

From: Business Management Daily

Subject: Practical HR strategies to boost your career

In The News ...

Stay away from pandemic 'safety waivers,' a bad (and likely unlawful) idea that some employers have used in a bid to avoid unsafe working condition lawsuits. In most states, employees cannot preemptively waive a workers' compensation claim, meaning such waivers would be unenforceable. Better message: Reiterate your efforts to keep employees safe.

Employers cannot require COVID antibody tests of employees as a condition of returning to the workplace, according to new EEOC guidance that says an antibody test "constitutes a medical examination under the ADA" that doesn't meet the law's standard of "job related and consistent with business necessity." Tests for active COVID-19 infections are still permitted.

Remote terminations: Call or Zoom? Terminating employees in-person is always best but if that's not possible these days, do it via a phone call not a videoconference chat. One reason: Employees may be able to record the termination talk. Even if you have nothing to hide, it's often not a good thing to display to a jury. For more on the issue and tips for legally safe termination meetings, go to www.theHRSpecialist.com/zoomfire.

In this issue

Prevent the top 5 COVID-19 lawsuits	2
From the Court: Racism, cell phones, harassment.....	3
CDC guidelines for reopening offices	5
Memo to Managers: First, heal yourself.....	6
Layoffs? Look first into cutting wages	8

Review policy & training after key LGBT ruling

Make clear to your supervisors that they can never treat gay or transgender employees differently in hiring, firing, pay, promotions or any other workplace conditions.

That was the law in about half of the states (and many city statutes), but it is now a nationwide standard after the U.S. Supreme Court ruled June 15 that discrimination based on an employee's status as a gay person is prohibited by the sex discrimination provisions of Title VII of the Civil Rights Act.

"An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in

the decision, exactly what Title VII forbids," wrote Justice Neil Gorsuch.

Various federal appeals courts had been split on whether discrimination against gay employees constitutes sex discrimination as defined by Title VII. The Supreme Court issued this key decision by consolidating a trio of related cases.

In addition to training your supervisors that any kind of discrimination against gay or transgender employees (or applicants) is prohibited, make sure such wording is included in your EEO policies.

Online resource Read more about the ruling and four steps to prevent LGBT discrimination at work at www.theHRSpecialist.com/gaybias.

Speak up or be silent on race? Employers split

After the racial justice protests exploded nationwide last month following the death of George Floyd, many employers felt compelled to take a public stance against racism. The reasons ranged from a true conscious belief in the cause to fears of shareholders' response.

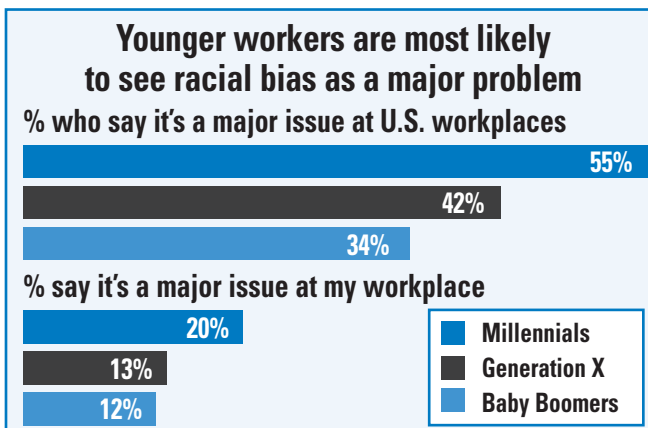
How did your organization react? Here's a snapshot of employers' actions, along with employees' view of racism in the workplace, based on a survey by market rating firm Clutch:

Go public or keep quiet? Half of U.S. businesses (49%) addressed the Floyd death and protests in some public manner. Large businesses

(67%) were more likely to address the protests than smaller ones (34%). The most popular methods:

- Release a public statement (30%).
- Hold an open discussion with leadership (19%).
- Donate to racial justice causes (10%).
- Promise to hire a more diverse

Continued on page 2



Speak up on race?

(Cont. from page 1)

workforce (7%).

- Make it easier to take time off (6%)

Was the response enough? About two-thirds of workers (65%) say their employer has done enough to address the issue, but 29% say the response was too weak. When asked what employees wanted, the number one thing was an open discussion with leadership.

