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HRMORNING

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HRMorning, part of the *SuccessFuel* Network, provides the latest HR and employment law news for HR professionals in the trenches of small-to-medium-sized businesses. Rather than simply regurgitating the day's headlines, **HRMorning** delivers actionable insights, helping HR execs understand what HR trends mean to their business.

Think employees are ready to return to work? Think again

■ 3 key tactics to make them comfortable

COVID-19 vaccines are abundant and employers are eager to bring staff back into the workplace.

But your employees aren't so eager. In fact, nearly half are *scared* to return.

Top concerns

FlexJobs recently surveyed over 2,100 employees and found a lot have issues with returning to the workplace.

Even with the vaccines, 49% of workers are fearful of being exposed to or contracting COVID-19.

Other top concerns included:

- less flexibility (46%)

- less work/life balance (43%)
- office politics/distractions (34%), and
- lack of safety measures (32%).

Not budging

Employers may think workers' hesitancy is nothing to worry about, and that they'll get used to coming back into the office eventually.

FlexJobs' survey suggests otherwise.

Fifty-eight percent (more than half!) of employees said they'd definitely look for a new job if they weren't allowed to continue working from home, and

(Please see Return ... on Page 2)

Support grows for hiring formerly incarcerated

■ Most adults are in favor of removing hiring barriers

A recent survey conducted by staffing firm Kelly Services found that most U.S. workers are in favor of eliminating hiring practices that discriminate against the formerly incarcerated.

Sixty-four percent of respondents believe nonviolent offenses shouldn't automatically disqualify someone from consideration.

Impacts business as a whole

Furthermore, 71% said employers should eliminate policies that reject applicants for a minor criminal offense.

Companies should take note of these results, because it could have an impact on their business. Seventy-six percent of people said they're more likely to support companies that are dedicated to ending hiring discrimination against those with criminal records.

Despite some new "ban the box" laws which prohibit employers from asking about criminal offenses, there's still a lot of work to be done – hiring of the formerly incarcerated lagged during the pandemic.

Click: bit.ly/banthebox580

Return ...

(continued from Page 1)

31% admitted they weren't sure what they'd do if they were called back into the office.

Only 11% had no concerns about returning to the workplace – and a measly 2% actively want to come back.

So what does this mean for employers? Workers aren't giving up telecommuting without a fight.

What the people want

According to the survey, 65% of employees want to work remotely full time. Another 33% would like a hybrid arrangement. These results aren't surprising to FlexJobs CEO Sara Sutton.

"The landscape of remote work has permanently changed as a result of COVID-19," Sutton says. "I'm not surprised to see that more than half of people working remotely during

the pandemic appreciate its benefits to such a strong degree that they would leave their current jobs."

Sutton predicts COVID-induced remote work will impact the job market and the workplace well into the future.

Easing the transition

If bringing your people back to work has already been decided, there are a few things you can do to try and make the transition less painful.

1. **Consider a flex schedule.** Ask yourself if employees really need to be on-site 100% of the time. If not, implement a hybrid schedule – or let those who really want to stay home, stay home. You'll likely have some employees who'd rather return to the office full-time. Let them.

This strategy can help keep everyone happy and assist with social distancing in the office.

2. **Listen to your employees.** Ask them individually why they don't want to return and what could convince them otherwise. Don't try to guess what'll get them back.

Some people might be concerned about commuting or lack of childcare options. See if you can offer a small stipend to assist with these costs.

And if your workers are mainly concerned about getting COVID-19, reassure them with your safety protocols.

3. **Offer new perks.** Many viewed remote work as a perk, which is now going away. So replace it with something else that's desirable.

For example, unlimited vacation time is becoming more popular, as it helps emphasize a healthy work/life balance while getting people back into the office. Employees might be more receptive to coming back full-time if they knew they could take as many days off as they wanted (as long as their work gets done, of course.)

A pet-friendly workplace is another great perk that could help ease the transition from home to office.

Info: bit.ly/returntowork580

Sharpen your JUDGMENT

This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.

■ Worker fired after exhausting FMLA leave: ADA violation?

HR manager Lynn Rondo had just finished a virtual interview when company attorney Eric Bressler knocked on her door.

"Got a minute?" He asked.

"Sure," Lynn replied. "I just interviewed a promising candidate for Yvonne's old position."

Eric frowned. "I actually wanted to talk to you about Yvonne. She's suing, saying we violated the ADA."

Wouldn't come back

Lynn sighed. "How? She wouldn't come back to work after her FMLA leave. We had no choice but to fire her."

"Remind me what happened," Eric said.

"Yvonne got injured and went on FMLA leave," Lynn explained. "When her leave was up, she said she couldn't come back. So I let her take another month. After that, Yvonne said she still wasn't able to return to work, but she refused to get examined by her doctor to confirm that. She was taking advantage of our generosity. That's when I let her go."

