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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.

Bad news? 6 ways HR can let employees down easy

■ *Communicating unpopular decisions*

We've all been there. Leadership had to make a tough call. Employees need to be told, but you know they aren't going to react well – and you have the unenviable tasks of figuring out how to break the news.

Unfortunately, communicating unpopular, yet important, decisions is a difficult job for both new and veteran HR pros.

From budget cuts and plugs pulled on projects to wage freezes or extra workloads, “communicating unpopular decisions is a task that all leaders will tackle,” says Kevin Eikenberry, leadership expert and author of *Remarkable Leadership*.

But there are ways to make the news go down a little easier. Here are six tactics to help you prepare for and deliver unpopular decisions.

1. Be prompt

The most important thing: Don't wait. Share the bad news as soon as you know about it.

“Once you have the decision and the needed information, rip off the Band-aid and share the decision,” Eikenberry says.

This is important because you can get ahead of the anxiety that can arise

(Please see Bad news ... on Page 2)

Study: Employers struggling to hire talent

■ *54% of organizations can't fill open positions*

Despite the high pandemic unemployment rate, the majority of employers are having difficulty filling jobs.

This is according to a recent report published by the National Federation of Independent Businesses.

More job ads, incentives

The report found that 54% of orgs are struggling to find talent, the industries having the most trouble include construction, transportation, manufacturing and retail.

Employers are scrambling to fill these positions, increasing the number of job postings and even offering unique incentives to lure in candidates.

The cause of this labor shortage? Many are hesitant to re-enter the workforce due to pandemic-induced mental health struggles, safety concerns, childcare needs and unemployment benefits.

Experts predict labor shortages will begin to ease by the end of 2021, and will potentially resolve in 2022.

Click: bit.ly/shortage582

Bad news ...

(continued from Page 1)

outside of closed-door meetings and the gossip that soon follows.

2. Anticipate the reaction

Think about how your audience will feel – initial reactions, concerns and questions. You can't predict what they'll do exactly, but if you have an idea of how they'll feel, you can address immediate needs.

Will they be afraid it's the tip of the bad-news iceberg? Could they be concerned their roles and expectations will change? Or will they just be upset and need to vent?

Anticipating these things can help you gather the most relevant information and prepare to deliver it.

3. Be clear

This is no time for wishy-washy language to soften the blow. Avoid

“maybe,” “might,” “kind of,” “sort of” and other ambiguous words.

Describe the decision, what it means for everyone and the next steps.

As long as you consider how the audience will feel about the announcement, you likely won't deliver a blunt, cold message.

4. Recognize resistance

Despite efforts to be sensitive to their reactions, you'll still get some resistance. Avoid pushing back to their push-back.

“Just like the pressure builds in a can of soda when you shake it, if you don't acknowledge the resistance to the decision or change, the resistance will continue to build,” Eikenberry says.

Give employees a chance to air their resistance. They often lose their anger edge as they share it – and might even start to recognize some positive aspects.

5. Have a real conversation

Unpopular decisions often come as an edict in an email to the masses – and cause an angry whisper that turns into an uproar by the end of the day.

Employees deserve more. They deserve a conversation.

Even if the news comes from a cold, corporate email, get your people together quickly for a talk.

Allow enough time and space for people to comfortably, and appropriately, share their reactions.

6. Look into the future

Let employees air feelings and ask questions, but stop everyone short of wallowing in pity or belaboring the issue. Describe the future based on the unpopular decision and group and individual roles.

“As you help people see the future, they will begin to move towards it,” Eikenberry says.

Info: bit.ly/badnews582

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.

■ Transgender worker wasn't granted more leave: Bias?

HR manager Lynn Rondo was thinking about her sister's upcoming 4th of July cookout when her phone rang.

“This is Lynn,” she said.

“Hi, Lynn, it's Jake Riley.”

Lynn sat up straighter. Jake was an employee currently out on medical leave. “Hi, Jake. What can I do for you?”

“I'm calling because I'm going to need an extension on my leave,” Jake said with a sigh. “I still haven't recovered from my procedure.”

Offensive manager comments

Lynn frowned. “I'm sorry, Jake, but I can't grant you an extension,” she said. “We need you here. We were already quite generous with granting you retroactive leave when you took time off with no notice.”

“But I need more time,” Jake insisted. “You can't say no.”

“Unfortunately, I am,” Lynn said.

“This is insane,” Jake said. “We both know you're denying this because I'm transgender. I know the company has a problem with it. Steven, my *manager*, has made awful, offensive comments to me.”

