To: The HR Specialist

Date: August 2022
Vol. 20, No. 8

From: Business Management Daily

Subject: Practical HR strategies to boost your career

In The News ...

Revisit COVID testing in light of new EEOC guidance

Throughout the pandemic, employers could be confident that it was generally legal to require employees to be tested for COVID as a condition of employment. But new guidance from the EEOC "upends this long-held principle and will require employers to rethink whether to require COVID testing," says the Foley & Lardner law firm.

The EEOC says your organization's ability to conduct COVID testing and screening now depends on whether that decision is "job-related and consistent with business necessity." Previously, the EEOC said testing was permissible for on-site employees.

This new standard means employers could have to monitor often-shifting guidelines from the CDC and various health authorities to make the testing-mandate decision. Among the issues you'd need to consider: the level of community transmission, the vaccination status of employees and the ease of transmission of current variants.

This would be a new burden on employers, and it could force employers with multiple locations to establish varying testing rules based on site.

Bottom line: The EEOC no longer presumes routine COVID testing is legal in all cases. Ask your attorney if you should continue to require it.

Online resource Read EEOC guidance at **www.tinyurl.com/EEOCcovidtest**. See Foley's analysis at **www.tinyurl.com/EEOCnewCOVID**.

In this issue

Clarify your guns-at-work policy for workers

After the U.S. Supreme Court recently gave Americans more freedom to conceal-carry firearms in public, your employees (and customers) may overestimate their rights to bring guns into your workplace. But the landmark ruling doesn't have to turn your workplace into the Wild West.

Private employers still have the right to prohibit the carrying of weapons into the workplace, regardless of whether the person possesses a concealed-handgun license. (Some states may require you to allow people to keep legally owned firearms locked in their cars in the company parking lot.)

If you haven't already, remind employees about your weapons-at-work policy and how it specifically applies after the Supreme Court ruling. You may also want to use signage to express your policy to customers, vendors and other third parties who come onto your premises.

The ruling: The high court's 6–3 decision struck down a New York state law that required applicants for a license to carry a gun outside their homes to have a "proper cause" to do so. (*New York State Rifle & Pistol Association Inc. v. Bruen*)

Typically, a concealed-carry permit allows holders to carry a firearm in public places. However, most jurisdictions stipulate that gun owners may not carry a concealed firearm in certain "sensitive" establishments

Continued on page 2

HR & the Supreme Court

Counter 'Big Quit' with counteroffer strategy

More than four million Americans left their jobs each month so far this year—a record-breaking trend. And 40% of U.S. workers say they're considering quitting their current jobs in the next six months, according to a McKinsey and Co. report.

But when an employee tells you they're leaving for another gig, do you try to retain them with better pay or perks? Surprisingly, more than 90% of organizations don't have a policy or strategy on how (or whether) to propose counteroffers, according to Tom McMullen, senior partner at consulting firm Korn Ferry.

"Wouldn't it make sense for organizations to have a playbook and maybe ask a couple of key questions, like, *'Do we even want to make a counteroffer for this employee?'* or

Continued on page 2

Identify real reasons for quitting

In exit interviews and surveys, employees often cite money as their reason for leaving. It's an easy answer that won't burn bridges. "But the real question to ask is, *'Why did you pick up the phone and listen to the offer in the first place?* Quite often, it's around the nonfinancial rewards, or lack thereof," says McMullen. Employees' most common nonfinancial reasons for quitting: poor management, no career development and lack of trust in leadership.

Guns-at-work policy

(Cont. from page 1)

such as schools, places of worship, hospitals and, in some places, bars.

The key for employers: Private employers are generally free to prohibit people from carrying concealed handguns on the employer's premises. You can also prohibit nonemployees (customers, vendors, etc.) from carrying guns on the property.

In many jurisdictions, such as Florida and Texas, employers cannot prohibit employees from storing guns locked in vehicles in the employer's parking lot. Other states have no comparable limits.

Employers—especially multistate ones—should check with their state law or attorney to make sure their guns-at-work policy accounts for difference across states lines.

Counter the Big Quit

(Cont. from page 1)

'Are there certain roles in our organization where we don't have bench strength, and if this person walks, we're in deep trouble?'" said McMullen on a recent SHRM podcast.

