

OCTOBER 1, 2021

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## HRMORNING

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## Workplace conflict up: 5 tips to get ahead of collision course

### ■ Getting back to the office

**H**R leaders beware: Workplace conflict will be on the rise – and leaders will need to help employees regain harmony.

Unfortunately, many companies returning to the workplace are on a collision course with strife. According to the LaSalle Network Re-Entry Index, 40% of leaders anticipate conflict when employees return to the office.

“While planning for office re-entry, businesses should expect some degree of backlash, as there is no one policy that can please every employee,” the LaSalle researchers said.

The sources for conflict abound. Employees have issues with their

employers, colleagues and bosses. Some aren't happy about returning to work and others resent anyone who remains remote. Not to mention, many employees have forgotten workplace etiquette.

### Take action now

“Don't wait until a problem arises to help managers recognize and deal with situations that are not only disruptive, but pose significant risk to the organization,” says Melissa Gonzalez Boyce, JD, legal editor at Xpert HR. “Advance preparation is key to

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

## Study: 44% of workers faced harassment

### ■ Only half of employees report problems to management

**I**f you thought remote work eliminated workplace harassment, a recent survey suggests otherwise.

According to a study done by employee feedback management platform AllVoices, 38% of workers experienced harassment remotely, such as through email, virtual meetings or chat apps.

Concerningly, nearly one-fourth of employees said harassment got *worse* when their company switched to remote work.

For those who are back in the

office, 44% experienced bullying or discriminatory harassment.

### Want to stay anonymous

This is an issue employers will need to address, especially when 34% of employees said they'd leave a job due to unresolved harassment problems.

The study also found that only half of employees have reported harassment to management, but 85% would report if there was an anonymous method.

*Click: [bit.ly/harass588](https://bit.ly/harass588)*

# Workplace ...

(continued from Page 1)

minimizing the potential for conflicts in the future.”

HR pros and leaders at all levels will want to take steps now to prevent workplace conflict – or they’ll need to mitigate it when it hits.

Here are five strategies to deal with the rise in conflict.

### 1. **Communicate early and often.**

Leaders can head off workplace conflict with transparency. The more employees know about the transition to the office, the more likely they’ll be at ease. And when they’re at ease, they’re less likely to spark tension.

“Nothing should be a surprise to employees,” says Tom Gimbel, founder and CEO of LaSalle Network. “It helps lower anxiety and gives employees ample time to ask questions and mentally prepare.”

2. **Prepare the frontline.** Give front-line managers a manual or training

practice at handling real-time conflict. After all, they’re the most likely to stand in the middle of employees in conflict. Get them started with real-life examples.

“If employees are arguing about vaccines, redirect them,” suggests Gonzalez Boyce. “Stop and say something like, ‘Look, everyone has their own ideas on this topic. That’s not why we’re here. We’re at work, where our focus should be. How are things going with ... ’”

3. **Be candid.** Nearly 60% of employees are worried about having awkward conversations along the lines of vaccinations, safety, flexibility and not wanting to return to work, a Harvard Business School study found.

Guess what employees do when leaders don’t have these uncomfortable conversations? They fill in the unknown with worst-case scenarios and gossip.

Leaders should be candid so there’s less room for negative talk.

4. **Get the gang back together.** Try to build harmony before discourse and conflict sets in. Managers should hold regular team-building events to help employees reconnect.

You might want to offer companywide training on transitioning back to the office. Include reminders on procedures and updates on new protocols.

Another idea that worked at LaSalle Network: Creating mental health support groups led by therapists for all interested employees.

5. **Maintain a ‘clean break.’** Many employees said one disadvantage of working from home was they lost the clear line between work and home life. With a return to work, you can help cut workplace conflict by maintaining that boundary.

Leaders can set the example. Don’t send messages – or expect responses – outside of work hours. Check on employees’ workloads to ensure they can maintain a healthy balance. Happy employees are less likely to cause conflict.

Info: [bit.ly/conflict588](https://bit.ly/conflict588)

## 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 instead of manager’s girlfriend: Sex bias?

HR manager Lynn Rondo sat at her desk, already dreading her next meeting: An employee had just been let go.

“Hi, James,” Lynn said when he appeared in her office. “I’m so sorry about this, but we have a generous severance package I want to go over with you.”

“This is ridiculous,” James said. “We both know I’m only losing my job because I’m not sleeping with the boss.”

### Lack of funding

Lynn blinked, shocked. “Excuse me?”

“The layoff was between me and Melanie, right?” James asked. “Of course I got the ax, because Melanie is in a relationship with Dan, our manager. That’s what saved her.”

“James, I wasn’t aware of anything going on between Melanie and Dan, but I can assure you, that had nothing to do with this decision,” Lynn said. “We simply don’t have the funding to keep you both. And actually, Melanie has consistently had better performance reviews than you.”

