

From: Business Management Daily

Subject: Practical HR strategies to boost your career

## In The News ...

**New overtime threshold coming, may reach \$50k**

The Biden administration is expected to soon propose an increase in the salary threshold that qualifies white-collar employees to receive overtime pay. Expect a new standard near the level the Obama administration tried in 2016 to push through: \$47,476 per year. A federal court struck down that threshold before it could take effect. The current threshold is \$35,568 per year (\$684 per week).

**Inflation has employers rethinking salary budgets**

With inflation hitting 8% (a 40-year high), a new Mercer survey finds that half of employers say they'd be willing to conduct additional salary reviews for all or some employees in response to inflation. Less than 25% say they've already adjusted salary budgets to account for this spike in prices.

**Divesting from Russia: Do your employees agree?**

Overall, three-quarters of American workers say U.S. companies should quit doing business in and with Russia because of the war in Ukraine, says a new Harris Poll. Baby boomers (87%) are most supportive of divesting from Russia. Only 58% of Millennials agree.

**In this issue**

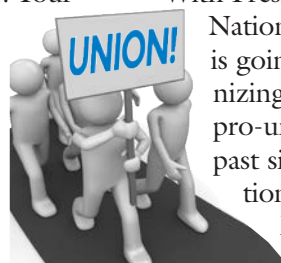
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**A rebirth for labor? Unions & activism on rise**

The year-to-year statistics aren't worrisome: Only 10.3% of American workers belong to a union, and that number has fallen steadily over the past few decades. But organized labor has racked up some head-turning successes lately. Your employees have likely taken notice—and they may be open to exploring union representation themselves.

“Two years ago, I would have told you that labor unions were a dinosaur,” says Cleveland employment law attorney Jon Hyman. “Today, they are Jurassic Park, risen from the dead. Employers who ignore their threat risk getting eaten alive.”

Even when employees aren't organizing a union, they're becoming more vocal in challenging their employers (both union and nonunion) on social, cultural and moral issues.



Plus, the tight labor market is giving workers more leverage to push their employers on issues like social justice, the environment and pay.

**NLRB fueling the fire.** You're facing another headwind in this battle. With President Biden's support, the National Labor Relations Board is going all out to make the organizing climate for employees as pro-union as possible. Over the past six months, union representation petitions filed at the NLRB have jumped 57% from the same time a year ago.

The NLRB's latest move: It's working to strip employers of their rights to hold mandatory “captive audience” meetings with employees to explain the downside of creating a union.

**The Amazon game-changer.** Last month, Amazon workers at a Staten Island fulfillment center voted to cre-

*Continued on page 2*

**The 'big quit' is fizzling; hiring will get easier**

Is the “Great Resignation” becoming the “Great Regret”?

About four million people quit their jobs every month in the past year—a record high dubbed the “Great Resignation.” But a new Harris Poll of 2,000 people who quit over the previous year found that almost a quarter now regret the decision and wish they'd stayed in their old jobs.

Plus, recent employment numbers show that Americans are increasingly stepping off the sidelines and back into the workforce in recent months. And some states are tightening the access to unemployment benefits.

All of this means U.S. employers will likely soon have less trouble fill-

ing open positions.

The Great Resignation narrative holds that millions of workers simply stepped away from the workforce during the pandemic and weren't coming back. Some retired early. Others supposedly concluded that working just wasn't worth the hassle of managing daycare, virtual schooling and a deadly disease.

But reports show that the labor participation rate is returning back up to pre-pandemic levels. The rate reflects the percentage of potential workers in their prime working years (ages 25–54) who are employed or looking for a job.

*Continued on page 2*

## A rebirth for labor?

(Cont. from page 1)

ate a union. That's a first for stridently anti-union Amazon, which has successfully held its finger in the labor dike for years.

Since that vote, employees at more than 100 other Amazon facilities have taken steps to unionize.

**Why this matters:** It could illustrate a workplace power shift. That organizing campaign at Amazon's Staten Island facility was a grassroots crowdfunded effort started by a terminated 20-something worker. It was supported by the big unions but was mostly employee-driven and fueled by social media.

Also, don't think this is only a problem for large employers. Union organizing has enjoyed a renaissance lately by convincing small groups of employees to join, including individually owned franchises.

**The bottom line:** The best union defense continues to be providing good pay and good working conditions, and responding to employee feedback.

**Online resource** For advice on legally responding to a union campaign, see [www.theHRSpecialist.com/union](http://www.theHRSpecialist.com/union).

