

APRIL 1, 2021

WHAT'S INSIDE

- 2 Sharpen Your Judgment**
Injured worker violated policy, got fired: Discrimination?
- 3 Employment Law Update**
Worker didn't follow FMLA request policy, court OKs her firing
- 4 Answers to Tough HR Questions**
We denied a transfer: Can that be discriminatory?
- 6 What Would You Do?**
WFH permanent: What questions should HR ask job candidates?

HRMORNING

Keep Up To Date with the Latest HR News

With **HRMorning** arriving in your inbox, you will never miss critical stories on labor laws, benefits, retention and onboarding strategies.

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.

Frontline managers' 5 biggest challenges: How HR can help

■ *Get your employees to thrive today*

Everyone knows that most employees are struggling to work through the ongoing pandemic.

But there's another often overlooked group having a difficult time too: frontline managers. They're facing more challenges now than ever.

Fortunately, HR pros can help them overcome the biggest issues, allowing managers to thrive – and equip their employees to succeed.

Impact on output

Managers have a huge impact on employees' output, says Dr. Natalie Baumgartner, chief workforce scientist

at Achievers. "Simply put, the more effective a manager is, the more engaged their team is likely to be."

Here are the most pressing challenges managers face today and how HR can help their leaders, according to Achievers.

1. **A lack of support.** Only about one-third of front-line managers were trained to support their employees. Many managers get promoted because they knew how to work well, but they might be fuzzy on how to help *others* work well.

"Good managers become so

(Please see Managers ... on Page 2)

Senate passes another COVID-19 bill

■ *Provisions include extended unemployment benefits*

In a 50-49 vote, the Senate recently passed a \$1.9 billion COVID-19 relief bill, which will extend unemployment benefits and offer additional economic relief to citizens.

The American Rescue Plan also includes small-business aid.

Aid for bars, restaurants

The additional \$300 a week for those collecting unemployment benefits was set to expire mid-March, but the Senate approved an extension, and the \$300 payments will now continue until

Sept. 6. This additional aid will help a lot of people; as of mid-February, the DOL reported more than 18 million Americans were unemployed.

The bill also offers relief to small businesses, allocating \$50 billion for a grant program that would provide funds to bars, restaurants and other businesses that had to close due to the pandemic.

Despite a minimum wage boost being included in the original version of the bill, that won't be happening.

Click: bit.ly/COVIDbill576

Managers ...

(continued from Page 1)

through development and support,” Baumgartner says. “Conversely, bad managers are often just under-supported and under-developed.”

So it’s imperative that every organization empowers their managers with consistent, cross-functional training.

You’ll want to start or increase soft-skill training for managers when they’re brand new to leadership, hitting on areas such as:

- holding one-on-one meetings
- recognizing employees
- showing empathy, and
- managing strengths.

2. **A lack of recognition.** Achievers’ study found that only 20% of managers have someone regularly recognizing them. How can employers expect managers to praise their reports, when managers aren’t getting praised themselves?

Department heads should get into the habit of praising their frontline managers. Ideally, the praise should be:

- specific
- timely
- public, and
- values-based.

3. **A lack of formal training.**

Only about 12% of managers report that senior leaders invest time and resources into their formal training. A lot of the time it’s because higher-ups are more concerned with profits and not long-term talent development.

So how can HR help overcome this challenge? Carve out time for your managers to pursue leadership and job-specific training, and encourage them to complete it.

And when you schedule time to discuss performance reviews, don’t forget to also make time to talk about professional development.

4. **A lack of a proper staff.** A lot of managers don’t feel like they have the right number of staff members or the right kind of people on their staff. Managers need more than task-doers – they need problem-solvers.

HR can help by creating ways for managers to find talent within the company. Work with them to align job roles and ideal candidate types.

5. **A lack of communication.**

Managers have concerns just like employees, but they often feel like they have to mask those to be an effective leader.