How big a problem is bias? About three-quarters of workers overall say race discrimination is a problem at U.S. workplaces (43% say it's a "major" problem, 32% say "minor").

But those numbers fall when employees are asked if it's a problem in *their own* workplace (14% say major, and 30% say minor). A full 64% of African-American workers say their own workplace has problems with racism, compared to 44% overall.

What about the racial wage gap? In addition to racial discrimination, employers need to be aware that black workers, on average, still earn less than their white counterparts. A 2019 PayScale analysis of 1.8 million employees found that African-American men earn 87 cents for every dollar that a white male worker earns in the United States. Now is a good time to conduct an analysis to spot pay inequities based on race, age or gender.

Online resource Read a full report on the Clutch race-response survey at www.tinyurl.com/RaceEmployer.

Steps to e-race bias

The EEOC recommends employers:

- Recruit, hire and promote with EEO principles in mind.
- Conduct a self-analysis to see if current hiring, pay or discipline practices treat minorities differently.
- Make sure promotion criteria are known, and that job openings are communicated to all eligible workers.
- Make clear to employees that they can bring their complaints to management and won't be subject to retaliation. Remind managers they can be terminated for retaliation.
- Adopt a strong anti-harassment policy and periodically train employees.

COVID-19 claims to 'increase dramatically'; prevent these top 5 lawsuit threats

For HR professionals, the first wave of COVID-19 concerns was their employees' health. The second wave was compliance. The next wave? Litigation prevention.

Employment lawyers report a spike in claims relating to new leave laws, unsafe conditions, medical accommodations and more. And, "it's likely that these types of lawsuits will increase dramatically in the coming months," says a new report from the Ogletree Deakins law firm.

Here are the most common coronavirus-related employee claims currently working through the system:

1. Whistleblowing, retaliation, wrongful termination

Many lawsuits allege workers were fired or retaliated against for raising COVID-related safety concerns.

In Kentucky, a worker claims he was fired for complaining about a lack of latex safety gloves. In Illinois, a nurse alleges she was fired for warning co-workers their masks were inadequate. In Texas, a man sued saying his boss broke the law (a stay-at-home order) by denying his request to telework.

Remind managers that employees have a legal right to voice safety concerns. Never discipline for that reason.

2. Unsafe work conditions

Employees are claiming that unsafe working conditions (failure to clean, enforce distancing standards or provide protective equipment) has caused COVID sickness and death.

Such workplace exposures would normally be covered by state workers' compensation laws. But if employees can prove their employer acted recklessly, workers can recover much more.

Plus, many states have enacted (or are considering) changes to workers' comp rules to create a presumption that staff who contract COVID did so at work, thus exposing employers to more workers' comp claims.

Make sure employees understand your coronavirus safety plan. Have employees sign an acknowledgement form. Document your training.

Coronavirus-related claims

Type of employee complaint	% of claims
Retaliation/wrongful discharge	40%
Unsafe work condition	23%
Disability discrimination	15%
FMLA/Families First leave law	12%
Wage and Hour	6%
Other	4%

Source: Ogletree Deakins study, March–May

3. Discrimination & harassment

Employers may think they are protecting "vulnerable employees"—older workers or those with preexisting conditions—by terminating them first. That could violate anti-discrimination laws. In New York, a man sued, alleging he was among the first laid off, based strictly on his age. Other suits claim disabled or pregnant staff were singled out for discharge.

4. FMLA/emergency leave

Much uncertainty looms over the paid emergency sick leave and FMLA leave provisions in the Families First Coronavirus Response Act. Law firms are soliciting employees who claim they were denied their leave rights or retaliated against for taking this leave.

Make sure your supervisors know how to respond if an employee says they need to take leave during this time. Different requests—medical leave, lack of day care, etc.—can trigger different leave laws. When in doubt, have managers talk to HR.

5. Wage-and-hour/overtime

With the spike in remote work, expect a rise in employee lawsuits for overtime, off-the-clock work and for work completed prior to COVID-related business closures.

As businesses reopen, expect wage claims over time spent completing health screenings and temperature checks. Beware claims on confidentiality of records for these medical tests.

In addition, if you're doing layoffs or closings, make sure you give employees enough advance notice to comply with the federal or state WARN Act.