## The 'big quit' is fizzling

(Cont. from page 1)

**States restricting unemployment.**

During the pandemic peak, Congress passed laws that gave unemployed workers enhanced and extended unemployment benefits. Those additional funds are no longer being paid.

Plus, several states have gone even further by reducing how long workers can receive unemployment benefits. For example, Kentucky just reduced the number of eligible weeks to 12 (down from 24) during times in which the state's unemployment rate is low, as it is now.

**Final tip:** Don't close the door on recent resigners. Maintaining a connection with ex-employees can help bring them back. Build a rehire database that includes ratings and insights from managers. And reach out to those "most wanted" ex-workers twice a year to let them know you want them back.

## Big changes planned for Form I-9 this fall

As employers are painfully aware, the Form I-9 (*Employment Eligibility Verification*) is full of hidden traps—and the penalties for mistakes can be harsh. So just as you've finally figured out the current I-9 version, the Department of Homeland Security, the Department of Homeland Security has proposed significant changes to the form before the current version expires on Oct. 31.

The goal is to simplify and clarify the process for HR departments. Among the changes proposed:

- Compress Sections 1 and 2 from two pages to one page to reduce paper use and storage burden on employers.
- Change Section 3 to a Reverification and Rehire Supplement that is a "stand alone" section, which employers would only print and use as needed.
- Update the List of Acceptable Documents to include a link to List C documents in the regulations. This will help because List C is where the unlisted documentation resides.
- Reduce and simplify the I-9 instructions from 15 pages to 7 pages.



The goal: Clarify the I-9 process and reduce the paper/storage burden on employers.

- Remove electronic PDF enhancements to make sure the form can be completed on all electronic devices.

Another proposed revision: Remove the onerous requirement for employers to put "N/A" in all unused fields. This would allow HR and new hires to leave fields blank if the information doesn't apply.

Many employer advocates were hoping that DHS would extend the flexibility for remote verifications that was allowed during COVID. This proposed update doesn't include that flexibility, but DHS still may grant it sometime this year.

**Online resources** For more details on the proposal, see [www.tinyurl.com/I-9proposal](http://www.tinyurl.com/I-9proposal). To submit your comments to the DHS, go to [www.tinyurl.com/I-9comment](http://www.tinyurl.com/I-9comment).

## Time to update workplace romance rules?

It's been five years since the #MeToo movement raised awareness about sexual harassment in the workplace. Many employers amended their policies governing romantic relationships.

Few companies put a total ban on workplace romance, but many prohibit supervisor-subordinate relationships. Some merely require disclosure.

Such cases, however, keep coming. Earlier this year, Jeff Zucker, president of CNN, stepped down after failing to disclose a romantic relationship with a subordinate, as company rules require.

CNN's policy states, "To avoid a conflict of interest, employees must not hire or supervise someone with whom they have a personal relationship. And if you are in a position to influence the employment of someone with whom you have a personal relationship ... you must inform HR."

Practically speaking, these are your options for regulating romance:

- Prohibit all workplace romances.
- Prohibit relationships in which one party reports to the other.
- Require disclosure of direct-report relationships.
- Require transferring one or both partners in a direct-report relationship. The safest course is to transfer the highest-ranking partner.

**Note:** Power-differentiated relationships can become legal trouble even if the person isn't a direct supervisor. *Example:* A car dealer loan officer had a relationship with a sales rep. Other reps complained that the loan officer gave the best sales leads to her lover.

**Online resources** For five tips on legally managing employee relationships in the workplace, go to [www.theHRSpecialist.com/romance](http://www.theHRSpecialist.com/romance).



# 'Don't say pay' policies violate labor law

Last month, a Kentucky fitness center posted a notice on its breakroom wall that read, “*Effective immediately, conversing about wages (both on and off duty) is strictly forbidden ... If you are overheard speaking (or listening to!!) a conversation in which wages are discussed, you will receive disciplinary action up to and including termination.*”

It did not go over well. Employees complained and, quite creatively, responded with their own poster on which 17 employees listed their personal hourly rates. The company’s poster (and the employees’ response) quickly went viral online. And it serves

as a great cautionary tale for you and your managers.

**The lesson:** Don’t try this at home. The National Labor Relations Board says, “Policies that specifically prohibit discussions of wages are unlawful.” It adds that employees “may have discussions about wages when not at work, when on break, and even during work if employees are permitted to have other non-work conversations.” These rights apply whether the workers are in a union or not.