“We both know why she had better reviews,” James said, getting up. “This is discrimination. I’ll see you in court.”

When James sued for sex bias, 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

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*What’s Working in Human Resources*, (ISSN 1088-3223) October 1, 2021, Vol. 26 No. 588, is published semi-monthly except once in December (23 times a year).

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

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# The use of slurs in another language can create hostile work environment

### ■ Manager also gave employee less favorable assignments

Courts have determined that one or two uses of a racial slur are enough to create a hostile work environment. But what if the slur is uttered in a foreign language?

In a recent lawsuit, the 5th Circuit decided a slur is a slur in any language.

### Offensive terms

Michael Johnson, an African American man, worked as a maintenance worker for PRIDE Industries in Texas.

His Hispanic supervisor began calling him the Spanish equivalent of the N-word. The supervisor also referred to Johnson as “mijo” (son) and “manos” (hands) instead of calling him by his name.

Furthermore, the supervisor

began giving Johnson less favorable assignments, and removed his application for a promotion.

Johnson later sued for a hostile work environment based on racial discrimination. The 5th Circuit ruled in his favor.

The court stated the N-word is the “most noxious racial epithet.” The fact it was spoken in a language Johnson didn’t speak was irrelevant. The continued use of that word, as well as the other terms the supervisor used with Johnson, were enough to establish a hostile work environment.

Johnson’s case only got stronger when he proved the supervisor treated him more poorly than the other non-African American employees.

*Cite: Johnson v. PRIDE Industries, 8/6/21.*

# 5th Circuit: Company violated FMLA by firing poor performer during leave

### ■ Employee took FMLA leave after ‘final warning’

One company terminated an employee with performance problems – but ended up in court because he was on protected leave at the time.

Here’s why a court ruled against the company.

### Fired two months in

James Hester worked as an engineer for Texas-based Bell-Textron Inc. for more than 20 years. During his time there, he only received one bad performance review.

After the review, Hester was given a “final warning” to improve his performance or face termination. Not long after, Hester requested FMLA leave due to his epilepsy. Two months

into that leave, Bell-Textron fired Hester for poor performance. Hester then sued for FMLA violation.

The company argued Hester’s firing had nothing to do with his FMLA leave and was because of his poor performance, which was documented. But the 5th Circuit disagreed.

The court said because Hester was fired during his leave, the timeline indicates the company’s decision wasn’t “completely unrelated” to Hester’s FMLA leave.

This case is a reminder that even if the worker has a history of poor performance, the timing of terminations does matter.

*Cite: Hester v. Bell-Textron Inc., 8/23/21.*

### ■ Refusal to hire pregnant worker costs company \$40K

The EEOC has issued a warning: If an employer refuses to hire a candidate just because she’s pregnant, the commission will take it to court.

Wise Staffing Group, located in Tupelo, MS, was sued by the EEOC for pregnancy discrimination.

During an interview for a data clerk position, a candidate revealed to the hiring manager that she was pregnant. The manager then informed the candidate a more qualified person received the job. However, the EEOC discovered the person who ultimately got the job was less qualified than the pregnant candidate. This is a violation of the Pregnancy Discrimination Act (PDA).

Wise Staffing Group will pay \$40,000 to settle the lawsuit, and the company must also conduct anti-discrimination training.

*Info: bit.ly/pregnant588*

### ■ Employer sued after worker penalized for having disability

When an employee has a disability, employers are expected to help accommodate them – not punish them.

The EEOC recently sued Michigan-based company Agropur Inc. after it mistreated a disabled employee.

The employee in question had an allergy to rubber and plastic, and requested to wear gloves while doing her job. The company didn’t grant this simple request. Instead, it forced the employee to leave work when she had allergic reactions, then marked her as having unexcused absences.

When her accumulated absences exceeded the allowed number in the attendance policy, the company fired her. This is a violation of the Americans with Disabilities Act (ADA).

The case is currently pending.

*Info: bit.ly/disabled588*

## 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.

### Can we have a surcharge for unvaccinated employees?

**Q:** I saw that Delta Airlines is instituting a surcharge for unvaccinated employees. Could my company do that?

**A:** The short answer is yes, you can do this, but it's a little complicated, says employment law attorney Lyndsey Barnett of the firm Graydon Head & Ritchey LLP.

First of all, your surcharge amount for unvaccinated employees can't exceed 30% of the cost of single coverage. So you could charge \$200 only if the cost of your health plan (including employee and employer contributions) is \$600 or more.

You also must offer a reasonable alternative to avoid the surcharge. For example, if an employee has a medical reason for not getting the vaccine, you should make an exception if they receive the proper medical paperwork. To cover your bases, you should have the same exemption policy for sincerely held religious beliefs.