Online resources Read more insights on HR's response to the pandemic at www.theHRSpecialist.com/corona.



Unchecked manager racism: a \$1M mistake



In addition to taking a public anti-racism stance, many employers last month responded to the growing protests

by reevaluating the treatment of their minority employees and providing fresh training on unconscious bias.

Now's the time to remind staff about your anti-discrimination policies and remind managers about the harsh consequences of violating those rules.

Turning a blind eye to racist managers and then punishing employees who speak up about in-house racism is a costly error. It lowers morale, increases turnover and allows a malignant culture to grow. It also can lead to huge legal judgments.

Recent case: The EEOC sued a Houston oil company, saying its managers often hurled racial slurs at black employees and assigned black workers to lower-paying jobs.

Retaliation also flourished. When a black employee reported a racist social media post shared by employees, he was fired. Another black employee was fired after complaining about a manager's racial slur in a meeting.

Before the case went to a jury, the company settled, agreeing to pay nine black workers a total of \$1.2 million. (*EEOC v. Nabors Corporate Services*)

Online resource Read the EEOC's Q&A on race-discrimination compliance for employers at www.tinyurl.com/EEOCrace.

NLRB OKs limited ban on cell phones at work

The National Labor Relations Board has upheld an employer policy requiring workers to stow personal cell phones in lockers because safety concerns on the factory floor outweigh the "relatively slight risk" that the policy would interfere with employees' right to discuss protected activities with each other.

A beverage bottling company set the no-phones rule to prevent loose items from falling into the vats. An unfair labor practice charge argued that the policy prevents employees

from photographing working conditions to which they might object. The NLRB sided with the company. (*Cott Beverages Inc.*, Case 16-CA-181144)

Advice: If you plan to ban cell phones at work:

- Be prepared to justify your policy by citing a legitimate safety concern.
- Limit the ban to specific work areas where safety is critical.
- Allow employees to use their personal cell phones in other areas and during breaks.

\$300K lesson: Stop online harassment

If you learn that an employee is using the internet to harass and bully a co-worker, you can't just turn a blind eye because it's not happening "on your property." Employers are required to investigate any and all types of harassment complaints.

Recent case: The EEOC filed a lawsuit against United Airlines, saying the company knew for years that one of its pilots had been posting sexually explicit photos of a flight attendant online without her consent.

Despite the flight attendant's numerous complaints to United, the company did nothing and the pilot continued to post photos. Finally, a U.S. attorney's office initiated a criminal prosecution of the pilot under Internet stalking laws, but United still allowed him to retire with full benefits.

United has now agreed to settle the case for \$321,000 and will revise its sexual harassment policy to include harassing conduct perpetrated through the internet or social media.

Legal Briefs

When to deliver that final paycheck: State law chart

With layoffs on the rise, you need to know what goes into that final paycheck and when to pay it. *Best practice:* If you have offices in several states, apply the most stringent state law, which is to pay right away. Also, you can usually take all the regular deductions from a final check, but know state law and company policy on paying commissions, accrued vacation and PTO time.

Online resource Find a chart of 2020 state laws on timing of last paychecks, including whether you must cash out accrued vacation days, at www.theHRSpecialist.com/finalpay.

Pay for pre-shift tasks that are 'integral and indispensable'

A California trucking company must pay 56 employees nearly \$200,000 in back pay after the U.S. Department of Labor found the company failed to pay drivers for tasks they performed before and after shifts (inspecting vehicles, pumping gas, etc).

The lesson: Work that is performed before or after a shift must be paid if it's a "principal" activity that benefits the employer, not the employee. Principal activities are those that are "integral and indispensable" to perform the job. These days, pre-shift temperature checks or health surveys would likely be considered paid time.

Limited duty is 'reasonable' even if worker doesn't like it

A mail carrier hurt her hip at work and was assigned to administrative tasks upon return. She sued, alleging disability bias. The Court disagreed, saying the new job was a reasonable accommodation—one that kept her working even if she didn't like the tasks. (*Jackson v. Brennan*, SD TX)

The lesson: Limited-duty assignments can serve as reasonable accommodations, even if the worker doesn't favor the change.



