

JULY 14, 2021

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## 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.

# Are we back to normal? 5 big challenges that lie ahead

## ■ Best practices for new workplace realities

**Y**our role has never been easy – and now you're facing even more HR challenges.

Before the pandemic, HR pros handled daily dilemmas and long-term projects, all while keeping your finger on the pulse of the company.

Now, many companies don't operate in the same way – from fully remote and hybrid to configured schedules so employees stay safe.

### Realities have changed

People, companies and realities have changed, and that's presented new challenges for HR.

Here are the top five issues HR pros can expect to face for the rest of this year, and expert tips on how to handle them.

1. **Gauging employee morale.** Almost half of HR leaders in a recent study from Paychex said it's more difficult than ever to gauge employee morale.

Makes sense, right? Many employees aren't in sight. Those who are on-site are likely wearing masks. It's tough to gauge if people are happy if you can't see them smiling.

But it's not just a physical test. Everyone has been extremely stressed

*(Please see Normal ... on Page 2)*

## Record number of employees quitting jobs

### ■ Quit rate is highest since 2000

**W**ith a record number of job openings comes a record number of workers leaving their jobs.

According to the *New York Times*, four million employees left their jobs in April, making the "quit rate" 2.7% of employed people.

This is the highest the rate has been since 2000.

### Better opportunities

The quit rate was highest in the leisure and hospitality industries. And

while this mass employee exodus causes turnover issues and business disruptions, economists say employees seeking better opportunities is a sign of a healthy labor market.

The reason for so many resignations? One theory is many people have been wanting to leave their jobs over the past year, but the uncertainty of the pandemic made them stay on longer.

Employers should expect to focus on retention efforts throughout 2021.

*Click: [bit.ly/quitrate583](https://bit.ly/quitrate583)*

# Normal ...

(continued from Page 1)

for more than a year. How can you tell if they're overly stressed by life, or if they really aren't happy and motivated by work?

**Best answer:** Survey them. Whether you use an app, email or paper, ask employees to rate their morale and engagement compared to pre-COVID days. Ask what they think could improve engagement and morale, too.

**2. Keeping remote employees healthy.** Nearly half of all HR leaders say they're concerned about employees' mental health – whether they work remotely or on-site.

HR pros are often concerned about employee health (physical and mental) and offer opportunities to help workers improve that. But in any kind of remote setting, it's a bigger challenge because you can't see if employees are suffering any visible symptoms. HR also can't be sure if employees know how to easily access

their health benefits remotely.

**Best answer:** Gear up efforts to promote mental health benefits. It's a good idea to offer outlets to relieve stress – such as counseling, yoga, meditation, exercise and work/life balance policies. More importantly, you'll want to share information on all you offer through multiple communication channels.

**3. Monitoring employee behavior.** About 45% of HR leaders say monitoring employee behavior is more challenging than ever. If you don't see employees every day – and how they work and interact with colleagues – it's difficult to know if they're acting as they should.

Not to mention, communicating primarily through email and messaging services could also lead to more misunderstandings.

**Best answer:** Encourage weekly meets. Ask frontline managers to check in weekly with employees to make sure they have everything they need, and to see how they're doing in general.

**4. Adapting to new work styles.** Some employees adjusted well to remote work, and others didn't. Some will want to come back into the office, and others will drag their feet about it. HR pros are going to have to facilitate some kind of harmony.

**Best answer:** Flexible thinking. It's important not to let your line of thinking fall back into old patterns. Instead of protesting a new idea right away, let yourself mull it over and see how it would work as a solution.

**5. Recruiting new employees.** About 40% of HR leaders are currently struggling to get new talent. It's difficult to find and interview candidates right now, especially if you can't meet them in person first.

**Best answer:** Imagine your ideal candidate. Think about what skills the new hire will need to succeed. How much experience have past employees needed for the role? Having baseline requirements will make it easier to know if someone would be a good fit.