**Online resource** Read more about employees’ rights to discuss wages at [www.tinyurl.com/NLRBpaytalk](http://www.tinyurl.com/NLRBpaytalk).

# Stay away from ‘year of graduation’ questions

It’s graduation season, so here’s a timely tip to remind your hiring managers: Don’t ask applicants which year they graduated from college or high school. And if the applicant’s résumé doesn’t have that info, don’t ask. An EEOC lawsuit settlement announced last month is a perfect warning.

**The case:** An applicant was rejected for a customer service position after he declined a recruiter’s request that he provide the date he completed his education. The applicant objected to the question, noting that such requests are unlawful



age-discrimination triggers.

The recruiter did not respond to his objection. But soon after, the applicant was not referred to the position, despite earlier assurances that he would be referred. The EEOC sued and the company wisely settled. (*EEOC v. Software People LLC*)

**The EEOC’s message:** “The Age Discrimination in Employment Act not only protects job applicants from discrimination based on age, but it also prohibits recruiters from retaliating against individuals who object to discriminatory questions during the hiring process.”

# Ensure bosses accurately track staff hours

The Fair Labor Standards Act requires employers to track employee hours, and that task usually falls to front-line managers. But bosses under pressure to reduce labor costs may be tempted to require employees to work off the clock.

Alert managers that accurate time tracking comes first. As this case shows, FLSA violations can hit supervisors directly *in their own wallets*.

**Recent case:** Managers at a New Jersey electrical company allegedly

required all hourly workers to clock in at the start of their shifts. But they received straight-time pay for eight hours, even if they worked late. A federal court ruled that the company deliberately failed to pay 89 electricians for all hours worked or accurately track hours. Each employee received \$8,000, twice the amount they were underpaid.

**The kicker:** Those managers were held personally liable and had to pay the penalties of more than \$16,000. (*Scalia v. FTR*, DC NJ)

### If employee says, ‘No B-day party!’ you’d better listen

An employee told his boss not to celebrate his birthday at work because he has an anxiety disorder. Surprise! The boss held the party anyway. The worker had a panic attack and left. He was fired three days later. A jury sided with the worker’s disability bias lawsuit, awarding him \$450,000. (*Berling v. Gravity Diagnostics*, DC KY)

**The lesson:** The ADA requires you to offer reasonable accommodations for employees with disabilities, including anxiety disorders. Simply asking employees what they need (and believing their answers) goes a long way toward simple, low-cost accommodations.

### Promotions: Stick to your process & document decision

Barbara worked as a machine operator. She complained to the EEOC that male bosses at her factory groomed men for promotions and withheld training from women. A manager told Barbara he could promote whomever he wanted. Now the EEOC has sued on her behalf. (*EEOC v. Corning*, WD NY)

**The lesson:** When considering promoting an employee, carefully follow (and document) all steps in the process, from job announcement to final decision. Never let favoritism taint the process.

### Have a business reason for employee’s medical exam

When a manager heard that one of his employees had a disability, the boss placed him on leave and demanded he undergo a medical exam. The employee refused, was fired and then sued. A federal court hit the company with a \$67,000 judgment and mandatory training on the proper use of medical exams. (*EEOC v. Blue Sky Vision*, WD MI)

**The lesson:** Any medical exams (and subsequent job actions) must be job-related and necessary. The ADA strictly limits when employers can require medical exams or conduct inquiries. For tips on legal (and illegal) medical questions, go to [www.theHRSpecialist.com/medquestion](http://www.theHRSpecialist.com/medquestion).



## As of May 1, accept only unexpired I-9 docs

Since the pandemic began, the U.S. Immigration and Customs Enforcement (ICE) has let employers accept *expired* List B identification documents (such as driver's licenses) to complete I-9 forms. No more. Starting May 1, you can only accept *unexpired* List B documents. Plus, employees who previously presented expired List B documents must update their records with current, unexpired documents by July 31.

## Congress aims to mandate 401(k) auto-enroll

Legislation moving through Congress would require new 401(k) plans to automatically enroll employees into the plan. The House passed the bill by a wide margin, and the Senate may act soon. Even without a new law, more employers have voluntarily adopted auto-enroll features to boost 401(k) participation rates. Learn more about the 401(k) bill at [www.theHRSpecialist.com/401kbill](http://www.theHRSpecialist.com/401kbill).