OSHA issues guidance on face masks at work

OSHA's new guidance didn't go so far as mandating that employers provide cloth face coverings to employees during the pandemic. But it did reiterate the CDC's recommendation of face coverings and noted that OSHA's General Duty Clause requires employers to provide "equipment and a place of employment which are free from recognized hazards" that may cause serious harm or death.

By providing this additional information, says a Constangy Brooks law firm report, OSHA "may be signaling that it is more likely to begin issuing citations under the General Duty Clause for an employer's failure to adequately protect employees from COVID-19."

Online resource Access the OSHA guidance at www.tinyurl.com/OSHAMask.

Camp cancellation can also trigger paid leave

For employees whose children could not attend school this spring due to COVID-19, the end of the school year also marked the end of potential paid sick leave

and emergency FMLA provided under the Families First Coronavirus Response Act. If lack of school was the only reason triggering an employee's paid sick leave or EFMLA, your company can discontinue that leave now that school is out.

However, be aware that an employee's child care plans for the summer—including day camps and sleep-away camps—could trigger paid sick leave or EFMLA again if those child care options are not available to the worker this summer due to COVID-19. Check first to see if the employee's maximum amount of leave has been exhausted.

Federal contractors: Use new disability form

Federal contractors are obligated to strive for a workplace with at least 7% disabled employees. The U.S. Department of Labor has updated the form that federal contractors must use to allow applicants to voluntarily self-identify that they have a disability. The new form adds to the list of conditions considered disabilities, which may prompt more applicants to self-identify and request accommodations.

Note: Don't share these forms with anyone making hiring decisions. You can access the revised form at www.tinyurl.com/OFCCP-self-ID-form.

HR Q&A

Can we rehire laid-off employees at a lower rate?

Q. If we laid off certain employees and want to hire them back, can we do so at a lower rate of pay?

A. You can, but be aware that this will hurt morale and cause those returned workers to dust off their résumés. Also, if your company has taken out a PPP loan that you want forgiven, the amount forgiven will be reduced by the amount of employees' reduced pay. You must also be cognizant of any union rules, if they apply.

Worker wants to stay remote; can we say 'no'?

Q. We've been working remotely the past few months and are now requiring employees to come back to the office. If someone insists on continuing to work remotely, what are our options? Must we accommodate her? Can we terminate?

A. Many factors come into play here. First, have you followed all required safety measures from the CDC and your state re-opening plan (*see page 5*)? While the CDC guidance is not a regulatory requirement, it could be used against you later if an employee becomes ill with COVID-19 and sues you for reckless disregard for worker safety. Depending on your state, failing to follow the guidance may create liability under state law.

Another factor: Is she someone who is at high risk of complications from COVID-19 if infected? If so, she may be considered disabled under the ADA (or state law) and, thus, may be requesting a reasonable accommodation of

continued telework. If so, you'll need to engage in an accommodations dialogue with her, as you would for any disabled worker requesting an accommodation. Her disability may already be known, or she may have developed a new disability such as anxiety disorder. Or, she may be raising a safety concern by requesting to stay remote. If so, she would be covered by a whistleblower law or protected from discharge under public policy in your state.

Either way, before terminating, consider all these possibilities and get your attorney's signoff.

Can we tell an obese employee to stay remote?

Q. We have an employee who is obese, which makes him more likely to be affected by the coronavirus.

We want to suggest that he continue to telework. How should we present that?

A. You appear to have identified an employee you perceive as being disabled by obesity due to his vulnerability to serious COVID-19 complications. You must be careful not to regard the individual as disabled and then act as if he needs an accommodation of telework.

That may violate the ADA.

The best approach would be to inform all employees that if they are vulnerable employees as defined by the CDC guidance, you are willing to work on providing them with accommodations, such as continued telework.

*Do you have a question? If so, you can email it to **The HR Specialist** at HRSEditor@BusinessManagementDaily.com.*





Are you meeting the CDC's tough new guidelines for office safety?

The Centers for Disease Control and Prevention initially issued limited, vague standards for employers trying to figure out how to safely reopen their offices as the coronavirus eases. But the CDC quietly issued updated guidelines that may require big changes in your operations. Some highlights:

Identify trouble spots. Be able to recognize areas that may trigger fresh infections, including high-touch areas and places people come within six feet of each other. Examples: meeting rooms, break rooms, cafeterias, locker rooms, waiting areas and entrances.