“Now, hold on ... ”

“No,” Jake said. “If you won't grant me more leave, I'm suing for discrimination.”

When Lynn didn't grant the leave, Jake sued for sex 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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4th Circuit: Managers' comments constituted same-sex harassment

■ *When conduct was reported, worker was told to 'suck it up'*

An employee was fired for two separate safety violations – however, a court found that before his firing, the worker experienced same-sex harassment.

Here's a breakdown of the case.

Didn't conform to stereotypes

Chazz Roberts worked as a repairman for Glenn Industrial Group in North Carolina. Roberts worked with an all-male team, however he was the only gay employee.

Throughout his time with the company, Roberts' manager frequently called him "gay" and made sexually derogatory remarks. The manager also got physical with him, putting him in a choke-hold once.

Roberts complained to HR, but was told to "suck it up." He was later

fired for violating safety protocols. Roberts sued the company for sex harassment.

A district court initially sided with the company, saying Roberts wasn't harassed based on his sex, because none of his male colleagues were harassed. But the 4th Circuit reversed.

It said Roberts was harassed because he didn't conform to typical male stereotypes – he was singled out because he didn't present himself like his other male co-workers, which is a form of sex harassment.

This case serves as a reminder that the courts' definition of sex harassment has been expanding, and same-sex harassment comes in many different forms.

Cite: Roberts v. Glenn Industrial Group, 5/21/21.

Standard for proving retaliation lower than establishing hostile work environment

■ *Employee said she wasn't promoted because she was a woman*

In order to establish a hostile work environment, an employee needs to show the harassment they experienced was severe and pervasive.

But the bar is much lower to prove retaliation based on a protected class.

Here's an example of that.

Denied access, promotion

Sara Davis worked at the Metro Parks and Recreation Department in Tennessee. She was one of the only female employees, and described the atmosphere as a "good old boys club."

Throughout her employment, Davis claimed to experience discrimination based on her sex, including

reprimands, denied access to meetings and low performance evaluations. When Davis was denied a promotion she believed she was the most qualified for, she claimed retaliation.

A district court sided with the employer, saying Davis's compensation or terms of her employment weren't affected. But the Sixth Circuit reversed this decision.

The court said the definition of retaliation is much broader than the district court believed, and even petty slights and annoyances can be enough to establish a retaliation claim – even though it's not enough to prove a hostile work environment.

Cite: Davis v. Metro Parks and Recreation Dept., 5/10/21.

■ Company owes \$30K after demoting disabled employee

One thing not to do when accommodating a disabled employee: moving them to a lower-paying position.

Meijer Inc., a grocery store chain in Michigan, was sued by the EEOC after demoting a disabled worker.

For five years, the employee was permitted to work in the self-checkout area of the store because of his disability. A new supervisor wanted to move him to a regular register. When the employee explained that wouldn't be possible and asked to remain in his current position as an accommodation, the supervisor attempted to move him to a greeter position, which paid much less.

This is a violation of the ADA.

Meijer Inc. settled the lawsuit for \$30,000 and also must train its managers on ADA requirements.

Info: bit.ly/disabled582

■ Two companies settle racial harassment lawsuits for \$2M

When a staffing agency and the company it worked with both participated in racial discrimination and harassment, the EEOC taught them a very expensive lesson.

Miami-based Ryder Integrated Logistics and Los Angeles-based agency Kimco Staffing Services were sued by the EEOC for racial harassment and discrimination.

According to the lawsuit, both companies created a hostile work environment by allowing employees to use racial slurs towards their African-American co-workers. When the harassed employees complained, both companies fired them instead of correcting the problem. This is a violation of the Civil Rights Act.

Both Ryder Integrated Logistics and Kimco Staffing Services will pay \$1 million each to settle the EEOC's suit, and both companies will be monitored for future discrimination.

Info: bit.ly/racebias582

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.

Are COVID 'long-haulers' protected under the ADA?

Q: We have a few employees who are experiencing long-term effects after contracting COVID-19. Are they considered disabled under the ADA?

A: Yes, they might be, says employment law attorney Fiona Ong of the firm Shawe Rosenthal LLP.

The ADA defines a disability as a "physical or mental impairment that substantially limits one or more major life activities." Long-term effects of COVID-19 could fit under that definition, so your employees may be entitled to a reasonable accommodation.

It's important to note that employers are always free to offer an accommodation, even if the employee doesn't meet the ADA's disability criteria.

Temporary accommodations are also an option – these can always be removed at a later time when no longer necessary (i.e., an employee no longer is experiencing COVID effects).