## OSHA to increase recordkeeping obligations

OSHA has proposed to increase the requirements for certain employers to electronically submit their workplace injury and illness records (OSHA Forms 300). Organizations with 100 or more workers in certain high-hazard industries would be required to submit safety data electronically each year. The new rules would make

it easier for OSHA to publicly post more illness and injury data on the web. Read about the new proposal at [www.tinyurl.com/OSHASafetyrecords](http://www.tinyurl.com/OSHASafetyrecords).

## What counts as retaliation? Heed DOL guide

Joining the EEOC, which issued guidance on COVID-related retaliation in December, the U.S.



Department of Labor has now issued its own guidelines. Both indicate that the Biden administration is cracking down on employers who punish workers for exercising their legal rights to file (or voice) workplace complaints.

That's why it's wise to have a system to make it easy for employees to file complaints and to make clear in supervisor training that any retaliation is unlawful. Find more about the DOL guidance at [www.theHRSpecialist.com/DOLretaliation](http://www.theHRSpecialist.com/DOLretaliation).

## Data collection for EEO-1s runs until May 17

The EEOC last month began collection for the 2021 EEO-1 Component 1 data. The deadline to submit your information is May 17. Any private-sector employers with 100 or more employees (and federal contractors with 50+ workers) who meet certain criteria must submit information to the EEOC on the demographics of their workforce (race, ethnicity, sex, job categories, etc.). For more details, visit the agency's EEO-1 Component 1 site at [www.eeocdata.org/eo1](http://www.eeocdata.org/eo1).

## HR Q&A

### Can we have different attendance policies for different departments in our company?

**Q.** During the pandemic, each department in our company eventually created its own attendance rules, including how to apply (and waive) absence points. Should we allow this to continue now, or should we develop one single attendance policy for the whole organization? — A.P., Virginia

**A.** Your current policy is legally risky. Having a variety of different approaches to counting attendance "points" could lead to claims of discrimination. Also, some departments may have fallen into practices that would be considered unfair to individuals with disabilities or to those who are using FMLA.

You face other legal risks. Federal transportation regulations may require employers to excuse absences when an employee is too sick to drive safely, or you may have collective bargaining agreements for some workers. There may be additional laws for workers in the public sector.

In short, there are many good reasons to harmonize your various attendance policies as much as possible to promote consistency and compliance.

### Our payroll software messed up: Are we liable if employees owe taxes?

**Q.** A couple got married (they both work for us) and they refiled their W-4s to indicate their new status. They also checked the box on both forms indicating they wanted more taxes withheld. The checkbox was entered into the payroll software, but the software didn't pick it up, so they owed taxes. Is there any employer responsibility for their underwithheld income taxes?

**A.** You should apologize for the mistake, but no, the company isn't liable. The couple used the money last year, so they are taxable on it. It's up to employees to review their withholding.

This is a good example why you should remind employees to check their pay statements and withholding. If they're unsure whether they're on track, they can use the IRS' Tax Withholding Estimator tool at [www.irs.gov/individuals/tax-withholding-estimator](http://www.irs.gov/individuals/tax-withholding-estimator).

*Do you have a question? If so, you can email it to The HR Specialist at [HRSEditor@BusinessManagementDaily.com](mailto:HRSEditor@BusinessManagementDaily.com).*

## Is it time to drop your vaccine mandate?

Although the surging BA.2 variant has some cities tightening restrictions again, most mask and other COVID restrictions have been lifted in the majority of states and cities.

Is it also time for your organization to rethink its COVID policies, including requiring employees to be vaccinated and boosted as a condition of employment? Before making a decision, weigh these three issues:

**1 Worker expectations.** Some employees and applicants want their co-workers to be vaccinated. Others may want the opposite. Ask how employees feel about dropping your mandate. If most workers want a vaccinated workplace, dropping the requirement may lead some to quit. That's a big problem in today's labor market.

**2 Your organization's risk tolerance.** Some companies remain more vulnerable to a coronavirus outbreak than others.

If your employees work in close physical proximity to one another, you're more likely to see production interrupted if the BA.2 variant gets out of control.

Employers that can easily revert to remote work will have fewer problems. Infection spreading among unvaccinated or under-vaccinated workers on the factory floor is more likely to cause disruption than if a teleworker becomes sick.

**3 State rules.** A growing number of jurisdictions have either banned employer vax mandates or expanded exemptions beyond federal carveouts that exempt disabled employees or those with sincerely held religious objections to vaccines.