Protect workers from hazards. Install transparent shields to separate visitors from employees. Space out chairs in communal seating spaces. Get rid of high-touch, communal items like coffee pots, water coolers and snack bins. Increase ventilation, running air-handling systems even when the building is unoccupied.

Act quickly on illness. Tell workers with COVID-19 symptoms or sick family members to stay home. Isolate



Online resource Read the CDC's guidance on safely reopening your office at www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html.

employees who become sick at work. Tell them to follow up with their doctor. Shut down infected employees' workstations and disinfect them.

Conduct regular health checks (daily if possible) before workers enter. That includes a temperature check. Stagger start times if necessary to prevent crowding. Require staff and visitors to wear face masks.

Promote hygiene. Regularly clean all surfaces and make sure workers have hand sanitizer and cleaning wipes. Require staff to wash hands as soon as they arrive at work.

Consider the commute. Address the infection dangers of using public transportation and carpools. Offer incentives—reimbursements or parking passes—to encourage staff to travel alone in cars. Stagger shifts for those who must use public transportation to help them avoid peak times.

How to lure reluctant employees back to work

Some workers sidelined by the pandemic are hesitant to return to the workplace. There are four main reasons, each requiring employers to respond differently:

1. Child care struggles. Workplaces may reopen, but many schools, day care centers and summer camps remain closed. *Response:* Explore setting up temporary on-site child care. Consider partnering with existing care providers.

2. Generous unemployment. Coronavirus relief legislation added \$600 per week on top of state benefits. The extra amount is set to end July 31. *Response:* Lure laid off employees back by offering something akin to hazard pay. Or just

point out that refusing to return may make them ineligible for unemployment.

3. Fear of infection. Some of your workers may have preexisting conditions that make them more vulnerable. *Response:* Demonstrate you have done everything possible to keep these workers safe. Consider allowing telework, assigning them to jobs with little human contact or reconfiguring workspaces.

4. Anxiety and depression. A new study says one-third of Americans now meet the screening criteria for anxiety or depression. Be prepared to offer ADA accommodations such as time off and telework. Expect to honor requests for full and intermittent FMLA leave.

COVID impact: 74% of firms have altered operations

As operations aim to "get back to normal," three times more full-time employees will be working remotely, compared to before the pandemic, according to a new survey of 681 employers by the WillisTowersWatson consulting firm.

The survey found that 74% of employers had altered their operations in some way to reflect new post-pandemic protocols. *Examples:* installing touchless payment systems, offering services via video rather than in person, creating more space on assembly lines and changing work schedules to limit employee contact.

Almost three in 10 employers (29%) had reassigned some employees' job responsibilities, while 23% made changes to reflect work that was being done in-house instead of by third parties. Some employers started outsourcing work or using gig talent for work that was typically done by full-time employees.

Home, not work, is stressor for remote employees

Work is going just fine for most employees forced to work at home during the virus crisis.. It's the "home" part of the equation that's causing stress, according to new research by engagement-software firm Emplify.

A full 88% of about 20,000 employees polled say they have the tools and flexibility they need to work successfully from home. But for many remote workers, "home" is no longer a refuge from stress, the survey finds. In fact, that's where uncertainty lives: worries about finances, family squabbles and anxiety about personal and family health.

OSHA offers safety resources to assist COVID response

As workplaces ramp up staffing after coronavirus lockdowns, OSHA has gathered resources to make that process safer. Find guidance on use of personal protective equipment, safe social distancing, workplace hygiene, coronavirus testing and more at www.dol.gov/newsroom/releases/osha/osha20200615-0.

To: _____
 From: _____

Date: July 2020
 Re: Coping with the crisis

Coping 5 ways managers can care for themselves in uncertain times

The pre-flight safety message on airplanes always tells passengers to put on their own oxygen masks first before helping children put on theirs. The reason: You can't assist or lead someone else if you haven't first taken proper care of yourself.

The same is true for supervisors when it comes to managing during this unique time. Whether you're overseeing remote teams for the first time or are still reporting to the worksite as usual, you and your employees are experiencing challenges none of you have faced before.

