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Can we return to normal in 2021? 4 trends to watch for

■ Focus on vaccine policies, continued remote work

On the heels of arguably the most challenging year the American workplace has ever experienced, HR pros are seeking guidance on how to navigate the challenges brought on by the COVID-19 pandemic.

Now more than ever, employers are looking to implement thoughtful strategies to better engage the remote workforce and remain compliant – all while maximizing productivity and maintaining profitability.

Look out for ...

So, what are the key topics that employers need to keep in mind this year? Here are the top trends that will

shape the remainder of 2021, according to HR expert and employment lawyer Angela Rochester.

1. COVID-19 vaccination policies.

As the coronavirus vaccine becomes widely available across the U.S., one question that remains top of mind is whether or not it can be mandated in the workforce.

At this stage, mandating vaccines for employees may be premature until there's more information on efficiency and timelines.

The EEOC advises employers to wait and see what official guidance OSHA

(Please see 2021 ... on Page 2)

Temp jobs fell to Great Recession levels in 2020

■ Positions back on the rise this year

After a near record high of temporary and contract staffing jobs available in 2019, the industry was hit hard by the coronavirus pandemic.

As a result, in the second quarter of 2020, temp and contract positions fell to "Great Recession levels," according to a report by the American Staffing Association.

20% decline

When everything began to shut down at the start of the pandemic, staffing employment decreased by

roughly one million jobs. The report found that an average of only 2.5 million temp employees were working per week, which was a nearly 20% decline from 2019.

However, towards the end of 2020 the industry began to see growth again, climbing to an average weekly employment number of 2.8 million.

According to the experts, staffing companies will have a much better 2021, as we continue to see a steady demand for contract workers this year.

Click: bit.ly/temp577

2021 ...

(continued from Page 1)

will put forth on the matter.

Currently, most organizations have avoided implementing a return-to-office plan that mandates a vaccine because of the complicated nature of the situation.

If you're considering mandating the COVID-19 vaccine, it's important to exercise caution in regards to the ADA and religious accommodations. It's also a good idea to only mandate the vaccine if it's consistent with business needs or justified by a direct threat.

While the vaccine decreases the risk of spreading the virus, employees may respond poorly to being required to receive it.

2. **Paid time off plans.** Something else employers should watch for this year relates to the ADA, paid leave and sick time.

Companies will likely continue to experience workers requesting time

off to quarantine or self-isolate after potential COVID exposure. It's a good idea to have a policy in place for when employees can't come in due to contact with the virus.

3. **Continued remote work, flex schedules.** Although COVID-19 isn't a recognizable disability under the ADA, employers must still accommodate employees' COVID-related issues that can create new or different work circumstances.

Some COVID-related disabilities include heart/lung damage, memory problems and depression or anxiety. Employers should discuss possible limitations with their workers and figure out if a reasonable accommodation exists.

COVID-19 has also quickly ushered in widespread remote work. Now that workforces are scattered, employers need the expertise and tech to keep up. A lot of businesses have gone as far as getting rid of their office space and going fully remote.

Along with remote work continuing in some capacity, employers will need to tackle flex schedules, too. Many employees prefer to work outside of the traditional 9-to-5, which could lead to potential wage and hour issues.

Employers should ensure employees are properly tracking their hours and enforce timekeeping policy violations.

4. **Drug law changes.** Something not related to the pandemic: the legalization of marijuana continues to expand. While the drug is still illegal on a federal level, more states are seeking to legalize medical and/or recreational use.

In 2020, Arizona, Montana, New Jersey and South Dakota all approved recreational use of marijuana. Mississippi approved medical use.

Along with all these legalizations come protections for marijuana users in the workplace. Employers will have to stay up to date on their state and local laws, and take caution before terminating anyone for marijuana use.

Employers can, however, still forbid the use of the drug at work.

Info: bit.ly/trends577

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 fired for social media post: Discrimination?

HR manager Lynn Rondo had just secured her COVID vaccine appointment when company attorney Eric Bressler knocked on her door.

"Got a minute?" Eric asked.

"Sure, come in," Lynn replied. Eric sat down and sighed heavily.

"I'll cut to the chase. Karen Miller is suing us for discrimination. She says she was fired for her Facebook posts because she's white."

Double standard?

"Goodness gracious," Lynn muttered. "You and I both know that Karen's Facebook post about the recent protest was incredibly offensive. She said she wished the protesters would be run over!"

"I know, it was completely out of line," Eric said with a nod. "The problem is, two other employees, Alan and Sierra, also posted about the protests, but they weren't fired."

"Alan and Sierra didn't say anything half as bad as Karen," Lynn argued. "They didn't post anything violent, they just generally supported the protesters."