Counteroffers typically include a step up in pay, a new title or some sort of promotion. But it's wise to use this opportunity to look more holistically. Many people leave their organizations because they have differences with the company's culture or a bad relationship with a manager.

McMullen says that's one reason to not have the direct supervisor involved in counteroffer discussion.

"Maybe it's the second-level boss that has that discussion," says McMullen. "You want to really get at the root cause issues [of the departure] and make that as a part of the counteroffer—not just about pay and title but what is it that we need to change around your employment experience to make you feel better about staying here?"

Note: With some positions, you may have plenty of staff performing the same role and the departing person isn't a star performer. So, you won't need to make a counteroffer.

Excuse nonbelievers from at-work prayer; high court ruling isn't an OK to mandate it

The U.S. Supreme Court this summer issued a less-noticed ruling that said a high school football coach can kneel in prayer with his team at the 50-yard line after games. The ruling said the First Amendment doesn't allow the government to suppress such religious expression. (*Kennedy v. Bremerton School District*)

But the critical point is that this case involved a government employer. Government employees enjoy greater First Amendment protections at work. Employees in private-sector workplaces don't have such First Amendment rights.

The result: While private companies can offer prayer at work and incorporate it into the workday, they cannot *require* prayer sessions—or punish workers for not participating in them. That's because Title VII of the Civil Rights Act makes it unlawful to discriminate or retaliate against workers based on religion.

Title VII also says private employers need to accommodate an employee's request to pray during the workday, as long as doing so wouldn't impose an undue hardship on the employer. Employers can also prohibit employees from proselytizing in the workplace.

Key point: Make sure your managers apply any policy relating to religion or prayer consistently. You cannot, for example, permit prayer by some religions but not others.

The EEOC will back up these rules, and actually did so this summer. The agency announced that it is suing a North Carolina company for allegedly requiring all its employees to attend daily employer-led Christian prayer meetings conducted by the company owner. When a manager asked to be excused, the company cut his pay and then fired him. (*EEOC v. Aurora Renovations*)

Online resource Read EEOC guidance on religious discrimination at **www.eeoc.gov/religious-discrimination**.

Remind managers of their obligation to reasonably accommodate employees' religious beliefs and practices.
(*See training document on page 6*)

Case in Point

Can't accommodate religion? Prove hardship

Once an employee shows a legitimate need for a religious accommodation, the burden shifts to the employer to show whether the company is unable to accommodate the religious need without "undue hardship."

The EEOC defines undue hardship as something that "requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits [or] impairs workplace safety."

That hardship standard can trip up employers, so make sure your explanation holds up to scrutiny.

Case in point: Isabel applied for a data management position at the county jail. She would be solely and directly responsible for the intake and release of each inmate, which could happen at any time of the day. She was offered the job.

Then she explained that, because of her Orthodox Jewish beliefs, she couldn't work anytime during the Friday-into-Saturday Sabbath. The county rescinded the job offer, citing undue hardship. Isabel sued, alleging failure to accommodate her religious needs.

The county argued that the jail operates 24/7, and it insisted that no accommodation was possible because her duties could not be delegated. (*Balderas v. Valdez,* ND TX)

Consider legal risks before changing abortion benefits or offering travel pay

In the wake of the U.S. Supreme Court's landmark decision to overturn *Roe v. Wade*, you probably heard of many large employers (including Nike, Disney and Apple) saying they will now cover employees' expenses if they need to travel to another state to receive an abortion.

But if you plan to join this group, take note: It's not as simple as writing checks to pay for employees' travel. Much depends on the law in states where employers and staff are located.

Some 26 states have already restricted women's abortion rights or are poised to do so soon. In some of those states, it will be illegal to help a woman obtain an abortion, no matter where the procedure occurs. How employers' benefits plans are structured may also affect their ability to reimburse employee abortion-related expenses.

In general, group health plans can reimburse employees when they must travel to receive medical care. Self-insured health plans have more leeway to cover abortion costs because they are governed by federal law—ERISA. That means individuals in certain states can't be prosecuted for assisting an employee with her reproductive care.

But fully insured health plans are subject to the laws of the state in which they are licensed. If a state outlaws helping a woman receive an abortion, individual employees who facilitate the procedure by paying some of the costs could face criminal liability.