**Info:** [bit.ly/challenges583](https://bit.ly/challenges583)

## 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.*

### ■ Free speech violation? Worker fired for social media post

HR manager Lynn Rondo was just locking up her office for the day when she saw company attorney Eric Bressler hustling toward her.

"Hi, Lynn, I was hoping to catch you," Eric said, out of breath. "This should only take a few minutes."

"Come on in," Lynn replied, reopening her door.

"I wanted to talk to you about Amy Gilbert's firing," Eric said. "She's suing us for gender discrimination."

### Immediate termination

"What? Why?" Lynn demanded. "Amy made several posts on Facebook voicing support for the Confederate Flag. That offended several workers she supervised. We thought it was best to let her go."

"The thing is, Amy has had a spotless record for the past 30 years," Eric replied. "She's saying she should've been given a warning instead of immediate termination."

"We have a policy stating we're permitted to fire employees immediately for harassment," Lynn pointed out. "And Amy's employees certainly felt harassed by the views she shared online."

"We've also never had any complaints about gender discrimination before," Eric said. "Amy's grasping at straws. I think we should fight this."

When Amy brought the lawsuit to court, the company fought to get the case dismissed.

Did the company win?

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

### What's Working in HUMAN RESOURCES

EDITOR: RACHEL MUCHA  
ASSOCIATE EDITOR: BRIAN BINGAMAN  
MANAGING EDITOR: RICH HENSON  
EDITORIAL DIRECTOR: CURT BROWN  
PRODUCTION EDITOR: P.J. FRONZEO

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# Court: OK to fire employees for not complying with vaccine mandate

### ■ 116 hospital workers refused to get COVID-19 vaccine

When a group of hospital workers pushed back against a vaccine mandate and were fired, they sued for wrongful termination.

Here's how the company came out on top.

#### Human trials?

Several months back, Houston Methodist Hospital informed its employees that everyone was expected to receive the COVID-19 vaccine. Out of the 26,000 workers, 116 refused to get vaccinated.

This group of employees sued the hospital, claiming their employer tried to unlawfully force them to get vaccinated.

They went on to say the hospital violated federal law by "forcing its employees to participate in human

trials," since no vaccine has been granted full approval from the Food and Drug Administration (FDA) yet.

But a district court ruled in favor of the hospital. It said the employees couldn't prove the hospital had forced them to commit an illegal act.

Furthermore, the court rejected the employees' "human trial" argument, since the vaccines have been granted emergency use authorization from the FDA. These employees weren't wrongfully terminated, the district court concluded.

This ruling can reassure employers that it's OK to have COVID-19 vaccine mandates, and there can be legal standing to terminate those who don't comply.

*Cite: Bridges v. Houston Methodist Hospital, 6/12/21.*

# Undocumented employee fired for workers' comp claim wins retaliation case

### ■ Citizenship status has no bearing on comp benefits, court says

It's illegal to fire an employee in retaliation for filing a workers' compensation claim.

And a court recently reinforced that ruling, even though the employee wasn't authorized to work in the U.S.

#### Threatened to drop claim

Ricardo Torres worked for Precision Industries, a manufacturing company in Tennessee, when he injured his back on the job.

Torres reported the injury and saw a doctor. When his employer refused to cover the cost of the doctor's visit and Torres' pain didn't improve, he filed a workers' comp claim.

When Torres' manager got wind

of the claim, he physically threatened Torres to get him to drop the claim. Torres refused, and he was fired.

In court, Precision Industries argued that Torres wasn't even entitled to workers' compensation because he was an undocumented worker, so his retaliation claim was moot. A district court agreed, but the 6th Circuit reversed the decision.

The court said there was no specific law preventing undocumented workers from receiving workers' comp benefits.

Furthermore, Torres was clearly retaliated against for filing his claim.