HR can help address managers’ concerns, such as by:

- being honest and transparent about business changes,
- giving details on updates that will affect policies and personnel,
- giving regular updates on training and career opportunities, and
- giving opportunities to solicit and give employee feedback that’s heard and responded to by senior management.

Info: bit.ly/managers576

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.

■ **Injured worker violated policy, got fired: Discrimination?**

“Lynn, you wanted to see me?”

HR manager Lynn Rondo looked up to see employee Heather Ryan lingering in the doorway.

“Yes, Heather, come in,” Lynn said, steeling herself for this difficult conversation.

“I wanted to talk to you about what happened last week,” Lynn started. “We sent you to a job site to do a few hours’ work, and you stayed overnight at a hotel without approval.”

“I had no choice,” Heather replied. “Because of my injury, I can’t lift more than 15 pounds at a time, so the job took me a lot longer than my manager thought it would.”

Doctor’s note

Lynn blinked, shocked. “You’ve never mentioned this injury before,” she replied. “We’ll need a doctor’s note to back this up, but in the future, you need to communicate things like this to us. You can’t just violate policies.”

Heather produced a doctor’s note a few weeks later which stated she had chronic back pain and muscle weakness. However, the doctor had never actually met with or examined Heather.

After Heather violated a similar company policy again, she was fired, and she sued for disability discrimination. The company fought to get the lawsuit 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

EDITOR: RACHEL MUCHA
ASSOCIATE EDITOR: BRIAN BINGAMAN
MANAGING EDITOR: RICH HENSON
EDITORIAL DIRECTOR: CURT BROWN
PRODUCTION EDITOR: JEN ERB

What’s Working in Human Resources, (ISSN 1088-3223) April 1, 2021, Vol. 26 No. 576, is published semi-monthly except once in December (23 times a year).

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal or other expert assistance is required, the services of a competent professional should be sought. — From a declaration of principles jointly adopted by a committee of the American Bar Association and a committee of publishers.

Copyright © 2021 HRMorning. Please respect our copyright: Reproduction of this material is prohibited without prior permission. All rights reserved in all countries.

Worker didn't follow FMLA request policy, court OKs her firing

■ Employee couldn't justify violating protocol

A recent court case showed how one employer defeated an FMLA retaliation lawsuit just by enforcing its call-out procedures.

Here's a breakdown of what happened.

Made only one call

Kelly Soutner worked for Penn State Health when she needed to take FMLA leave.

The company's procedure for requesting FMLA leave involved making two calls – one to the designated “call-off” line and the other to a third-party administrator explaining the need for the leave.

When Soutner made the call though, she only placed one of the required calls, violating company policy. This resulted in

her earning disciplinary points.

Eventually, Soutner reached her maximum allotment of points and was let go. She sued, claiming the company interfered with her FMLA leave, then retaliated against her.

But the 3rd Circuit sided with the company. The court said that Soutner failed to follow the FMLA request protocol, and she could provide no reason for why she didn't.

The court added, “An employee must comply with the employer's requirements for requesting leave, unless those requirements conflict with the FMLA.”

Therefore, Penn State Health didn't violate any laws by enforcing its call-out policy.

Cite: Soutner v. Penn State Health, 1/13/21.

No age bias: Court sides with school after it replaced worker with younger employee

■ Comments describing plaintiff as ‘traditional’ were dismissed

When an employee is fired and replaced with a much younger worker, a case for age bias could almost always be made.

But in this instance, the case just wasn't strong enough.

Contract wasn't renewed

Sharlene McEvoy worked as a professor at Connecticut's Fairfield University when her contract as the director for a pre-law advisory program wasn't renewed.

Instead, the university gave the position to a much younger professor. When McEvoy questioned this decision, one of the higher-ups told her she was too “traditional” and her pre-law advisory program was

“antiquated.” McEvoy sued for age discrimination soon after.

But the 2nd Circuit dismissed McEvoy's claim. The court said the “traditional” and “antiquated” comments were directed towards the program itself, and not McEvoy.