Short of having travel costs directly reimbursed through a group health plan, there are other employer-provided benefits that may apply:

- Employees can use health flex spending accounts to cover costs. Employers can contribute to those FSAs.
- Employees can use health savings accounts to cover the cost. Employers can contribute into HSAs, too.
- Employees can access benefits provided through an employee assistance plan. EAPs traditionally address issues affecting mental well-being, but they may also address medical services and travel.
- Employers can create a relief fund to assist staff. Note that any payments from the fund would be fully taxable to employees who receive them.

Final tip: The *Dobbs* decision will trigger litigation. So consult an attorney before deciding whether (and how) to reimburse employees for abortion-related care.

Reinstate reservists after their military leave

Never consider an employee's military service when making employment decisions, and promptly reinstate workers after they're released from their reservist duties. That's the message of the Uniformed Services Employment and Reemployment Rights Act (USERRA).

The U.S. Supreme Court recently upheld those protections for all employees, saying that states and other government employers must also comply with the law.

Recent case: A Texas government employee was also in the Army Reserves. After being injured during an active-duty term, he wanted to return to a desk job. The government refused, and the employee sued. Texas argued that it was immune from USERRA lawsuits, but the U.S. Supreme Court says the law applies to all employers, including governments. (*Torres v. Texas Dept. of Public Safety*)

Online resource For advice on USERRA compliance, see **www.theHRSpecialist.com/USERRA**.

Legal Briefs

Cut off network access directly after termination

A San Francisco bank fired an employee for accessing porn on his company laptop. HR told him to mail in the laptop, but failed to tell him to stay off the company network. Nor did it cut off his network access. That night, the worker accessed the network and caused $220k worth of damage.

The lesson: Shut off network access simultaneously with terminations and collect all electronics at the exit meeting. Make sure your policies are clear about unauthorized use of company hardware.

Ugly trend: Hiring staff based on preferred 'look'

The EEOC sued a New York restaurant, saying it refused to hire applicants aged 40 or above for any server, bartender and host jobs. Managers deemed the older applicants "not the demographic" they thought the customers wanted to see. Instead, they hired younger, less qualified workers. (*EEOC v. Hillstone Restaurant Group*, SD NY)

Advice: Never make hiring decisions based on the kind of employees you think customers might prefer. That quickly can devolve into a lawsuit based on age, race, gender, religion or disability. Run audits of hiring patterns for public-facing jobs.

The first rule of a no-fighting policy: Enforce it consistently

During a shouting match, an employee pushed his manager, who pushed back. The fight escalated and the manager was knocked unconscious. Citing its no-violence policy, the company fired both workers. The manager sued, but the court said companies are free to institute zero-tolerance violence policies, as long as they're applied evenly. (*Donez v. Leprino Foods*, 10th Cir.)

The lesson: Make sure your organization enforces its violence policy consistently or it could quickly trigger a discrimination claim.

Washington Report

Proposal to raise OT threshold coming in fall

The current overtime salary threshold for white-collar employees is $35,568 per year, meaning workers earning less have to be paid overtime beyond 40 hours in a week. The Department of Labor announced it will propose an increase to those Fair Labor Standards Act exemptions in October. How high could the new threshold go? Consensus says the DOL will probably choose a number just under $50,000 per year. It also may revise the duties tests that define the FLSA's executive, administrative and professional exemptions.

NLRB magnifies its penalties for unfair labor violations

No longer may employers simply pay lost wages and benefits when they're found guilty of committing unfair labor practices. They must now "make whole" the employee by paying for all costs resulting from a wrongful termination or job denial, according to a memo issued by the National Labor Relations Board. This could require employers to pay employees' interest expenses and "late fees," such as rent and car-loan payments, related to the unfair labor practice.

DOL expands its smartphone app to let workers track hours and pay

More of your employees can now use the U.S. Department of Labor's Timesheet app, which allows them to track their hours, break time, overtime and on-call time, and calculate how much they should legally be paid. The DOL launched an iOS version of the app about a decade ago and now just created an Android-compatible version. *Note*: If employers can't produce credible time records, courts almost always give the benefit of the doubt to employees who can.