"I know," Eric said. "But she might be able to make a case that we took Alan and Sierra's side because they're African American."

"We need to fight this," Lynn responded.

When Karen sued for race discrimination, the company fought to get the case dismissed. Did it win?

■ *Make your decision, then please go to Page 4 for the court's ruling.*

What's Working in HUMAN RESOURCES

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Disabled employee laid off during reduction in workforce, no retaliation

■ *Many departmental colleagues were let go as well*

When a disabled employee is chosen to be laid off, it can appear as if discrimination was the real reason they were let go.

But in a recent lawsuit, a court ruled there was no bias or retaliation. Here's what happened.

Acute medical episode

Mark Brader worked as a scientist for pharmaceutical company Biogen in Massachusetts for eight years.

For several months, Brader experienced an "acute medical episode," during which he became very paranoid. Brader began to feel unsafe around his supervisor and filed unsupported complaints against him.

Eventually, the company helped Brader take protected leave to recover. He later returned to work with no

restrictions or accommodations, though his relationship with his supervisor remained strained.

About a year later, Brader was laid off in a massive workforce reduction of 880 employees, because his project was no longer a priority and wouldn't be receiving funding anymore. Brader sued, claiming he was really laid off because he took protected leave.

But the 1st Circuit ruled in favor of the company. The court said the layoff was part of an overall company strategy, and that Brader was far from singled out, since 880 other employees were let go.

In the end, Brader couldn't prove a connection between his medical leave and the loss of his job, the court said.

Cite: Brader v. Biogen, 12/18/20.

Court says 'no bias' when worker refused to follow policy, was fired for insubordination

■ *Employee claimed she was really fired due to her age*

Policy violations can often be cause for terminations – but what happens when the employee corrected their mistake, but was still let go?

A recent lawsuit explored the murkiness of that.

Completed forms too late

Melanie Pelcha worked as a teller at the Watch Hill Bank in Ohio. After working there for years, Pelcha got a new supervisor who changed the policy for requesting time off. Workers now had to submit requests in writing, instead of verbally.

When Pelcha needed time off, she declined to ask for it in writing, and instead asked her manager verbally. After some back and forth, Pelcha

finally relented and completed the written request, though it was late.

However, the supervisor told the bank president about the conflict, who wanted Pelcha fired, stating he had "zero tolerance" for insubordination. She was then let go.

She sued, claiming she was fired for her age. Pelcha didn't buy the insubordination reasoning, because she eventually complied with policy.

But the 6th Circuit ruled in favor of the company. It said there was little to no evidence of age bias, and while Pelcha completed the forms eventually, her hesitation to do so made the request late.

Cite: Pelcha v. MW Bancorp Inc., 1/12/21.

■ Refusal to accommodate worker costs biz \$32K

When a disabled employee requests an accommodation, refusing to even consider it is a surefire way to get the EEOC's attention.

Valley Tool Inc., located in Water Valley, MS, was sued by the EEOC after firing a disabled employee who needed an accommodation.

The worker had sickle cell disease and sought an accommodation: intermittent leave on the days when she was too sick to work. But Valley Tool didn't grant her request. Instead, it removed her from the schedule and placed her on temporary leave before eventually firing her, according to the lawsuit.

This is a violation of the ADA.

Valley Tool Inc. will pay \$32,500 to settle the lawsuit and must also train its staff on proper ADA protocols.

Info: bit.ly/ADA577

■ Company owes \$115K for preference for younger hire

Hiring a younger candidate over an older one could raise discrimination questions – but clearly voicing your preference for someone young will definitely bring about a lawsuit.

Kalamazoo Psychiatric Hospital in Michigan was sued by the EEOC after it discriminated against an older job applicant.

The applicant, a 56-year-old, was highly qualified and the unanimous choice amongst the hiring panel. However, the head of the panel overturned this decision and went with a much younger, less experienced candidate, saying she preferred to hire young people.

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

The hospital will pay \$115,000 to settle the lawsuit and must train its employees on the ADEA.

Info: bit.ly/ADEA577

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.

Would vaccinated workers still have to self-isolate?

Q: Say we had a COVID-19 positive employee in the office who has exposed others to the virus. Would those who have already been vaccinated need to quarantine, or just the employees who haven't been vaccinated?

A: The CDC recently released guidelines on how fully vaccinated people should handle a COVID-19 exposure.

While cases are declining, it's important to remain vigilant. If there is an outbreak in your workplace, fully vaccinated employees don't need to quarantine unless they begin to feel sick.