Here are tips all managers can use to reduce the amount of stress you (and your teams) experience during this time of uncertainty:

1. Don't expect to be at your best all the time. Management experts say that succeeding in times of crisis demands a level of self-compassion you might not normally adopt or even prioritize. If you find yourself more distracted, moody or stressed than normal, remember that your reaction is entirely normal. Accept that you are experiencing a challeng-

ing time, along with the rest of the world.

When you review your list of daily to-do's and priorities, mentally coach yourself as a mentor would. Consider which tasks truly need to be accomplished today, and focus your energy there. If you get more done than expected, consider it a win. But if you don't, remind yourself that it is not a failure.

2. Recharge regularly. Exercise, fresh air, meditation and simply taking a break from negative media messages are more important than ever than right now.

Structure your calendar to allow for breaks throughout the day so you have opportunities to disconnect from technology, put work on pause and recharge. For maximum productivity, the ultimate cadence is a 17-minute break for every 52 minutes of work, says a study reported in *Inc.* magazine.



More than ever, employees need an empathetic leader who truly cares how they are doing. In team meetings, share how you are managing your own stress and invite your team to do the same. A vulnerable manager can instill a greater sense of trust.

3. Celebrate your accomplishments.

The pandemic and stay-at-home orders have caused many to feel like one day blurs into the next. Try writing down what you accomplished at the end of each workday, review the whole list at the end of the week and invite your team to do the same.

Hold weekly group calls where each team member shares their top accomplishments for the week to cultivate a teamwork culture where you and your employees celebrate the important work you're all doing. It will help to remind one another that you are not alone.

4. Be a human before a manager.

Your employees are looking to you for professional guidance and support like they always have, but they need an empathetic and human leader who truly cares how they are doing more than ever.

On your team calls, share how you are managing your own stress, how you are honestly feeling from one day or week to the next, and invite your team to do the same. Allowing yourself to be a vulnerable manager can instill a greater sense of trust that will have a lasting impact.

5. Embrace the unknown.

Uncertainty is scary. Embrace the fact that how you work has changed, to help release fear of change.

Instead, use it as an opportunity to think about new ways you can lead and connect with your team, and think creatively about how you can contribute to your team and company in a way that will have the most impact now, and moving forward.

Stress sparking employee behavior issues? How to respond

Employees have gone through traumatic changes this year, and some may react poorly at work due to financial stress and other fears. Some tips on how to respond when workers act rude to co-workers or disparage the organization:

- 1. State the facts.** Instead of asking "What's wrong?" to which the employee will probably answer "Nothing," start with your observations. Say, "In today's meetings, you've snapped at people for no apparent reason. For example ..." Keep your tone neutral and objective. Walk the person back through the incident to his or her perspective. Listen without interrupting.
- 2. Put the incidents in context.** Disgruntled staff may be so wrapped up in their unhappiness they're barely aware of others. Ask "How do you think your co-workers are responding to the major changes we've gone through lately?" and "Based on your actions, how do you think they see you at this time?"
- 3. Talk about solutions.** Once the employee is more aware of his or her actions and the consequences, talk about what can be changed. This may lead to a discussion of policies, procedures or relationships that need work. But the important point is showing your concern and working out actions to be taken.

How HR can help strengthen employees' mental health

Nearly a quarter (23%) of U.S. employees say they've "often" felt down, depressed or helpless during the pandemic, and another 31% have felt those symptoms "sometimes," says a new Society for Human Resource Management survey.

Women, younger workers and employees who live with a COVID-vulnerable person are most affected by this stressed and depressed feeling.

Rather than ignore this reality, many HR departments are addressing this mental-health crisis directly. How to respond? Consider three issues:

People with obsessive-compulsive disorders are suffering. The disorders are characterized by seemingly irrational acts such as repetitive handwashing and cleaning. Coronavirus precautions may have intensified existing conditions.

Anxiety and panic disorders are increasing in response to virus avoidance, while agoraphobia—a fear of leaving the home—is expected to become more prominent. Many employees may be reluctant to return to work as states authorize employers to reopen. They may not feel secure coming back to facilities that force them into daily contact with so many people.