Biden's White House will be the first one to pay its interns

The Biden administration says it will be the first ever to pay an hourly rate to its White House interns. The Fair Labor Standards Act requires for-profit employers to pay employees for their work, but interns can sometimes not be considered "employees" under the FLSA. To determine if interns should be paid, the Department of Labor uses a primary-beneficiary test, which looks at who benefits most from the work—the employer or the intern. Review the DOL's seven-factor test at **www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships**.

EEOC allows employees to choose a nonbinary label

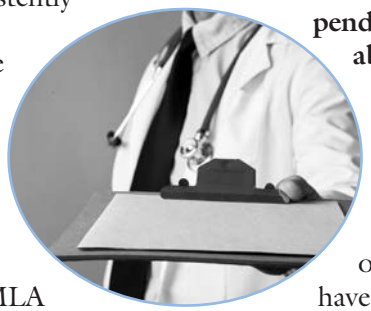
When employees file job-related discrimination charges with the EEOC, they will soon be able to select a nonbinary "X" gender designation. The EEOC said the new category was "consistent with the growing recognition that presenting only 'male' and 'female' options does not reflect the full range of gender identities." The EEOC also modified its charge of discrimination form to include "Mx." in the list of prefix options.

HR Q&A

Need FMLA certification or is a doctor note OK?

Q. Do employers have to request an official certification form for all FMLA situations, or can a physician's note be enough for an employer to designate FMLA?
— Ann, Illinois

A. Using an official certification form isn't required, but it is a best practice to use one form consistently so that you obtain all the information you need at once. That's especially true because the law limits your ability to go back to the physician and ask for updates in some circumstances.



If an employee presents a physician's note suggesting (or explicitly stating) that the employee has a medical condition that would qualify for FMLA leave, you should within five days "tentatively designate" the leave as FMLA-covered, and ask the person to have the medical provider complete a certification form within a reasonable time (15 days).

If you receive a doctor's note with all the information you'd usually request on the form, it wouldn't make sense to follow up and you could accept the note.

Guesstimating employees' expenses: OK or not?

Q. Can an employer guesstimate employees' average home office expenses, provide employees with a stipend and count the stipend as expenses and not taxable income? Are receipts required? Home office expenses would include furniture, a portion of internet services, electricity and maid service.

A. Guesstimates are not OK. The accountable plan rules apply when reimbursing employees for the business use of their internet and the purchase of office furniture. These rules require an item to have a specific business connection (i.e., the item isn't bought for personal use); a general statement indicating an employee uses the item for business isn't sufficient. The accountable plan rules also require employees to submit receipts.

Two-thirds of HR pros say inflation is affecting raises

Inflation is running at generational highs—near 9% last month—and employees are using this unfortunate trend as one reason they're requesting higher-than-average raises. Employers are listening.

Nearly two-thirds of HR professionals (63%) say that inflation is being considered or accounted for in raises being granted for the remainder of 2022, according to a poll of HR pros in July by the Society for Human Resource Management.

Small organizations were more likely than large ones to consider inflation when making decisions about raises.

"While some employers are reexamining their strategy when it comes to pay, many others are unsure or not currently considering inflation as a factor in their annual pay raises, instead focusing on pay transparency and competitive compensation, as well as the overall employee experience," said SHRM CEO Johnny Taylor.

Significant concern. Inflation and its effect on employees and the organizations' compensation strategies is a significant concern for 73% of HR professionals polled by SHRM. Concerns about inflation varied by organization size.

Fully 81% of HR pros in small organizations with fewer than 100 employees said they were worried about inflation's effects. Only 67% of those working for employers of 500 or more shared those concerns.

Show them the money. A survey by CareerBuilder found that 89% of employed adults said they expect an annual pay increase. And, fueled in part by inflation, nearly half (46%) of employees are now looking for a raise of at least 5%.

That's still not enough for 16% of workers, who said they expect a yearly raise of 10% or more each year.

Are 'woke training police' coming to your state?

With the new national emphasis on diversity and equity, many employers have launched employee training programs that address racism, sexism, ageism and other job bias.

But a backlash has begun percolating in state legislatures—and it could restrict the type of content you provide in those training programs.