Taking those remarks out of the equation, McEvoy was simply replaced by a candidate who happened to be younger. The court ruled there was no indication that McEvoy's age was a factor in this employment decision.

While the higher-up's remarks weren't ruled against in this instance, it's wise to simply not make them.

Cite: McEvoy v. Fairfield University, 2/17/21.

■ Company fires employee for religious beliefs, gets sued

It's illegal to fire a worker because their religious beliefs are inconvenient – but that's exactly what one company did.

Noble House Solé, a resort in Sunny Isles Beach, FL, was sued by the EEOC after it fired an employee because of their religion.

According to the EEOC, the employee observed the Sabbath on Saturday and therefore couldn't work on that day. For ten months, this request was granted. But when a new manager started at the resort, the employee was scheduled for Saturdays and told she had to work those shifts.

When the employee failed to show up for a Saturday shift, she was fired. This is a violation of the Civil Rights Act.

Noble House Solé is now facing a costly settlement or legal battle.

Info: bit.ly/religion576

■ The cost of sexual harassment? \$120K

When an employer repeatedly ignores sexual harassment in the workplace, the price will be steep.

According to the EEOC, Chinese restaurant New China in Medford, OR, employed a manager who repeatedly harassed female workers under the age of 18.

The harassment ranged from inappropriate comments to unwanted hugging and groping. After the manager tried to solicit nude photos from a minor, he was arrested and plead guilty.

However, the restaurant still allowed him to return to work, and the behavior continued. This resulted in an employee feeling forced to resign.

New China will pay \$120,000 to settle the lawsuit. The restaurant must also provide anti-harassment training and investigate all future harassment claims.

Info: bit.ly/harass576

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.

We denied a transfer: Can that be discriminatory?

Q: There's an employee who requested a lateral transfer. We denied her request, and she threatened to file a gender discrimination lawsuit. Can denying a transfer be considered discriminatory?

A: According to a recent ruling by a D.C. Circuit Court, no, denying a lateral transfer isn't discriminatory, says employment law attorney Fiona Ong of the firm Shawe Rosenthal LLP.

The court said that in order to prove a discrimination claim, the employee must show they suffered an adverse employment action. And a lateral transfer – where there's no change in pay or benefits – doesn't constitute an adverse employment action.

While this is just one court's opinion and others may disagree, it's a good case to use as a rule of thumb.

How to deal with worker's fragrance sensitivity?

Q: I have an employee who is very sensitive to fragrances – she

gets headaches and can get physically sick. We had her post "Fragrance-free zone" signs, but that hasn't stopped co-workers from wearing perfumes. What should my next steps be?

A: This is a tricky situation, but if the employee's reaction to fragrances is this severe, you should have them fill out ADA paperwork, says HR expert and author of *Evil HR Lady* blog, Suzanne Lucas.

This will get the accommodation process rolling and help show colleagues that this condition is serious.

As for what accommodation will work best, you'll need to speak with the employee. Can they work from home? Could the employee attend meetings virtually so they won't have to be in a room full of different fragrances?

If the employee's sensitivity is really bad, you may need to ask employees to stop wearing perfumes (which doesn't always go over well) so it's important to explore your other accommodation options before making that request.

How do we stop new hires, candidates from ghosting?

Q: We've had a few candidates and new hires simply drop out of the process or leave their job with no notice. Is there anything we can do to prevent this from happening?

A: Unfortunately, "ghosting" is very common in today's job market, says HR exec Barbara Schultz of Community Career Center. However, there are ways you can try and get on top of it.

With younger generations especially, quitting via text message or no notice at all is popular. To address this, it's best to just come out and let these candidates/employees know your expectations so they don't try to get away with it.

Develop communication protocols and explain the proper resignation etiquette to your new hires. When you detail the procedures and let people know how things are done, they're much less likely to quit with no notice.

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 Heather's case.