**Online resources** Track your states' rules at [www.nashp.org/covid-19-action-center](http://www.nashp.org/covid-19-action-center). Read the CDC's latest guidance at [www.cdc.gov/coronavirus/2019-ncov/your-health](http://www.cdc.gov/coronavirus/2019-ncov/your-health).



## Worker claims of job bias fall to a 24-year-low

With fewer employees in their workplaces last year due to the pandemic, the volume of employee-on-employee harassment and discrimination also declined.

In fact, the total employee discrimination charges filed with the EEOC last year (61,331) was the lowest since 1997, when the agency began using its current system to track data.

Still, this decline isn't an isolated trend. Discrimination charges have been falling steadily since reaching an all-time high of 99,947 charges in fiscal year 2011.

Retaliation was again the most common complaint by far (34,332), cited in more than half of all EEOC claims. That's because plaintiff attorneys now routinely add a charge of retaliation on top of their typical claims of race, age, sex or religious bias.

For the third year in a row, disability discrimination was the most common protected-class bias charge, including many related to the pandemic. Since April 2020, the EEOC received more than 6,200 COVID-related disability charges, with 2,700 related to COVID vaccinations.



### Employees' top discrimination complaints

	Number of charges	Percent of total
<b>Retaliation</b>	34,332	56%
<b>Disability</b>	22,843	37%
<b>Race</b>	20,908	34%
<b>Sex</b>	18,762	31%
<b>Age</b>	12,965	21%
<b>National origin</b>	6,213	10%
<b>Color</b>	3,516	6%
<b>Religion</b>	2,111	3%

*Source:* EEOC. Total percentages exceed 100% because most EEOC complaints allege more than one type of bias.

## The secret to retention? Gallup poll offers clues

In this tight labor market, retaining your employees is as difficult as it is essential. A new Gallup poll offers insights into what it takes to prevent employees from taking that initial step of sending out their résumés.

**Pay matters, especially as inflation spikes.** When Gallup surveyed 13,000 working Americans, 64% of those who had changed jobs said they did so because the offer included a significant increase in pay or benefits. In fact, better compensation was their primary motivator for jumping ship. In contrast, a similar poll from 2015 found that 60% accepted a new job because it allowed them to better use their skills.



The takeaway for employers: Expect to bump up your salaries and perks to secure new hires. You may have to bump up current employees' to keep them from defecting, too.

**Money isn't everything.** Other reasons cited to switch jobs: stability and job security (53%), vaccination policies that align with the worker's beliefs (43%) and diversity (42%).

**Schedules are key.** In a new Pew Research survey, 39% of those who took a new job in the past year did so because they previously worked too many hours and wanted a more manageable schedule. Another 30% said they wanted *more* hours.

Other steps to consider:

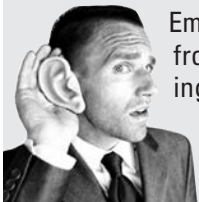
- Create (and publicize) paths to promotion that demonstrate commitment to employee job security and stability.
- Demonstrate (and publicize) your commitment to worker health, including plans to mitigate COVID illnesses and other safety measures.
- Commit to (and publicize) initiatives that promote diversity, equity and inclusion.

To: \_\_\_\_\_  
 From: \_\_\_\_\_

Date: May 2022  
 Re: Powerful phrases for managers

## Communication Say this, not that! Phrases that make or break a manager

### 10 things employees want (and need) to hear from managers



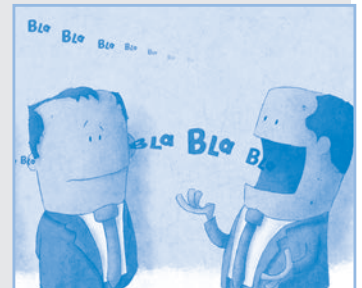
Employees crave more than just a paycheck from work. They want to go home feeling respected for the job they do. Here are phrases or questions you can use to build respect, gratitude and trust with your employees:

1. **"I need your help."** Rather than lose respect for you, they'll appreciate you treated them as valued partners.
2. **"How is your family?"** Employees will be more loyal and motivated if they feel valued as individuals, not just as job descriptions. Get to know employees on a real level and incorporate that knowledge into your interactions.
3. **"What do you need from me?"** Employees may be anxious about asking the boss for what they need, whether it's new equipment or time on a project. By asking, you extend permission to make those requests.
4. **"Thank you."** Praise, especially when it comes from authority, is fulfilling. In most cases, they'll be willing to work harder to keep the compliments and thanks coming.
5. **"Hey, everyone—listen to what Mike accomplished!"** Don't stop with a private compliment. Tell the rest of the team, too! Go beyond verbal praising. Highlight successes on the company website, newsletters or bulletin board.
6. **"What would you like to do here?"** Check with employees periodically to ask what they'd like to be doing. You may not be able to accommodate every preference, but workers are more motivated if their jobs match their skills.
7. **"What do you think?"** To unlock buy-in and achievement, ask employees for their opinions, ideas and preferences. Again, they'll be more invested.
8. **"Here's where we stand."** Help employees make connections regarding how your company works. Also, make sure everyone understands the relationship between their performance and the bottom line. Transparency breeds trust.
9. **"Mistakes happen. Let's talk about how to fix this."** Remember that mistakes can be part of growth. Focus on how to keep the mistake from happening again. Consider whether a task or process should be tweaked.
10. **"This task is in your hands—I'm stepping back."** Micromanaging and excessive hovering tell employees you don't trust them. Once you've delegated a task, step back and let employees do what you've asked them.

### 10 phrases that trigger bad vibes and employee turnover

As a manager, your words carry a lot of weight. It's important to avoid these types of common phrases that could turn employees against you ... and lead them out the door.

1. **"That's above my pay grade."** This essentially tells employees you not only can't solve the problem, but you're afraid to poke anyone higher for a solution.
2. **"Hold that thought."** OK. For how long? Tomorrow? Or until I forget about it? If an employee has a thought (be thankful they do), hear it out. "Hold that thought" is code for "I'm not interested in what you are about to say."
3. **"Because I pay your salary."** This comes from bosses who can't articulate a sound reason for an order or assignment. Give a clear business reason for any request.
4. **"I'm really busy right now."** You are, but find out what he or she wants. Maybe it can be addressed in minutes. If not, schedule a time when the worker can come back.
5. **"I need it yesterday."** The cliché is demeaning to the employee who's seeking a meaningful deadline. If it is urgent, say why.
6. **"Great job! Great job!"** This is fine if it's sincere and used sparingly when it's really warranted. Overuse of this T-ball-field praise dilutes its effectiveness.
7. **"I only took \_\_\_ days off last year."** This is inviting everyone to a pity party or elevating your own work ethic. Either way, employees don't want to hear about your woes, especially if you're not willing to listen to theirs.
8. **"Why did this mistake happen?"** This question works if it's directed squarely at the system, not the people in it. Otherwise, it could look like you're seeking a scapegoat.
9. **"I don't believe in giving employees a perfect score."** This performance review downer is a great way to convey that there's no point in truly excelling. This misguided motivational technique will only champion mediocrity.
10. **"Let me know if you need help."** Again, these words are fine, but tone is everything: When they're empty, they essentially mean, "Good luck; don't bother me with this anymore." Instead, stop by later to ask how you can help or what the person needs from you.





# Managing your I-9 forms: When to keep, when to shred

The Form I-9, *Employment Eligibility Verification*, is often a breeding ground for mistakes. Yet despite all the risks, employers often miss out on one of the few free lunches in I-9 compliance: shredding or purging all of those really old and errant I-9s that are beyond the Form I-9 retention requirement.

**What the law says.** In a nutshell, an employer must retain an employee's Form I-9 for "three years after the date of hire or one year after the date of the individual's employment is terminated, whichever is later."

Some employers hastily interpret that to mean they could destroy I-9 forms of their current employees after a three-year period. But the retention obligation extends to the *later of* three years after hire or one year after employment *ends*. So the retention period only comes into play after the employment is terminated, for whatever reason.

The most recent edition of the M-274 *Handbook for Employers* attempted to clear up the confusion by warning employers:

- Never dispose of a current employee's Form I-9
- You must keep it for as long as the employee works for you,

and for a certain amount of time after

- Only when an employee stops working for you should you calculate how much longer you must keep their Form I-9.

**Calculating the retention period.** The M-274 also provides employers with another way of thinking about this. It instructs employers to separate terminated employees into two different buckets:

1. **If the employee worked for less than two years**, you should retain their form for three years after the date you entered in the First Day of Employment field.
2. **If the employee worked for more than two years**, you should retain their form for one year after the date they stop working for you.

Personally, I like this method as it can help you easily determine

the retention period by simply eyeballing the employee's hire date and the termination date.