Some states are planning to ban—or have already banned—training programs that they believe cast blame on some workers while portraying other workers as victims. The model for this is Florida's new "Individual Freedom Act" (also called the Stop WOKE Act), which took effect July 1. The law applies to Florida employers of 15 or more employees.

Under Florida's law, an employer's diversity, equity and inclusion training materials may not declare that some workers have privilege while others are oppressed or that some groups have inherent biases. Nor may trainers suggest that some groups should feel shame for what members of their race may have done in the past.

Course materials also can't include discussions of "privilege." For example, trainers can't tell White workers that they're advantaged because of prior oppression of non-White groups.

Advice: Similar legislation is gathering steam in other state legislatures. So be prepared to comply.

If you outsource your DEI programs and training to a third party, insist that your training vendors guarantee their materials and methods comply with federal, state and local laws.

Online resource For advice on what this trend and Florida's new law could means for employers, read FordHarrison's analysis at **www.tinyurl.com/WokeTraining**.

5 trends revealed by the shift to remote work

The pandemic-induced push of the American workforce into a remote world has triggered many consequences—some expected and some unforeseen. Here are five key productivity trends that have emerged since the shift to remote work in 2020, according to a survey of more than 2,400 professionals by outplacement firm Robert Half:

1 Productivity peaks early in the week. Employees get more done on Monday and Tuesday, whether at home or in the office. Results are consistent with a similar survey conducted in 2019, before the rise of remote and hybrid work.

2 We have specific "power hours." Most workers hit their stride in the late morning (9 a.m. to 12 p.m.) and early afternoon (1 to 4 p.m.), regardless of where they work. Very few tackle their to-dos during lunch or evening hours.

3 Meetings are getting in the way. Asked to share what most impedes their productivity, employees most often cited unnecessary calls and meetings (35%), followed by conversations with colleagues (25%).

4 Home is where it happens. While 21% of professionals said they're equally productive wherever they work, 35% reported accomplishing more at home.

5 Concerns about flexible work are waning. Early on, many managers still focused on "time in the seat" contributions of remote workers. But two-thirds of employees (66%) now feel their boss cares more about their contributions to the company than when and where they work.

Memo to Managers

Copy the text below and distribute it to the managers at your organization.

To: _____ Date: August 2022
From: _____ Re: Accommodating religion

Employment law

Accommodating religion: 6 commandments for managers

Say an applicant tells you she wouldn't be able to work Sundays due to her religion. Or an employee begins wearing a headscarf to the office. How would you respond?

The increasing religious diversity in the workforce is causing more managers to make legal mistakes. And a recent U.S. Supreme Court decision may cause confusion about where managers can draw the line on religion and prayer in the workplace.

In that ruling over the summer, the Supreme Court gave the OK for a high school football coach to conduct post-game prayers with players. But that was in a school setting, and government employees have more First Amendment rights to free speech. Employees in private-sector workplaces don't have such rights.

That means, while a company can offer prayer at work, it can't *require* it or punish staff who don't participate.

The law

As a manager, you need to let employees express their religious beliefs while, at the same time, making sure those expressions don't infringe on the rights of co-workers or the organization.

Federal anti-discrimination law—Title VII of the Civil Rights Act of 1964—makes it unlawful to discriminate against applicants or employees based on their religion.

The law says employers must "reasonably accommodate" an employee's "sincerely held" religious practices unless doing so would impose an "undue hardship" on the employer. In most cases, such accommodations involve giving employees time off to attend religious services.

How to comply

Here's what religious bias law means to managers on a practical, day-to-day level:

1. Keep religion out of hiring and firing. You can't treat applicants or employees less (or more) favorably in hiring, firing or other job conditions because of their religious beliefs or practices.

2. No proselytizing. You can't force employees to participate (or not participate) in a religious activity at work. You should prohibit employees from trying to push their religious beliefs and practices onto co-workers or customers.

3. Offer accommodation. You must reasonably accommodate an employee's "sincerely held" beliefs and practices. That may require leave or schedule changes to conduct prayer or attend services.

4. Know the "undue hardship" line. You can deny a religious accommodation request if it would create an "undue hardship" on the organization's business interests. The EEOC defines undue hardship as something that "requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits [or] impairs workplace safety."

5. Allow (certain) religious expression. You must allow employees' religious expression if workers are allowed to engage in other personal expression at work, as long as it doesn't impose an undue hardship on the company or infringe on the rights of others.