However, vaccinated people still should be following these safety protocols:

- wearing masks and maintaining social distance
- avoiding medium-sized and large gatherings
- getting tested if experiencing any COVID symptoms
- following employer safety guidelines, and
- following CDC and

health department travel requirements and recommendations.

A candidate has only had one job – is that a red flag?

Q: We recently received a job application from a candidate who looks promising, but she's only had one job and has been there for the last 10 years. It also appears that she's had the same title. Is it a red flag that she hasn't moved up or moved on by now?

A: If she seems like a good fit apart from this, I'd definitely interview her and dig deeper into the specifics of her accomplishments, says management expert and author of *Ask A Manager* blog, Alison Green.

There could be a variety of reasons this candidate hasn't 'moved up' in her company that have nothing to do with her competence.

It's possible she's taken on more responsibilities over the years, but the employer doesn't do title changes, or the candidate wasn't sure how to indicate this on her resume.

On the other hand, maybe she doesn't have the drive you're looking for, and was happy to stay stagnant for 10 years.

This is why it's important to bring her in and ask about it.

Employee is confused about expectations: How to help?

Q: I have a worker who seems to not understand what I'm asking of him. Are there any easy ways to address this?

A: It's crucial to make your expectations known from the very beginning, says employment law attorney David Kim of the firm Ford & Harrison LLP.

Ideally, you'd set forth your expectations in the job description and interviews, and have the worker acknowledge these expectations in writing.

Another key step is to have clear policies and procedures and consistently enforce them – no one should be given a free pass for violations. Hold everyone to the same standard.

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 judge dismissed Karen's discrimination claim.

Karen's attorney argued that she was fired for being white and speaking out against the protest, and pointed to Karen's co-workers' posts. Both Alan and Sierra posted about the protests, yet they weren't disciplined. Karen's race played a role in the company's decision, the attorney argued.

But the court disagreed. It said that there was a stark difference between Karen's posts and her colleagues'. Karen expressed violence online, while Alan and Sierra

didn't. The company was justified in firing an employee for espousing violence, the court said – and it had nothing to do with Karen's race. Case dismissed.

■ Analysis: Violence isn't protected activity

This case acts as an important reminder about what online activity is protected, and what isn't.

The NLRA allows employees to discuss working conditions and terms of employment online without fear of retaliation. But that's about where the protections stop. As this case demonstrated, controversial and violent social media posts aren't protected, and employees can be justifiably fired for them.

Cite: *Ellis v. Bank of New York Mellon Corp., U.S. Ct. of App. 3rd Circ., No. 20-2061, 3/4/21. Fictionalized for dramatic effect.*

When considering employee training options, think of the ‘whole person’

■ Modern workforce wants info on living life better

When many employees hear they’re going to be training, they usually think of presentations that focus on something that helps them do their jobs better.

Depending on how long the training sessions are, there’s a chance they might start thinking about other tasks they need to accomplish that day, maybe zone out and not be fully engaged.

But what if employees also had training that helped them find significance in the work they do and showed that you’re invested in them as people? That’s what we decided to do.

Train them on what?

One of the top things the next generation of workers is looking for from their employers is development opportunities that help them live their lives outside of work better, so we wanted to focus on that.

Research studies have shown that younger workers most desire and value training on:

- making sure their finances are in order
- managing marriage and relationships, and
- making sure their ongoing health and fitness goals are up to date.

This type of “whole person” development is the kind of benefit that forges a deeper connection between your people and your organization’s mission and purpose.

Grow them as people

When employees are strong as individuals, what they do in their productivity will be even stronger.

Yes, there are trainings that are legally required or crucial, like learning to use new hardware, tools and machines; new technology or system software; regulations that affect your business; safety procedures; harassment prevention, etc.

But the key going forward will be to think beyond the basic and typical training topics and address working better, and consider what your employees could use help with in their lives outside of work.

When the workforce associates their personal goals with your company’s goals, they find purpose in their work and renewed motivation that can improve employee retention.

Resources to start with

In the post-COVID-19 world, the types of learning options you offer, which might even involve worker reskilling, will be important.

It may be time to ask higher-ups what new employee personal development programs would be a good fit.

Here’s where we got some ideas, and you can too:

- your Employee Assistance Program provider
- your health insurance provider
- [FinancialLiteracy.org](https://www.financialliteracy.org)
- [MyMoney.gov](https://www.mymoney.gov)
- [MoneyManagement.org](https://www.moneymanagement.org), and
- [WorkLifeBalance.com](https://www.worklifebalance.com).

(Gabrielle Bosche, president, The Millennial Solution, as presented during the BambooHR Virtual Summit)

REAL PROBLEM REAL SOLUTION

■ Creating a corporate culture built on respect

About 25% of Americans say they dread going to work.