*Cite: Torres v. Precision Industries, 4/22/21.*

### ■ Company owes \$410K for failing to stop harassment

Allowing sexual harassment to happen in the workplace is bad enough – but dismissing an employee's complaints makes the situation so much worse.

The EEOC sued a Walmart in Buffalo, NY, for failing to put a stop to sexual harassment.

According to the lawsuit, a male employee regularly harassed female co-workers. The conduct included inappropriate comments about their bodies, unwanted touching, and showing the women underwear he wanted them to wear.

When one employee reported this harassment, her manager dismissed her concerns, telling her to "stand up" for herself and to put her "big girl panties on." This is a violation of the Civil Rights Act.

Walmart settled the suit and will pay \$410,000. The store must also train all its supervisors on anti-harassment measures.

*Info: bit.ly/harass583*

### ■ Racial, religious bias costs company whopping \$5.5M

Not accommodating an employee's religious beliefs – and harassing them for it – is a surefire way to get the EEOC's attention.

Denver-based company JBS Swift & Company was sued by the EEOC for both race and religious discrimination.

The company employed a Muslim worker, who requested prayer breaks throughout his day. He was denied, and was harassed when he tried to pray on lunch and bathroom breaks.

The lawsuit also claims Muslim employees were called offensive names, and co-workers regularly threw things at them. This is a violation of the Civil Rights Act.

JBS Swift & Company will pay \$5.5 million to settle the lawsuit

*Info: bit.ly/muslim583*

## 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.

### How can we make workplace more LGBTQ-inclusive?

**Q:** What are some ways we can make our LGBTQ employees feel more included and welcome at work?

**A:** There are many ways you can make your workplace more inclusive for LGBTQ staff, says HR expert and author of *Evil HR Lady* blog Suzanne Lucas.

The biggest way is to put your money where your mouth is. LGBTQ employees will be happy to work for an organization that makes donations to LGBTQ causes.

Another easy way to be more inclusive is to ask people's pronouns. A survey by Tallo found that 88% of Gen Z candidates think it's important for employers to ask pronouns.

One more important thing: Don't make assumptions about people's identities or sexual orientations.

### How should we combat vaccine misinformation?

**Q:** We've had a few workers discussing the COVID-19

vaccine in the workplace, and these talks can sometimes lead to arguments or misinformation being spread. How can we combat this?

**A:** Employers should treat vaccine disputes like any other workplace conflict, says HR VP Elizabeth Joyce of the research firm Gartner.

Workers spreading vaccine conspiracies is not only distracting, but can dangerously influence people on the fence about getting vaccinated. Managers should have conversations with the offenders to let them know how inappropriate it is to discuss this with co-workers.

Instead of pointing out the employee is incorrect in their vaccine beliefs, which could cause an even bigger conflict, employers should simply explain how these conversations are disruptive to the work environment.

Managers can say something along the lines of, "This is not work-related, and it's causing people to lose focus. That's not a way we want to be engaging in the workplace."

### Do we have to let an employee work from home?

**Q:** We had an employee who worked from home, but was unable to perform well remotely. However, he still wants to work from home due to fear of contracting COVID-19. Do we have to let him?

**A:** Fear of getting COVID-19 isn't a disability, and doesn't need to be accommodated under the ADA, says employment law attorney Bradley Cave of the firm Holland & Hart LLP.

However, if this employee has an underlying disability that puts him at greater risk of contracting COVID-19, you should engage in the interactive process and consider allowing remote work.

There may be another accommodation that allows him to work in-office. If he does end up going back to remote work, you're still able to hold him to regular standards and start discipline processes if he fails to meet these set standards while working from home.

*If you have an HR-related question, email it to Rachel Mucha at: [rmucha@HRMorning.com](mailto:rmucha@HRMorning.com)*

### Sharpen your judgment...

## THE DECISION

(See case on Page 2)

Yes, the company won when a court dismissed Amy's discrimination lawsuit.