"Yvonne is saying we should've accommodated her instead of firing her," Eric replied.

"I don't see how I could've accommodated her when she just kept refusing to come back at all!" Lynn said, exasperated.

When Yvonne sued for an ADA violation, 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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Sexually harassed worker resigned before investigation could be done

■ Court said company didn't force employee to quit

An employer has a duty to investigate any claims of sexual harassment.

But a recent court decision shows the employee must give the employer a reasonable amount of time to do so.

Constructively discharged?

Heather Lopez worked for Whirlpool in Iowa when she began experiencing unwanted touching from her co-worker.

Lopez said this co-worker rubbed her shoulders repeatedly, came up close behind her, and called her “baby” on one occasion.

She reported this conduct to HR. For the next two days, the co-worker continued to hover near her work station and invade her personal space. Lopez couldn't take it anymore and

resigned on the spot.

Lopez then sued for sexual harassment and retaliation. She said she was “constructively discharged” (forced to resign) because the company did nothing about her harassment report.

The 8th Circuit disagreed with Lopez, though. It said to prove constructive discharge, the working conditions would have to be “intolerable” – and the court didn't find the reported harassment to be overly severe.

Furthermore, Lopez quit only two days after filing her complaint, which wasn't enough time for her employer to investigate her claims and put a stop to the alleged harassment.

Cite: Lopez v. Whirlpool Corp., 3/4/21.

Disabled employee wanting remote work fired, court says ADA wasn't violated

■ 10th Circuit determined physical presence was essential function

When an employee's disability makes it tough for them to do their job, an accommodation can help.

But what happens when their preferred accommodation isn't feasible?

Tried flex schedule

Joan Unrein worked at Colorado Plains Medical Center when she became legally blind.

She could no longer drive to work, and requested a flexible schedule as an accommodation. After a brief trial run, the hospital denied this request, as Unrein was unable to get her work done on a modified schedule.

Unrein then asked to telecommute,

but the hospital said her job required face-to-face interaction with a set schedule. Unrein was then fired.

She sued, saying the hospital failed to accommodate her, but the 10th Circuit denied her claim.

The court said the hospital was only required to give Unrein a reasonable accommodation. After trying out a flex schedule and having it fail, it became clear having Unrein consistently in the office was an essential job function – so her request to telecommute was unreasonable.

Employers must explore accommodation requests, but they aren't required to grant them.

Cite: Unrein v. Colorado Plains Medical Center, 4/8/21.

■ Denied accommodation, firing costs company \$25K

One employer didn't grant a disabled employee's accommodation even though it was reasonable – and the EEOC took them to court.

Baltimore-based tech company Design and Integration, Inc. was sued by the EEOC after denying an ADA accommodation and firing the employee instead.

An employee suffering from depression and anxiety requested one day of remote work every three weeks. Even though this worker would be able to perform her duties from home, and other employees had been granted remote work in the past, Design and Integration denied her request.

The worker was then fired, with a manager telling her she would've never been hired if they knew about her anxiety and depression. This is a violation of the ADA.

Design and Integration has agreed to pay \$25,000 to settle the lawsuit and now must conduct regular ADA training.

Info: bit.ly/ADA580

■ Biz out \$500K for permitting frequent sexual harassment

When a company is aware of ongoing sexual harassment, it's obligated to stop it. One employer did nothing, and ended up shelling out half of a million dollars for it.

The Bay Club Company, based in San Diego, was sued by the EEOC after many employees experienced sexual harassment and retaliation.

According to the lawsuit, female employees were subjected to harassment from both the club's customers and managers. When these women spoke out about the harassment, they were fired. This is a violation of the Civil Rights Act.

The Bay Club Company will pay \$500,000 to settle the lawsuit and will be closely monitored for future violations.

Info: bit.ly/harass580

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 can I do to fix my company's culture?

Q: The current environment at my company isn't good – morale is low, and we're understaffed due to several people resigning recently. Upper management doesn't seem too concerned about fixing things. Is there anything I can do on my own?

A: To be honest, it's going to be impossible to change your company's culture on your own. Major change needs to come from the top in order to stick. But, there are a few steps in the right direction you can take, says management expert and author of *Ask A Manager* blog, Alison Green.

Focus on improving the quality of life for both yourself and your direct reports. Can you get your people additional training for other projects they might be interested in working on? Could you throw in some small perks, like free breakfast vouchers on Fridays?

These small steps are hardly going to cause fundamental change, but it could help the day to day feel more bearable for you and your employees,

therefore increasing morale a little bit.

How can we make return to the office go smoothly?