For example, imagine you have an employee who was hired on April 28, 2014 and terminated on Oct. 31, 2016. You can quickly see that the individual was employed for more than two years, so you know the one-year-after term calculation will apply.

If you're still scratching your head, start using electronic I-9 software to calculate the retention period for you. But be careful of systems that "over-automate" by automatically deleting I-9s without giving the employer the opportunity to review and validate. Most employers will want a system with appropriate checks and balances.

*John Fay is a business immigration attorney and the president of LawLogix, a leading provider of I-9 and E-Verify management solutions.*



## Online resource: I-9 retention calculator

In response to requests for a simple tool to validate I-9 retention obligations, I created the LawLogix Sample I-9 Retention Calculator. Simply enter the employee's hire date and termination date, and the spreadsheet tells the date on which the I-9 can be purged. Access the free Excel sheet at [www.tinyurl.com/I-9calculator](http://www.tinyurl.com/I-9calculator).

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# IT HAPPENED IN VEGAS: HR Law Lessons from LEAP 2022

The HR Specialist's 18th annual **Labor & Employment Law Advanced Practices (LEAP)** conference brought together hundreds of HR professionals in Las Vegas recently for three days of quality HR training. Here are some nuggets of wisdom from the 30+ LEAP speakers.



**Retaliation risks.** “Retaliation cases are tougher to defend, easier to prove and jurors tend to believe a retaliation claim more than other claims. They’re very, very dangerous.”

– Richard Brann, Baker Botts, Houston

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**WFH rights.** “During the pandemic, employees have been able to show that remote work can be just as productive. So these work-from-home accommodation claims are going to be more and more successful and harder to fight in court.” – Deborah Adams, Frost Brown Todd, Cincinnati

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**State-law changes.** “The gridlock at the federal level has driven a lot of the changes in employment law to the state and local level.” – Joseph Beachboard, Ogletree Deakins, Torrance, CA.

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**Investigation proof.** “In HR investigations, you’re not going to be held to the standard of being absolutely correct all the time beyond a reasonable doubt. As long as you have a reasonable belief that your investigation conclusion is correct, you will be OK.” – Kathy Perkins, Kathy Perkins Workplace Law, Lawrence, KS

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**Pay transparency.**

“We’re seeing more state and local laws requiring employers to be transparent about pay rates and to disclose that information to applicants... All of this is aimed at getting past gender-pay disparities and getting everyone on the same playing field.” – C.B. Burns, Kemp Smith, El Paso

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**Wage-and-hour audits.** “The Department of Labor isn’t just content to look in your sock drawer when they arrive at your workplace. They’ll look in all your drawers. That’s why it’s important to get all your wage-and-hour issues right.” – Mekesha Montgomery, Frost Brown Todd, Nashville

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**Accommodations.** “Accommodations are often based on how well the company likes the employee. If they think this is a good employee, they will accommodate. If they don’t, they won’t. That’s a huge problem.” – Deborah Adams, Frost Brown Todd, Cincinnati

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**HR documentation.** “Bad documentation can bite you in the butt. Good documentation can save your butt.” – Carrie Hoffman, Foley & Lardner, Dallas

## FYI

### Hybrid work demands better management skills

Nearly half of employers (47%) say they expect to continue to use hybrid work schedules five years from now to the same extent they do now—and 34% expect even greater use of hybrid arrangements, according to a new Association for Talent Development survey. ATD says that will require organizations to invest more heavily in management training to keep remote and on-site employees productive. Among the most in-demand management skills: coaching, team-building and communicating priorities and expectations.

### Calculate COVID quarantine with new CDC tool

Even as COVID eases, the CDC recommends that people with mild COVID symptoms should still isolate. But for 5 days? 10 days? 0 days? To help employers decide what to do with workers who have COVID symptoms, the CDC unveiled a Quarantine and Isolation Calculator to help make those decisions. Find it at [www.tinyurl.com/CDCcalc](http://www.tinyurl.com/CDCcalc).

### Women’s pay is increasing faster than men’s

Women, who were hardest hit in the past two years by job losses, are reaping the biggest pay raises as the pandemic winds down, according to a Federal Reserve wage tracker. Women’s wages increased 4.4% in February compared to

a year ago. Women who switched jobs are also enjoying significant pay increases. Comp packages for women who changed jobs increased by 31%.