One more thing to remember: If you're a large employer, under

the ACA you must provide affordable health coverage. The surcharge could potentially make your coverage "unaffordable" and leave you vulnerable to penalties.

### Is any off-the-clock work OK for nonexempt employees?

**Q:** We have a few hourly workers who do a few work tasks at home off the clock, like answering a quick email. Do they need to be paid for this?

**A:** You have to be very careful when it comes to tracking hourly employees' work activities, says employment law attorney Robert Boonin of the firm Dykema.

According to the FLSA, employees must be paid for all activities necessary for performing their jobs.

However, there is a "de minimus" exception. If the intervals are small, scattered and difficult to track, employers don't need to worry about those. But if these employees are frequently responding to emails off the clock, that time needs to be paid, since they are technically working.

### How should I handle these problematic messages?

**Q:** When an employee resigned recently, messages were found on his computer between him and a co-worker, mocking another colleague. A lot of them were pretty rude. Should I bring this up to the conversation participant who's still here?

**A:** Yes, you need to bring this up. The remaining employee could continue to engage in this behavior with someone else, which can create a toxic environment, says management expert and author of *Ask A Manager* blog Alison Green.

It'd be different if this employee was just venting a little, but this sounds extreme. Let them know you've seen the messages and this conduct is unacceptable.

Most likely, this conversation will embarrass the employee, and they'll be quick to correct their behavior. It's important to keep an eye on them to ensure this behavior doesn't continue.

*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 James's sex bias lawsuit.

James's attorney argued his layoff was due to sex discrimination because the manager, Dan, had a clear preference for an employee he was in a romantic relationship with. Since Melanie and Dan were involved sexually, this is a form of sex bias, and therefore a violation of the Civil Rights Act, the attorney argued.

But a court disagreed. First, it said that Melanie's performance was better, so there was a nondiscriminatory reason for keeping her on instead of James.

The court went on to say that even if Dan did show preference to Melanie because of their relationship, that still wouldn't constitute sex bias because Melanie's gender wasn't the reason she was kept on – it was because of her personal relationship with the manager.

### ■ Analysis: Nepotism doesn't equal sex bias

This case made an important distinction that just because an employee of the opposite gender is given preferential treatment, it doesn't automatically constitute sex bias.

To prove sex bias, an employee has to show their gender is the reason they were treated differently – not their personal relationship with the manager.

**Cite:** *Maner v. Dignity Health, U.S. Ct. of App. 9th Circ., No. 18-17159, 8/20/21. Fictionalized for dramatic effect.*

# How we got execs on board with creating a mindfulness program

■ Using research, employee testimonials & original data

I used to thrive on high-level stress and multi-tasking – I always believed I could do it all.

But then I burned out in a big way. I ended up in the hospital, needing back surgery, physical therapy and a lot of different medications. I needed to make a big lifestyle change, which was when I discovered mindfulness.

I started small, with just one to five minutes of mental practice a day, but it made a huge difference in my life.

And because of that, I wanted to bring it into the workplace somehow. I knew there had to be many employees on the verge of burning out, just like I was.

### Pilot program

I found a colleague who shared an enthusiasm for mindfulness with me, and we put our heads together. We didn't want to overwhelm anyone or force the idea of mindfulness on staff, so we started small.

We had just one page of ideas and met with an executive to make our case. In the end, he gave us \$5,000 to start a mindfulness pilot program, just to see how much interest our employees really had in it.

We were hoping to get 100 people to participate. But after we sent out a companywide email explaining the program, we quickly got over 500 responses from people very interested in participating.

Our cap was firm at 100, so we added the other 400 employees on a waiting list, and we got started.

### Helping them get started

The pilot program was set to last for 30 days. We initially had two offerings: yoga sessions, and the use

of a meditation app. The app was by far the more popular selection.

It was important we set everyone up for success, so we led sessions on how to get the app set up, and all the cool tools it offered. You can't just give employees the app and expect them to figure it out on their own.

As our program got started, we regularly collected feedback from our employees and brought that to other executives. One exec didn't even know what the word 'mindfulness' meant at the time!

To combat that, I would regularly send him articles and short videos explaining what it was all about. Employee testimonials also got hesitant execs on board.

We also regularly shared our data and testimonials with HR. In the end, the testimonials

were so glowing, we convinced HR to add access to the meditation app to employees' benefits packages! Now everyone has access to the app, whether they're in the mindfulness program or not.

### More people on board

Now, we're focused on expanding our mindfulness program. We have employees using word of mouth to encourage their colleagues to join.

We also have a Mindfulness For Beginners course. This is a five-week course, less than 10 minutes per session, that educates employees on how to practice mindfulness. It also dispels myths.

Overall, our mindfulness program has made our employees less stressed and more resilient and creative.

*(Christine Wenger, national manager, Toyota, Frisco, TX)*

## REAL PROBLEM REAL SOLUTION

### ■ Used COVID necessity as great onboarding tool

Like many companies, we sent most employees home when COVID-19 hit.