Q: We're about to bring our employees back into the office full-time. We have masking and social distance mandates in place. Any other pointers for how we can make it go smoothly?

A: It's good you've got the basics of masking and social distancing covered, says HR expert and author of *Evil HR Lady* blog Suzanne Lucas. But there are a few other things you'll want to nail down, too.

Some of your employees will be ready to shake hands again, and some won't. Make sure you emphasize to your employees to err on the side of caution and to not assume every vaccinated person will be okay with touching again. As a general rule, people should still keep their hands to themselves.

In a similar vein, it's a good idea to get on top of potential food sharing issues. Some employees might try to start

bringing in batches of cookies or bagels for the whole office – which could make some feel uncomfortable or unsafe. Send out a memo discouraging food sharing for now to avoid this.

How can we support women re-entering the workplace?

Q: The pandemic forced a lot of women out of the workplace. Are there any ways we can support them as they return?

A: The best thing you can do is listen to what these employees need, says Meenu Agarwal, senior VP of customer success at VMware.

Ask your female employees what difficulties and insecurities they have as they come back to work, and address these concerns as best you can.

Another thing you can do to help would be to conduct unconscious bias training to ensure employees with families aren't discriminated against in the hiring process.

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 Yvonne's case.

Yvonne's attorney argued the company fired her too quickly without going through the interactive process to find a reasonable accommodation, therefore violating Yvonne's ADA rights.

The court disagreed. It said Yvonne didn't do her part by getting evaluated by her doctor to see if she could return to work. Instead, Yvonne kept insisting she wasn't well enough to come back yet.

The court said the company tried to be flexible by

offering her more leave once the FMLA leave was exhausted, but wasn't obligated to continue holding the job for Yvonne when she wasn't able to work.

■ Analysis: Interactive process works both ways

This case demonstrates how the ADA only protects employees who are qualified for their job, with or without a reasonable accommodation.

Since Yvonne said she wasn't able to come back to work at all, the company wasn't obligated to try and find an accommodation that would allow her to. Yvonne's refusal to be examined by her doctor further interfered with her own ADA claim. The interactive process works two ways, and both the employee and employer must participate.

Cite: *Williams v. Pinnacle Health Medical Services, U.S. Dist. Ct. of App. 3rd Circ., No. 20-2737, 3/24/21. Fictionalized for dramatic effect.*

Revamped tuition assistance program to train workers for hard-to-fill jobs

■ Move has paid off in an 85% retention rate

A few years ago, our tuition assistance program was overextended and over budget, resulting in significantly fewer employees receiving financial assistance for educational pursuits.

We knew we needed to strategically allocate the funds we did have for tuition assistance.

First, we focused on getting employees properly trained for hard-to-fill positions at our 29 hospitals and other facilities.

With clear goals in mind, we partnered with an educational technology services provider and their accredited online university to launch a pilot program.

First year

During the first year, we only enrolled six students in the program. The biggest obstacle was the program was too narrowly focused.

So we expanded it to all locations and broadened our focus to include more jobs. The program took off.

Our Full Tuition Grant is open to every full-time employee who's been employed for at least a year. Each summer, we select up to 60 students to help advance their careers at no cost.

To date, more than 140 employees have used a grant to pursue a bachelor's or master's degree.

Retention, promotion rates

The most obvious metric of success is the graduation rate, and we're very pleased there: More than 100 employees have completed degrees through Ashford University, including 32 employees who graduated this fall.

But the larger measure of success is

the retention and promotion rates of all program participants.

Each year, we review our full list of graduates, check on their employment status and see if they have been promoted to a higher position.

Historically, we've seen an 85% retention rate and a 48% promotion rate from the graduates of this specific program, which are very positive compared to industry rates.

Responding to feedback

Over the years, the partnership with Ashford University has continued to evolve and demonstrate the power of collaboration.

Each year, while preparing for the upcoming application period, we review the previous year's data and results to ensure we're addressing any issues

brought to our attention.

Since the program started in 2014, we've responded to feedback by adding essay questions allowing applicants to talk about how they'll apply what they learn to community service and engagement, as well as in their jobs.

Heart of our mission

We're also constantly working to make the application website more user-friendly.

People have always been at the heart of our mission and work. Now, especially with many trained for some of our hard-to-fill positions, they play an even more critical role in our future – and we're aiming to keep it that way.

(Jackie Hunter, senior director of diversity/inclusion and talent pipeline, Banner Health, Phoenix)

REAL PROBLEM REAL SOLUTION

■ Surveyed workforce before implementing return to work

The pandemic forced many of our people to work remotely.

And when the time was right to start drafting a return-to-work plan, we needed to carefully consider the safety and comfort of our employees.

Whether they were vaccinated or not, if there wasn't enough buy-in on returning to work, it could have a negative impact on morale and productivity.