### Workplace language getting more casual, graphic

Whether due to pandemic frustrations, Zoom fatigue or increasingly casual online business chats, workers are uttering more four-letter words than ever before. One piece of evidence: Analysis from financial firm Sentieo found that expletives in transcripts of quarterly earnings calls, investor conferences and shareholder meetings rose to a five-year high in 2021, and they’re on rising at an even faster rate so far this year.



### In which states is hiring the hardest these days?

With the labor force participation rate near 62%, one of the lowest in decades, most employers are having trouble finding and hiring employees. Where is it the hardest? The top five states (in order) where hiring is most difficult for employers, according to a new WalletHub survey: Alaska, Georgia, New Hampshire, South Carolina and West Virginia. Employers in the District of Columbia are struggling least in hiring, followed by Kansas, Connecticut, Delaware and Arkansas.



Is there anything more dangerous than crossing the IRS?

# *Payroll Compliance Handbook*

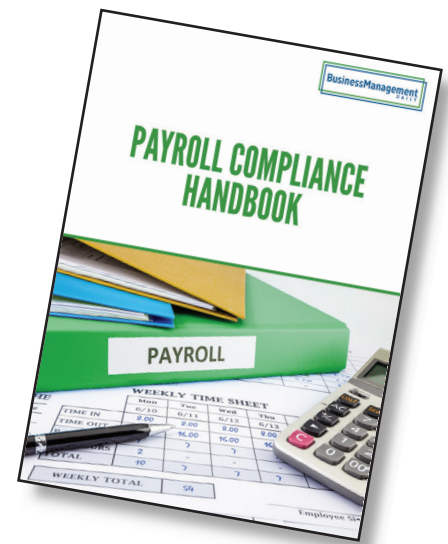
Once upon a time, payroll used to be easy: the employee's gross pay minus federal, state and local taxes. Then along came health premium and 401(k) deductions. Still simple, but...

Today, payroll managers deal with direct deposit, health spending accounts, vehicle allowances, phone expenses, earned income credits, garnishments and more. Payroll is now a confusing and time-consuming task prone to error.

Don't let a simple mistake unleash the full and frightening power of the IRS and wipe out your business... and you personally.

With our newly updated *Payroll Compliance Handbook*, you'll quickly and easily find answers to all of your nagging payroll questions. This handy reference is written in plain English - no legal gobbledygook here - so you can quickly understand what you need to do to stay in compliance, improve efficiencies and avoid costly payroll errors.

Each chapter focuses on a specific aspect of payroll management and compliance... and every issue of payroll compliance you need to know is addressed.



## Navigate easily to topics including:

- Complicated tax calculations
- Exempt classification
- Fringe benefit deductibility
- Independent contractor status
- Paying for on-call time
- Business expense reimbursement
- Saving on unemployment taxes
- Payroll record-keeping
- Handling the IRS without stress
- Everything you need to know about W-4 forms
- And dozens more critical topics!

*Over, please*

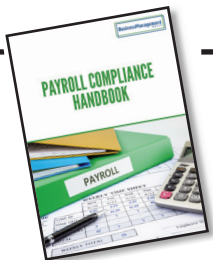
## We've Made Payroll Easy Again!

You will not find a more comprehensive payroll resource than the **Payroll Compliance Handbook**. The author, Alice Gilman, Esq., is our resident expert in payroll and tax compliance. Over the past 30 years, she's written and edited several leading payroll publications, including Business Management Daily's *Payroll Legal Alert*, the Research Institute of America's *Payroll Guide*, the American Payroll Association's *Basic Guide to Payroll* and the *Payroll Manager's Letter*.

### The **Payroll Compliance Handbook** answers questions like:

- **Are your employees exempt or non-exempt?** A handy checklist makes it easy to determine
- **Must you pay an employee for attending a training program?** The answer may be no if these four conditions are met
- **How can you avoid the most common FLSA violation?** Simply follow our chart or be at risk for a hefty fine
- **A woman has less experience and education than a man in a similar role. Can you pay her less?** Plus, how to establish an equal pay merit system that works
- **Fringe benefits: taxable or non-taxable?** How to reward fringe benefits to employees without crossing swords with the IRS
- **W-2s, W-3s, 1099s and more: What errors will land you in the IRS hot seat?** We'll tell you how to avoid them
- **What's the law in your state?** Check out the appendixes for the requirements in your state.

To stay ahead of the IRS, you need the bulletproof strategies found only in the **Payroll Compliance Handbook**. Get your copy now!



### SPECIAL REPORT ORDER COUPON

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