Encourage your employees to talk to you about their limitations, and you can work

together to come up with a solution, even if the ADA isn't involved.

How can we best prepare for workplace violence?

Q: In the wake of more workplace shootings, is there anything we can do to keep our people safe and be more prepared?

A: While impossible to truly prevent acts of workplace violence, OSHA does have some recommendations to be as prepared as possible.

Employers should have a communication system in place to warn employees about safety hazards, as well as a system for employees to report any safety issues they notice – without fear of reprisal.

Periodic inspections should be performed to identify any gaps in safety and security procedures, and there should also be procedures in place for investigating any threats of violence made against the workplace.

Running emergency drills is also a good idea, so everyone knows what to do.

What are the legal risks of mandating COVID vaccines?

Q: Our company is in the healthcare industry, so we believe it's important to have our employees vaccinated against COVID-19. Could we run into any legal issues with a mandatory vaccine policy?

A: While you're entitled to having this policy, it's likely at least a few employees will push back, says employment law expert Lisa Nagele-Piazza.

Houston Methodist, a hospital in Texas, is facing this issue right now. It required all employees to receive the COVID vaccine, but 117 out of 26,000 workers refused to get vaccinated and have filed a lawsuit against the hospital.

The EEOC has stated employers can require the vaccine, however if employees have legitimate health or religious reasons for refusing to get vaccinated, employers must grant reasonable accommodations.

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 Jake's discrimination suit.

Jake's attorney argued he wasn't granted additional medical leave because he was transgender. Jake's manager's comments proved the company was biased against transgender people, and then the company further discriminated against him by denying him more leave, the attorney said.

But a court disagreed. It said the company initially granted Jake medical leave, but couldn't make the extension work for legitimate business reasons. Jake failed

to prove the denial of the extension had anything to do with his transgender status, because he couldn't point to a cisgender employee who was treated more favorably.

The manager's comments may have been discriminatory, but that didn't prove unlawful denial of more leave.

■ Analysis: Follow policies consistently

As this case demonstrated, a key in proving a discrimination case is pointing to an employee who was treated more favorably. Jake failed to prove the company treated him any differently than a cisgender employee who wanted more leave.

Employers should follow their policies and handle worker requests consistently to avoid bias claims like this.

Cite: Olivarez v. T-Mobile USA, U.S. Ct. of App. 5th Circ., No. 20-20463, 5/14/21. Fictionalized for dramatic effect.

Supported our people by making mental health a value-driven benefit

■ Carrier change increased employee satisfaction

Even though we'd been one of *Fortune's* "10 Best Companies to Work For" for over 22 years, our employee assistance program's (EAP) mental health benefits weren't keeping up with the rest of our best-in-class benefits package.

Employees were struggling to find in-network providers, and scheduling appointments was time consuming.

It was also hard to tell how much of our workforce was utilizing this benefit or how effective the care was. For all we knew, someone could attend five sessions and get absolutely no benefit.

Because this could negatively impact our reputation as a top-notch employer, something had to change.

What do we need?

Data on how our workforce engages with their benefits is important to us. We needed a carrier that could measure the different types of services being utilized, track the outcomes and make the information available to us.

For example, are calls being made to the EAP center without follow-through scheduling for a counseling session? Are employees getting matched with providers experienced in treating their needs?

Thorough search process

We looked at benefits programs our competitors are offering and realized we needed a comprehensive employee mental health program.

After a thorough search process, we found a carrier committed to accessible mental health support for our employees and their dependents.

Benefits got to work ensuring our people were aware of their new mental health benefit and how to use it – and employee engagement and satisfaction increased as a result.

New partnership

Now, anyone looking for care is introduced to an intuitive online platform that recommends nearby providers in minutes.

They can choose to meet virtually or in person and tap into digital tools for building new skills. Most appointments happen within a week of the initial call and our employees love it.

The carrier we chose also gives us the necessary transparency for evaluating their program's effectiveness.

Case Study:
WHAT
WORKED,
WHAT
DIDN'T

99% get matched

Some key metrics are:

- 99% of employees searching for mental health care get successfully matched with a provider
- 11% of employees get matched with a provider within 24 hours of searching, and
- 88% of those in care are experiencing clinical improvement or recovery.

Our new carrier not only removed barriers to care with de-stigmatization campaigns, they helped us build a culture of awareness and support for employee mental health – and it has really paid off.

And we feel great that we can help our employees get the often-overlooked care they need.

(Deborah Olson, principal benefits manager, Genetech, San Francisco)

REAL PROBLEM REAL SOLUTION

■ Expense policy to create 'happy places'

Whether employees work from home, in the office or spend their time between the two, nearly everyone has faced challenges during this past year.