Amy's attorney argued that her termination was too hasty. With Amy's flawless employment record, she should've at least been given a warning before being fired. The company's treatment of her pointed to gender bias.

But a court disagreed. It said there were no reported incidents of the company mistreating Amy or other employees because of their gender.

Additionally, the company's own harassment policy said immediate termination was permissible – and the workers

under Amy's supervision no longer felt comfortable working for her upon learning her opinions through her social media posts. Case dismissed.

#### ■ Analysis: Social media isn't separate from work

A lot of employees assume what they post on their private social media accounts won't affect their employment status, but this case proves that's not true. And if subordinates take offense to their manager's views, it can veer into harassment territory, like it did in this instance.

It's a good idea to remind your employees about company social media policies and to fully investigate complaints about workers' social media habits.

**Cite:** *Patterson-Eachus v. United Airlines Inc., U.S. Dist. Crt. CO, No. 19-CV-01375-MEH, 12/9/20. Fictionalized for dramatic effect.*

# Self-funded trust kept employee health costs stable through COVID-19

■ *Trust a good option for small to medium size employers*

**K**eeping our employee health costs down was always a struggle. That's when we decided to explore our options, and we looked into a self-funded healthcare plan.

We started by tracking the utilization data over five years – which we weren't able to do before in a traditional, fully funded health insurance plan – and it was enlightening.

For example, we learned that our pharmaceutical costs were high because some of our people take medications that are on the expensive side and don't have a good generic equivalent.

### Fewer employees

On the other hand, the tricky part about self-funding is it favors larger employers.

Having 500 employees contributing premiums, along with stop loss insurance, helps balance out an unexpected wave of costly claims.

However, if you only have 100 employees like we do and 10% of the workforce starts having major health issues – a legitimate concern during the coronavirus pandemic – it would increase costs substantially.

### Additional factors

We learned that in addition to company size, workforce demographics have a major impact when it comes to self-funded health benefits.

In our case, we have many young women, who may be considering having children, and a lot of older men. These two groups draw high health costs.

Also, in a self-funded model,

employees who become especially high-maintenance are subject to being “lasered out.”

It means that instead of raising the premium for all employees because of a lot of high-dollar claims, the carrier adjusts the coverage for high cost employees and the employer maximum out of pocket cost gets raised.

### Designated fund handler

After expressing concerns to our benefits broker, they referred us to a partner that acts as a trust for employers our size in our industry that have also gone the self-funded route.

This self-funded trust reduces our administrative burden by managing the funds designated for our employee health plan.

The trust is industry-specific so it understands our needs and has helped us get a more accurate picture of what our health benefit costs are going to be for the year.

### Kept costs down

There's still a chance down the road we may go back to a fully funded employee health insurance plan because leadership may start having second thoughts about the amount of employer-assumed risk under a self-funded plan.

But because it's kept costs stable throughout the pandemic, we're sticking with the self-funded trust for now, and we'll reevaluate down the line if necessary.

*(Terry Cline, HR director, BancCentral National Association, Alva, OK)*

## REAL PROBLEM REAL SOLUTION

### ■ Top staffers train, share best practices

Some of our employees are what we called “superstars” at their jobs. They set a great example, and it seemed like everyone could learn a thing or two from them.

Problem was, with various divisions and locations, all our employees didn't always interact or cross paths.

As a result, they didn't get to see the people who excelled in action.

It was difficult to share their skillsets and know-how person to person due to how spread out we were.

And having a trainer absorb our staff superstars' best practices and pass them along to others wasn't very effective, either.

### Walk and talk through it

Fortunately, we figured out a way to get people who were performing off the charts to share their best practices across divisions and locations.

We asked them to show us exactly what they did on camera.

These staffers walked and talked everyone through their best practices while a colleague shot a video of it.

Then we sent short videos with one skill lesson each to all employees in similar roles.

Employees could identify with their colleagues and put each tip into practice immediately.