Alcohol and substance abuse relapses could surge because wide-

spread shutdowns mean there is less access to nonemergency medical treatment. Fewer medical personnel are available for substance-abuse treatment.

Plus, restrictions on group gatherings have cut off access to support programs such as Alcoholics Anonymous, Narcotics Anonymous and other 12-step programs. Experts say these factors may bring many employees back to work while battling active addictions.

Employer solutions

Revisit policies that help workers cope with mental health problems.

- **Provide leave flexibility** for employees who need access to mental health treatment and recovery services. Time off for diagnosis and therapy may be covered by intermittent or full-time FMLA leave. Additional leave may be a reasonable disability accommodation under the ADA.
- **Work with your health plan** or employee assistance program provider to offer access to online counseling for remote workers.
- **Sponsor workplace activities** that

can benefit the mental health of all workers. Consider programs that help employees manage stress, get more exercise and eat healthier.

Employers should develop a mental health

policy, aimed at all employees, that destigmatizes treatment and encourages staff to seek help if they need it.

Make sure everyone is aware of all the options available through your benefits program; your employee handbook probably didn't go into much detail about them.

Explain mental health coverage available through your health insurance plan. Publicize your employee assistance program if you have one. If you don't, explore public mental health services available in your community.

Train staff on workplace and other forms of stress, including how to cope with common mental health issues.

Issue a general invitation for employees to discuss FMLA leave options or request ADA reasonable accommodations. Clarify that HR and management are committed to supporting employees' FMLA and ADA rights.



Explain mental health coverage available through your health plan, and publicize your employee assistance program.

The most powerful companies have their own training newsletters. Now you do too.

The HR Specialist can now be branded, and even customized, for your organization.

Paul Legrady (703) 905-4516
plegrady@businessmanagementdaily.com



STAFF

Editorial Director: Patrick DiDomenico, (703) 905-4583, pdidomenico@BusinessManagementDaily.com
Contributing Editors: Anniken Davenport, Esq., Rob Lentz, John Wilcox, Cal Butera

Publisher: Phillip Ash
Associate Publisher: Adam Goldstein
Customer Service: customer@BusinessManagementDaily.com, (800) 543-2055

Volume 18, Number 7

Printed in the United States.

The HR Specialist (ISSN 1545-360X) is published monthly by Business Management Daily, 7600A Leesburg Pike, West Building, Suite 300, Falls Church, VA 22043-2004, (800) 543-2055, www.theHRSpecialist.com. Annual subscription price: \$299.

© 2020, Business Management Daily, a division of Capitol Information Group, Inc. All rights reserved. Duplication in any form, including photocopying or electronic reproduction, without permission is strictly prohibited and is subject to legal action.

For permission to photocopy or use material electronically from *The HR Specialist*, please visit www.copyright.com or contact the Copyright Clearance Center Inc., 222 Rosewood Dr., Danvers, MA 01923, (978) 750-8400. Fax: (978) 646-8600.

This publication is designed to provide accurate and authoritative information regarding the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal service. If you require legal advice, please seek the services of an attorney.

Considering layoffs? First take a look at reducing employee wages

Even organizations lucky enough to have been deemed “essential” during the coronavirus-driven lockdowns have faced declining revenues and business activity. The specter of layoffs has loomed for months.

Some employers that managed to maintain staffing levels are now starting to feel more economic pain. Even if they were able to secure forgivable Paycheck Protection Plan loans, those funds are only sufficient to cover two months of payroll costs. And the program was set to end June 30.

Once that money is gone, scraping together payroll may be difficult while maintaining the same headcount.

Increasingly, employers are skipping layoffs, which bring Worker Adjustment and Retraining Notification Act compliance headaches

and increase the risk of costly class-action lawsuits. Instead, they’re opting to cut pay and retain workers. It’s a strategy with both pros and cons:

✓ **Pro:** Cutting pay lets employers keep valuable employees. They won’t have to find, hire and train replacements when business picks up.

✗ **Con:** Some employees, especially the highly skilled, will seek other jobs before they accept a pay cut.

✓ **Pro:** Selectively imposing pay cuts can mean significant savings. For example, only cutting salaries for those making over \$100,000 limits the number who feel financial pain and can yield more savings.

✗ **Con:** High earners may have more job flexibility and decide to bolt.