We wanted to help our team members alleviate their work stress and bounce back.

No fix would work across the board for every employee in every working situation – so we knew a one-size-fits-all remedy didn't exist for us.

Instead, we decided to focus on giving employees resources to make their work situation as comfortable as possible.

Employees pick the fix

We created an expense policy that allowed employees to invest in their work surroundings, regardless of where that was.

Essentially, we wanted them to create their own personal "happy place," and whatever that may entail.

While our budget for this idea was modest, the fix the employee chose was entirely up to them.

Some examples: One employee used the budget to get a healthy smoothie delivered occasionally.

Another invested in a fitness app membership to help stay mentally and physically healthy. Someone else enjoyed surrounding herself with fresh plants and flowers.

These employees chose three very different routes, but it was customized to them and what would make them happiest.

The expense policy showed employees two things: We cared about their wellbeing, and we believed they knew what was best for them.

(Tiffany Mast, director of digital marketing, TravelBank, Dale City, CA)

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 should HR address alleged past workers' comp abuse?

The Scenario

Field Supervisor Marc Elliot spotted HR manager Stu Capper in the outdoor break area and approached him.

"Sorry to interrupt, Stu. Something's been bothering me all day and I think I need to say something," Marc said.

"That's OK, Marc. Have a seat," Stu replied. "I know you're fully vaccinated, so you can take off your mask if it makes you more comfortable."

"Ha, I got so worked up I forgot I had a mask on," Marc nervously laughed. He sat down and took off his mask.

"Someone on my crew told me two of the new guys – Aaron and

Cody – were bragging about how much money they got from workers' comp claims at their previous jobs. Sounds to me like it could've been fraud," said Marc.

Serious enough to investigate?

"Workplace rumors are one of my pet peeves," Stu sighed.

"I know, Stu. But if it's true, and they come down with some mysterious injury, it could hurt us," Marc said.

"You're right. I may need to take a look into this," Stu said.

"Is there a workers' comp clearinghouse background check that can be run on them?" Marc asked.

If you were Stu, what would be your next move?

Reader Responses

1 Taylor Meadows, HR generalist, Chiyoda USA Corporation, Greencastle, IN

What Taylor would do: Based on my past experience, this may merit an investigation. I'd turn it over to our safety manager.

Reason: At our company, all worker's comp matters go through the safety department. The safety manager needs to be aware of anything involving employee injuries and workers' comp. Depending on what happens after that, we may have to contact our legal team.

2 Corey Mann, HR director, Memorial Health Systems, Seward, NE

What Corey would do: I'd give our attorney a heads up, but I'd hold off on an investigation.

Reason: You have to tread down

this path very carefully. Marc didn't directly hear the employees talking about their alleged workers' comp payday. It's a secondhand account. So to me, that's hearsay. That's not substantial enough for me to start calling people into my office. In our state, workers' comp records are accessible to the public. But we haven't had a need to look up that information.

3 Karen Huntsman, HR director, Zerbe Retirement Community, Narvon, PA

What Karen would do: I'd tell Marc to keep his ears open and let me know if he hears anything else.

Reason: Because this involves a previous employer, there isn't anything I can do. But if there was a new claim involving Aaron or Cody, we have the option to submit a note to our worker's comp insurance carrier that it could be suspicious.

HR OUTLOOK

■ Cultivating a culture that values mental health

As more employers cautiously take steps toward full return-to-work operations, your people may have different post-pandemic expectations for benefits and culture than they had before COVID-19.

One example: top performing employees want to work for a company committed to the wellbeing of their people.

A survey of 1,500 workers conducted by Mind Share Partners, SAP and Qualtrics found:

- 86% think a company's culture should support mental health needs, and
- 75% of Gen Z employees and half of millennials have left jobs for mental health reasons.

Exploring solutions

In the aftermath of COVID, employee mental health programs need to be accessible, easy to use and empowering for workers so they're able to set their own path to wellbeing – according to clinical psychologist Dr. Heather Bolton.

Because of the wide variety of vendors out there, talking the following checklist over with your organization's benefits broker is a good first step to developing a healthier, more productive and loyal workforce.

Employee mental health resources should:

- focus on happiness, sleep, coping, calmness, health, connection and fulfillment
- enable them to measure their mental health continuously with self-assessments and other tools
- be more than just an assortment of apps
- offer inclusive support for wherever employees are on the mental health spectrum, and
- direct them to other helpful programs, such as your EAP.

Info: bit.ly/mental582