The reason for this? They don’t feel respected. And respect is critical in getting your people to stick around long-term.

Over the past five years, estimated costs from turnover caused by workplace culture dissatisfaction were a whopping \$223 billion countrywide.

At our company, we wanted to do our best to create a positive workplace culture based on mutual respect.

Communication keys

We know today’s workplace features different cultures, genders, ages and education levels, and it’s important that everyone can work together in harmony.

That means managers, supervisors and employees must be careful with what they say and how they say it.

Communication can break down because the intent of the message may not be the same as what’s interpreted.

So, we made sure our leadership and workers paid careful attention to:

- who the message was for and how a third party may perceive it
- their tone of voice
- actively listening, and
- treating others the way they’d like to be treated.

For us, allowing all employees to be seen and heard has led to more mutual respect and a healthier work environment. Everyone’s interactions are friendly and professional.

(Cornelia Gamlem, president, GEMS Group, as presented during the BambooHR Virtual Summit)

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.

How can HR persuade employee suffering from burnout to stay?

The Scenario

Carefully reviewing a batch of workers' comp paperwork, HR manager Stu Capper looked up and was surprised to see employee Jamie Gordon silently sitting in a chair in front of his desk.

"Jamie, why didn't you let me know you were there? You startled me," Stu said.

"Sorry Stu, I have to tell you something, but I'm embarrassed to say it," she replied.

Indefinite time off

"Well, you know you can tell me anything in confidence, right?" said Stu.

"I'm giving my two weeks notice. I

didn't find another job or anything; I just need time away from work," Jamie said.

"Sounds like you're having a really tough time right now. Have you thought about just taking a week off instead of leaving altogether?" Stu asked. "That's what your paid vacation time is for."

"Even if I took two weeks, it isn't going to be enough. I'm not sure how much time I'm going to need," she said. "I've been here six years and, if I'm being honest, I don't find my work fulfilling anymore."

"I appreciate your honesty, Jamie. I'm sorry to hear you're struggling. I'll look into what we can do to convince you to stay." Stu said.

If you were Stu, how would you help Jamie?

Reader Responses

1 Frances Nelson, HR manager, Justin Brands Inc., Fort Worth, TX

What Frances would do: I'd suggest that Jamie take some time off and put the decision to quit on hold. Later it'll be important to have a follow-up conversation to see how she's feeling. If there's something going on at home, we can look into if she's eligible for FMLA leave.

Reason: It doesn't happen often, but I've been in Stu's situation – dealing with an employee that's so burned out they're on the verge of walking away. In my experience, when an employee takes at least one full week away from work, it tends to effectively refresh their perspective. After that, they usually decide to stay. If there are issues that persist, we'll do everything we can to address them.

2 Quentin Wright, HR generalist, CenClear, Bigler, PA

What Quentin would do: I'd dedicate a half-hour to Jamie to get to the root cause of what's got her feeling burned out. For example, I might ask if she's bored in her current role. Then, I'd ask follow-up questions based on her responses and collaborate with her on strategies to address the problem together and come to a happy medium.

Reason: Making the effort to tell me she's burned out tells me Jamie cares about the company and doesn't really want to leave. She deserves the opportunity to express in her own words exactly what's bothering her. From there, I'll try to figure out what's going on and identify what the problem *could* be. Are there family or other issues outside of work affecting her ability to do her job? Are there issues with a co-worker that can be adjusted?

HR OUTLOOK

Workers may be looking to leave: What should HR do?

If a report by Achievers Workforce Institute (AWI) is accurate, many employees are feeling overworked and underpaid, and are hunting for a new job.

A survey said that more than 50% of workers plan on getting a new job this year. Last year, that number was 35%.

The reason: work-related stress magnified by the pandemic, which has people reevaluating whether their current employer cares about their wellbeing.

Areas to improve

Instead of remote work causing a decrease in productivity, the opposite is happening. Those working from home are forgetting to take breaks from work, according to data from consulting firm Robert Half.

It's up to employers to gently remind them to avoid overextending work hours, which leads to burnout.

Also, the AWI report found 20% of surveyed employees would stay in their current role, citing positive recognition of their work as the main reason.

At the same time, 42% of employees say that since the start of the pandemic there's been either a lack of communication from their employer or a lack of effort to make remote employees feel connected.

Some low-cost ways to show appreciation and create connection:

- Send a handwritten letter.
- Surprise your employees with random treats.
- Take them out for a socially distanced lunch.
- Give a day off or flex time.
- Start a work area/home decorating tradition, and
- Showcase employees on social media.

Info: bit.ly/jumpship577