✓ **Pro:** Retaining workers builds morale. Just make sure employees



Retaining workers can build morale. Just make sure your staff understands that the alternative was layoffs.

understand that the alternative was a layoff.

✗ **Con:** With unemployment benefits pumped up by \$600 per week, some employees would rather have been terminated.

Final note: Cutting all salaries by the same percentage in a job category reduces the risk of being sued for discrimination. It’s hard to argue that bias caused an employee’s pay cut when everyone in the same classification suffered the same reduction.

FYI

Women most vulnerable to pandemic-related job loss

In the coronavirus downturn, women account for 49% of the overall U.S. workforce, but 55% of the initial job losses, said an analysis of federal data from outplacement firm Challenger, Gray & Christmas. The report said the first wave of job losses “hit industries primarily employing women, including food service, child care, retail, personal care, office assistance and hospitality, where working from home is not an option. This differs from the Great Recession, during which the vast majority of job losses were among men.”

In COVID, some firms detach pay from performance

Last year, a great majority of employers (85%) said they link employees’ pay directly to performance, according to a Mercer study. But the consulting firm says some companies are now incorporating a “compassion factor” in how they calculate goals and performance, taking into account

remote-work circumstances and other pandemic-related distractions.

Some employers, says Mercer, are intentionally separating their performance rating and pay decisions during COVID-19. They point to the mixed messages an employee receives when getting a rating that doesn’t align with their performance. But this misalignment, says Mercer, could leave companies more exposed to potential litigation if they later terminate employees due to performance.

Pandemic perks: No-contact mobile refueling at work

The CDC, as part of its return-to-work guidelines, recommends employees avoid human contact as much as possible during their commute. One benefit that can help workers achieve that goal: mobile refueling in the company parking lot. Companies like Booster Fuels can come to your workplace and refuel employee or fleet cars on the spot. No touching pumps or credit card machines.

Abortion excluded from 10% of employee coverage

One in 10 U.S. workers are employed by organizations that have asked their insurers or third-party administrators to exclude abortion coverage from their health plan, according to a Kaiser Family Foundation study. It found that 4% of covered workers are employed at firms that exclude coverage of abortion under any circumstance, while 6% exclude abortion coverage except under some limited circumstances. Several court decisions have carved out exceptions to an Affordable Care Act mandate for health plans to cover abortion services.

Upcoming webinars for HR

July 1: **Timekeeping and Payroll Recordkeeping**

July 8: **Interviewer Boot Camp**

July 9: **I-9 Compliance Workshop**

July 15: **The W-4 Workshop**

July 16: **FMLA & Emergency Leave**

July 17: **Onboarding and Reboarding: The 5 Firsts**

July 23: **Independent Contractor Compliance**

To register or learn more, go to www.theHRSpecialist.com/events

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

YES! I want to make my payroll practices easy again.

Please send me ___ copy(ies) of the *Payroll Compliance Handbook* at the low rate of \$127 per copy, plus shipping and handling.

Payment options:

- Check enclosed. (Payable to: *Business Management Daily*)
 Please charge my credit card:
 Visa MasterCard AmEx Discover

Card # _____ Exp. Date _____

Signature _____

Name _____
(please print)

Company _____

Address _____

City _____ State _____ ZIP _____

Daytime Phone () _____ Fax () _____

Email _____

(We will never sell your email to other companies.)

PLEASE DETACH AND MAIL TO: Business Management Daily, P.O. Box 9070, McLean, VA 22102-0070.

Please allow 3 weeks for delivery.

**PRICE PER COPY:
\$127**

Number of copies	\$
Add \$6 S&H per copy	\$
VA residents: Add 5% sales tax	\$
TOTAL ORDER	\$

Payable in U.S. dollars

BPCH

**SPECIAL OFFER
YI1788**

4 Easy Ways to Order

WEB:
www.BMD.biz/PayComp2

CALL:
(800) 543-2055
8:30am – 6pm ET

FAX:
(703) 905-8040

MAIL:
Use the order coupon below and enclosed postage-paid envelope

**100%
MONEY-BACK
GUARANTEE!**

If you are not completely satisfied with *Payroll Compliance Handbook*, just return it within 30 days of receipt and your money will be refunded in full.