Not to mention, being able to view these videos at their leisure made it all the more convenient.

It even stirred up some friendly competition at our company to do things better and become the next video superstar! Now, everyone has the tools they need to excel in their roles.

*(Dave Mingle, global director of customer experience, General Motors, Detroit)*

**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.

### Worker stressed by unexpected expenses: How can HR help?

#### The Scenario

HR manager Stu Capper walked down the hall when he saw communications director Michaela Hilling coming his way. She was shaking her head and looking slightly downward.

"Something on your mind, Michaela?" Stu asked.

"I was on my way to see you," she replied.

"In that case, let's head to my office," he said.

When they got to Stu's office, Michaela began to cry.

Stu reached for the box of tissues he kept in his desk. "Go ahead and take your mask off and tell me what I can do to help," he said.

"I'm embarrassed to ask. Can I get an advance on my salary? I'm having money problems and I don't know what to do," she said, wiping her eyes.

#### Financial worries

"You're definitely not alone in that struggle right now. Tell me more about what's going on," Stu said.

"My car needs major repairs. I got a really high doctor bill yesterday. And my hot water heater died this morning," she said.

"Not only do I not have enough money to cover these right now, I'm afraid I'm not going to have enough money to retire on."

*If you were Stu, what advice would you give Michaela?*

#### Reader Responses

##### 1 Sherry Wilson, HR director, Blakehurst, Towson, MD

*What Sherry would do:* I'd discourage Michaela from pursuing an advance on her pay and give her a pamphlet guiding her toward our EAP providers that specialize in money matters. I'd point out that she can contact them whenever it's convenient for her and that financial counselors will keep whatever she tells them in confidence. I'd also remind her that 401(k) funds come from her pretax dollars, making it a good way to save for retirement. I'd encourage her to contribute whatever she's comfortable with because it's worth it.

*Reason:* Borrowing from future pay tends to have a snowball effect that causes more problems than it solves. How will Michaela deal with having less money next payday because we

already gave it to her? However, it's an encouraging sign that Michaela mentioned retirement savings because it means she's thinking about her future and not just her immediate money needs.

##### 2 Bonnie Ace-Sattur, HR director, Monroe County Administrative Offices, Stroudsburg, PA

*What Bonnie would do:* For Michaela's retirement concerns, I'd refer her to a representative with our pension program. I'd also recommend that she sign up for the deferred compensation elective benefit that we offer to our people.

*Reason:* Pretax dollars go into deferred compensation program accounts and they're released for unforeseen expenses – like if the roof blows off your house. This program provided assistance to our people that were furloughed during the worst part of COVID.

## HR OUTLOOK

### ■ 5 ways to keep employees happy, reduce turnover

Watch out, HR pros! According to research by Prudential Financial, 25% of all workers are considering quitting their job after pandemic emergency restrictions are lifted.

Reasons include not feeling supported by their employer and lack of growth opportunities in the company.

But there are steps firms can take to make employees want to stick around longer, which lowers turnover and hiring costs.

#### Path of development

Tami Simon of the employee benefits consulting firm Segal offered these tips:

1. **Be willing to make changes.** It may be time for your training program to incorporate reskilling, upskilling and career lifecycling. Support it with apprenticeships and appropriate formal education and licensure.
2. **Make training accessible.** Because different people learn in different ways, consider offering online, classroom, virtual reality, shadowing and hands-on learning options.
3. **Coaching clarity.** Transparently tell employees about career development paths and what it takes to progress. Create a culture where each employee is in tune with their purpose and how it contributes to company objectives.
4. **Look at your managers' successes.** "Evaluate managers by the successful advancement and promotion of their people. It shouldn't just be the employee's responsibility to progress," Simon said.
5. **Regularly reinforce success.** Instead of relying on annual reviews for employee performance feedback, provide frequent empowerment and performance feedback.

*Info:* [bit.ly/retain583](http://bit.ly/retain583)