I'd let his supervisor know he's working while sick and ask if it's reasonable to encourage him to cut back on his work hours until he feels better.

Reason: The biggest concern I have is Dave's capability to do his job right because sick employees don't perform at their best and are more likely to make mistakes. Working through illness can also slow down the recovery process. But as long as a supervisor is closely monitoring his productivity, I don't have an issue with Dave's decision to continue working.

HR OUTLOOK

■ Should employees know what co-workers make?

According to a report by *beqom.com*, a side effect from having so many people still performing their jobs from home is they're less comfortable talking about compensation with their managers.

Although traditional workplace etiquette says you shouldn't talk about it, not talking about it can hamper efforts to improve pay equity and keep morale up as the pandemic wears on.

In fact, the report found more than half (58%) of workers would consider leaving their job if they found a potential employer that was more transparent about salary.

What is pay transparency?

The practice of making employee compensation figures or ranges visible to others is a common recruiting tactic.

Some companies take it a step further by making pay figures for all employees visible.

Pay transparency has the potential to improve:

- organizational trust
- employee engagement
- pay gaps
- diversity
- employee productivity, and
- employee loyalty.

Pay transparency can also provide helpful data for informing and supporting pay decisions.

So instead of having employees upset about not getting a raise, they may be more understanding if they can see organizational pay data that explains why.

Note that a few states have laws that address disclosing the wages of co-workers. So before beginning a conversation with leadership about it, look into whether your state's labor department has guidelines on pay transparency.

Info: bit.ly/pay575