Testing the waters

So we sent a companywide email of the draft version of our policies and asked for employee input.

Every few months, we asked our people in a survey to rate on a scale of 1-10 how comfortable they were with the return to work plan.

We knew it was time to make a move toward reopening when 94% responded with an eight or higher. The other six percent said they'd be anxious about returning to the office, no matter what.

Another important question we asked: "How comfortable would you be if we stopped doing morning temperature checks?" It got nines and 10s from 94%.

We also got some good suggestions when we asked if there's anything we should be doing to make the workplace safer.

For those that made suggestions we didn't use, we transparently told them why the idea wasn't feasible.

When we reopened, we made sure to post plenty of signage around the building to remind everyone of the organization's COVID-19 safety rules.

So far, we haven't sent anyone home because of COVID symptoms, and there have been no employee complaints.

(Barbara Irving, HR director, Moose International Inc., Mooseheart, IL)

Case Study:
**WHAT
WORKED,
WHAT
DIDN'T**

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.

Onboarding lapse: Can HR convince recent hire not to quit?

The Scenario

An email with the subject line "Resignation" brought a frown to HR manager Stu Capper's face.

He was caught off guard to see it was from Cathy Nolan, who had been hired just a month ago.

Stu read the message and was concerned by statements like "It feels like I've been forgotten about" and "I'm frustrated because things are constantly lost in the shuffle because we're working remotely."

Lack of follow-up

"She's not all the way on board," Stu thought as he called Cathy's cell phone.

"Hey, Stu," she answered. "I guess

you got my email. I gave it a chance, but this job isn't working out."

"I'm sorry to hear that, Cathy," Stu said. "We hired you because we knew you'd be a superstar here. Tell me more why you feel it's not working out."

"My first day, I came into the office, got a laptop, filled out some papers, then nothing," Cathy said.

"Is your manager communicating with you?" Stu asked.

"Only emails telling me I missed project deadlines I didn't even know about," Cathy said.

"I believe these issues are fixable. Is there anything I can do to convince you not to quit?" Stu asked.

If you were Stu, how would you handle this?

Reader Responses

1 Laurie Jackson, HR administrative specialist, Pike's Peak Library District, Colorado Springs, CO

What Laurie would do: I'd make every effort to make changes to keep Cathy. I'd start with an investigation into the disconnect between Cathy and her manager.

Reason: You should be able to approach a manager even if you're working remotely. Maybe they're not on the same page because the manager is supervising too many people. I can relate to Cathy's situation. My son's just getting started in his career. His start date was postponed, then the employer told him he had to work from home. Working from home is very isolating – a less than ideal environment for a new professional. He's sticking it out, but he gets frustrated because sometimes he

doesn't have enough to do and he feels ignored. I encourage him to reach out to his manager and say, "I'm ready and willing to do whatever you need."

2 Esther Larios, chief HR officer, Boston Senior Home Care, Boston

What Esther would do: I'd start a fact finding conversation with Cathy. Are there other reasons why she wants to leave? What else is happening that makes her feel out of the loop?

Reason: When we ran into similar situations, we changed our new hire program. The Friday before a new hire starts, they come to the office to pick up their equipment and meet with IT. Then, orientation features meetings with their manager, with an assigned work buddy that can answer any questions and with their work group. Because of COVID, we now hold these meetings on Zoom.

HR OUTLOOK

■ Relief for workplace COVID-related panic attacks

Before the pandemic, close to 27 million Americans were coping with panic attacks, making it one of the most common anxiety disorders.

COVID-19 has likely increased that number. Since the virus arrived in the U.S., the percentage of people reporting anxiety and depressive disorders jumped from 11% to 40%.

Potential impact on the workplace includes increased absenteeism, decreased productivity and increased healthcare costs.

Fresh air

Psychotherapy and/or medication have helped some patients, but there can be issues with sticking to these treatments long-term.

Studies show one contributor to panic attacks is supersensitivity to carbon dioxide, and experts say synchronized breathing therapy can help.

FDA-approved treatments aimed at normalizing respiratory rates have been shown to be effective in minimizing or eliminating panic attack symptoms.

They're available in clinical practice and worth asking your healthcare carrier if they're covered.

During twice-a-day, 17-minute sessions conducted at home, the patient inhales and exhales in sync with rising and falling audio tones accompanied by a graphic display on a tablet.

Weekly telehealth coaching provides support to help patients achieve their breathing targets.

A claims analysis study funded by Highmark Health and conducted at Allegheny Health Network in Pittsburgh found medical costs decreased 35% for patients that had this breathing therapy.

Pharmaceutical costs fell 68% and emergency department costs dropped 65%, the study said.

Info: bit.ly/panic580