Heather's attorney argued that Heather was covered under the ADA, because of her back pain and muscle weakness. She couldn't lift more than 15 pounds, so Heather needed an accommodation, the attorney said. Instead of granting her an accommodation, the company fired Heather.

But the court disagreed. It said Heather violated a company policy before even disclosing her injury and lifting restriction. Furthermore, because the doctor's note

came from a physician who hadn't examined Heather, it couldn't qualify Heather as an ADA-protected individual – meaning she wasn't owed an accommodation. Her firing based on the policy violations was justified, the court said.

■ Analysis: Proper documentation is required

This case goes to show that when employees are claiming to be disabled, they need to have the proper documentation to back this up. A doctor's note is usually enough, but as this court stated, the doctor needs to have actually examined the employee.

Heather may have been able to qualify under the ADA if she'd been examined and gone about obtaining the doctor's note properly.

Cite: *Tesone v. Empire Marketing Strategies, U.S. Ct. of App., 10th Circ., No. 20-1093, 2/5/21. Fictionalized for dramatic effect.*

How we expanded diversity and inclusion efforts across our business

■ We set social impact goals – then achieved them

Sales are a huge part of our business, and we know sometimes that can feel very transactional – so we always had a mission to “Keep Commerce Human.” We believe this mindset makes us a stronger, more resilient business.

But we knew we had to have more than a mission statement to back up our good intentions.

So last year, we set specific goals rooted in transparency and accountability to keep us on track.

Overarching goal

We started with an overarching social impact goal to guide us: Enable equitable access to the opportunities that we create.

From that starting point, we wanted our goals to be specific, so here’s what we came up with.

1. Build diverse and inclusive workforces that are broadly representative of their communities
2. Build a diverse, equitable and sustainable supply chain to support our operations and bring value to both our company and vendors, and
3. Ensure our marketplaces are diverse, welcoming and inclusive places to shop and sell.

We also wanted the goals to be time-bound and measurable, so we added the following stipulations:

- Approximately double the percentage of Black and Latinx employees in our workforce by 2023
- Ensure at least 50% of our small and medium-sized suppliers are owned by women, minorities or veterans by 2022, and

- By 2021, define a key performance indicator and establish a baseline for marketplace diversity and inclusivity.

Diversity in workforce

To work toward our goal of doubling our Black and Latinx employees, we used targeted outreach. We maximized our presence at relevant conferences, engaged with prospective talent on social media and boosted our referral program.

We also launched a mentor program, connecting Black and Latinx employees with senior leaders who help them map out their career path with us.

Because of these initiatives, Black and Latinx employees made up 20% of our new hires in 2020. They now comprise over 12% of our workforce, which is up from 10.5% in 2019.

Vendor inclusivity

To ensure diversity amongst our vendors as well, we highlighted current minority vendors through our marketing efforts, which led to other diverse vendors wanting to work with us. We also created a community that allows our diverse vendors to connect with one another and offer support.

We made significant strides in 2020 and are proud of our efforts, but we know the work must continue into 2021. This year, we intend to formally audit processes such as hiring, leveling, pay and promotions to ensure every decision is fair and to increase our overall equity.

(Toni Thompson, global head of people, Etsy, New York)

REAL PROBLEM REAL SOLUTION

■ We put the spotlight on mental health benefits

The coronavirus pandemic was adding stress to our employees’ work, home and family matters, and it had taken a toll on a lot of people.

Our company needed to address the mental health and wellness challenges COVID-19 was causing our workers. We knew it wasn’t something we could just ignore when no one was having an easy time with the situation.

It’s OK to not be OK

We launched an “It’s OK” campaign to destigmatize mental health care and encourage people to take care of themselves by being mindful of any struggles they may be going through.

Leadership committed to sharing personal stories about difficulties in their lives to show how important it is to get support when it’s needed, whether that’s reaching out to a friend or family member or seeking out therapy.

The campaign outlined the many helpful employee assistance program options that are available to them, as well as their family members.