Fortunately, the pandemic didn't hurt our business terribly, and we were able to invest in new talent. So we still needed to recruit and onboard employees.

We adapted, became increasingly flexible and eventually created a good process for finding and bringing in new hires that was, in part, inspired by pandemic work habits.

### Immediate celebration

When it was time to go on site and resume traditional recruiting and onboarding, we decided to look at our remote process for better practices.

We wanted to take the best from both situations to make a great new process that our people would appreciate and enjoy. And we managed to accomplish that.

For instance, one thing stood out with remote onboarding: Our recruiter made Zoom calls to tell prospects they got the job.

New employees said they loved this because they had someone to celebrate the win with them. The recruiter enjoyed seeing people's happiness, too – all their hard work was rewarded.

It was also a way to use Zoom for a fun reason instead of associating it with just work meetings.

So we stuck with Zoom when informing new hires, rather than using phone calls – and the process is still fun!

It's been a real morale booster for our new people and has helped them be even more excited to start working with us.

*(Annie Lin, VP of people, Lever, San Francisco)*

**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.

### A few workers were habitually late, now everyone's doing it

#### The Scenario

HR manager Stu Capper sat at his desk, phone to his ear – after the seventh ring, he gave up. He then spotted office manager Liz Brady walking by his office.

"Hey, Liz," Stu called. "Is Peter out sick today? I can't get him on the phone."

"Nope." Liz looked at her watch. It was 9:45. "He'll be here soon I'm guessing."

"Why isn't he here yet?" Stu said.

"It isn't just Peter," Liz said. "Half the department doesn't get in until ten anymore."

"What?" Stu leaned back in his chair. "But we expect everyone to be here by nine."

"I know," Liz said. "But I'm trying to be flexible. A lot of people have to deal with traffic or drop their kids off at school."

"I get that," Stu said. "But an hour seems excessive."

#### Pushing the envelope

"I'm not sure what to do about it now," Liz said. "Employees say the flexibility is a big reason they stay at the company."

"I've warned some of the worst offenders that they need to get here earlier, but they continue to push the envelope," Liz continued. "I'm not sure how to get through to them about holding a stricter schedule."

*If you were Stu, what would you do next?*

#### Reader Responses

**1** Mark Might, VP of internal operations, Ohio Insurance Guaranty, Columbus, OH

*What Mark would do:* I'd start keeping track of every employee's tardiness. I'd keep a record of what time everyone actually came in and how many hours they really worked. Their pay would be docked if they weren't hitting the number of hours they should be.

*Reason:* A lot of workers may be guilty of coming in late, but it's important to see how many hours each employee is actually working – some may work far less than others, which isn't fair. Docking pay would let everyone know tardiness won't be tolerated anymore. It would also give them incentive to ensure they're on time. I bet a lot of these "traffic" problems would clear up.

**2** April Burchett, HR manager, Minden Gardnerville Sanitation, Carson City, NV

*What April would do:* I'd talk with the office manager and organize a staff meeting. We'd let the workers know that lateness won't be tolerated anymore, and those who continue to be late will be written up. If the tardiness continues, eventually it would lead to termination. I'd let them know that those with legitimate excuses for coming in late can get that approved by their manager.

*Reason:* Since it's important for these employees to be on time for client calls and meetings, we need a strict policy against lateness. But, obviously, there are going to be some exceptions, which is why employees now need manager approval for tardiness. People who were just being late because they thought they could get away with it won't go through the effort of trying to get approval.

#### HR OUTLOOK

#### ■ Digital health tools: The pandemic impact & challenges

At the height of the pandemic, telehealth became a very popular healthcare option for those not wanting to risk leaving the house. And with the rise of telehealth popularity came other digital healthcare tools, too.

A recent report released by IQVIA Institute for Human Data Science examined all facets of digital health, including the pandemic's impact, continued usage, challenges and what the future looks like for digital healthcare.

#### Increased usage

Here's a rundown of all the benefits of digital health tools the report identified:

- Several different digital health tools helped people during the pandemic, and there was an increase in app downloads for telehealth, exercise and mental health
- 90,000 new digital health apps were created in 2020, with more than 350,000 now available
- More people are wearing devices that monitor steps taken and calories burned, and
- The use of software to treat, prevent and manage specific conditions has increased.

#### Continued challenges

However, it's not all smooth sailing for digital health tools. Here are some problems that still exist, according to a study done by the University of Michigan:

- Telehealth grew during the pandemic, but total health care remains at the same level, meaning people use telehealth as a substitute for in-person visits
- Rural areas have low rates of telehealth usage, and
- Older people, minorities and men were less likely to use telehealth.

*Info:* [bit.ly/telehealth588](https://bit.ly/telehealth588)