It’s important for people to know “it’s OK” to admit you’re stressed and having issues coping with uncertainty of these times and that “it’s OK” to maintain your mental health.

We emailed follow-up surveys to everyone to get a sense of whether we were offering the right kind of mental health support. The feedback has been informative and positive.

(Michelle Garner-Janna, executive director of corporate health, safety and environment, Cummins Inc., as presented at the National Safety Council State of Response and Future World of Work Virtual Summit)

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.

WFH permanent: What questions should HR ask job candidates?

The Scenario

HR manager Stu Capper answered his office phone. It was his HR director friend Deanna Carter.

"Are you busy right now?" Deanna asked. "I could really use some advice."

"I'm a little busy, but I can tell you need help. What's up?" Stu said.

"Got a bombshell today. We're getting rid of our office space and everybody's going to be working remotely from now on," she said.

Pros and cons

"I can understand why. It'll save a ton of money that was being spent on operations. I'm surprised we haven't done that here yet," said Stu.

"Here's the thing, though, Deanna said. "We're going to be hiring for a couple positions and I just realized a lot of my tried and true candidate interview questions need to be adjusted for a work from home workforce."

"Like what?" Stu asked.

"Will you be able to report to work on time?" is one. "Can you perform the job, with or without a reasonable accommodation?" That isn't so important if they're at home, right?" Deanna said.

"Can you email me the list of questions you use? I want to give my undivided attention to this and brainstorm some fresh ideas," Stu replied.

If you were Stu, what suggestions would you make to Deanna?

Reader Responses

1 Lorena Leslie, HR manager, Health Advocates, Chatsworth, CA

What Lorena would do: I'd remind Deanna that the answers to her questions will have to indicate how potential hires will handle the challenges of working remotely.

Reason: She needs to know if their home work space is ergonomically sound. Not having a home office properly set up, or if there are safety hazards (e.g., COVID) in the home, could result in workers' comp claim headaches. She needs to get a feel for how they'll balance their work time with their family life. When work/life balance is out of whack, it causes employees to burn out. Does their home work space have enough privacy? If the job has a lot of virtual meetings, how would they manage meeting fatigue?

2 Jennifer Eakes, HR director, Town of Selma, Selma, NC

What Jennifer would do: I'd tell Deanna to make sure she has enough specific interview questions to get a clear picture of whether a candidate has sufficient technology at home to perform the job – Internet, equipment, software, smartphone, etc. If necessary, ask IT what the minimum tech requirements would be for the job, and what tech a leading candidate might already have at home.

Reason: Up to date technology and tech-savvy employees are what organizations need most for getting work done in a remote environment. For example, if there's a project deadline but the employee responsible for it is hampered by slow home Internet speed, there could be negative outcomes. If the position involves handling sensitive customer information, is their security software top-notch?

HR OUTLOOK

■ How to help your people navigate financial needs

If you're like many workplaces, eight out of every 10 workers have run into at least one unexpected financial need during the pandemic.

These setbacks can carry over into the workplace, with distracted, less productive workers.

However, leadership may not be aware of it. Despite admitting that pay advance requests are on the rise, most employers (87%) say their employees are in good financial shape.

What people are saying

A recent survey by *Immediate* found that:

- More than 75% of workers said money problems negatively impacted their physical health and 80% reported mental health struggles.
- Forty percent of employers don't offer financial wellness tools to employees.
- A whopping 97% of employers feel they *could* offer tools to help employees manage their financial wellness.

Addressing challenges

Maybe some of your employees are asking for raises or bonuses, but the money's not there to give. That's where adding financial education to your company benefits can help.

Some places to get ideas:

1. your Employee Assistance Program provider
2. [FinancialLiteracy.org](https://www.financialliteracy.org)
3. [MyMoney.gov](https://www.mymoney.gov)
4. [MoneyManagement.org](https://www.moneymanagement.org)
5. bit.ly/money576

It also may be time to review whether your company's compensation package is competitive enough for your industry and local area.

Info: bit.ly/finances576