6. Prohibit religious harassment. You must take action if an employee is being harassed based on religious beliefs.

What's a religion?

When it comes to job discrimination, courts say employers must view "religion" fairly broadly, accommodating everything from mainstream religious views down to small sects.

In fact, the EEOC specifically states that the size of the group the person belongs to is irrelevant to his or her right to be free of discrimination and harassment. The same is true of workers who don't adhere to any religion.

Employee requests Saturdays off to worship: What's a manager to say?

Let's say a top employee refuses to work a company's new mandated Saturday shift. His religion won't allow it, he says, and he wants an accommodation.

How you listen and react when first approached about a religious accommodation sets the tone for a quick resolution. If you sit down with the employee and discuss the problem, there's a good chance you can work something out. Even if there is no alternative, the employee would at least see your effort. Usually, that's all an employee—or the courts—will ask. Before you act, ask yourself these questions:

- What are your required working hours?
- Why is it essential that an employee work during those periods that his or her religious beliefs prohibit working?
- Are there other qualified employees who would be willing to substitute during those periods? What additional costs would that require?
- Are there reasons other than cost compelling you to refuse to accommodate?
- How have you responded to other similar requests? (Courts will also look for consistency.)
- Has the employee offered a possible accommodation to produce a compromise?

Abortion discrimination is still illegal pregnancy bias

Is it legal to fire an employee who has an abortion? This is a question that a lot of employers and employees will now be asking in light of the Supreme Court's decision that there is no constitutional right to abortion. (*Dobbs v. Jackson Women's Health Organization*)

As controversial and divisive of an issue as abortion is (perhaps now more than ever), the law is clear that an employer cannot fire an employee for having one.

Nothing the Supreme Court did in *Dobbs* changes this.

The EEOC made this clear in guidelines that the agency published in 2015, Enforcement Guidance on Pregnancy Discrimination and Related Issues:

> *Title VII prohibits discrimination based on pregnancy, childbirth, or a related medical condition. Thus, an employer may not discriminate against a woman with a medical condition relating to pregnancy or childbirth and must treat her the same as others who are similar in their ability or inability to work but are not affected by pregnancy, childbirth, or related medical conditions....*
>
> *Title VII protects women from being fired for having an abortion or contemplating having an abortion.*

(See the full EEOC document at **www.tinyurl.com/EEOCpregnancy**.)

Even after the *Dobbs* decision, firing an employee who has—or expresses an intent to have—an abortion is no different than firing that employee because of her pregnancy.

The courts have universally supported the EEOC's position. It's been the law of the 6th Circuit for more than 25 years and the 3rd Circuit for nearly 15 years. The *Dobbs* decision does nothing to change this.

Yes, there are limited exceptions. The First Amendment, for example, likely protects religious institutions that take adverse actions against an employee because of an abortion.

For the most part, however, you need to understand that whether or not you agree with a woman's right to have an abortion (and they still have that right in states that have not banned it, including the right to travel to those states if possible), abortion discrimination equals pregnancy discrimination.

Thus, firing an employee who has—or expresses an intent to have—an abortion is no different than firing that employee because of her pregnancy.

Dobbs may have eliminated the constitutional right to abortion, but it did not alter Title VII's workplace protections for having one.

Jon Hyman is a partner at Wickens, Herzer & Panza in Cleveland and one of America's top writers and speakers on employment law. You can read his popular blog at ***www.OhioEmployerLawBlog.com****.*

STAFF

Editorial Director: Patrick DiDomenico, 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 20, Number 8 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.

4 key questions to guide your back-to-the-office decisions

Is it time to revisit where your employees do their work? Telework may have been essential back in 2020, but now more employers have moved on to hybrid schedules, in which employees work remotely sometimes and on site sometimes.

Some organizations have scrapped telework altogether in favor of returning to the office full-time. Others shut down most of their office space and shifted to permanent remote work.

Choosing which will work best for your organization can be daunting. Ask these four questions to determine which of these models makes the most sense for your organization:

1 Who is working where right now? Take a good look at where your employees are working now. Are most still teleworking? Have some returned to the office at least a few days per week on a hybrid schedule? How many now work exclusively on site? Assessing current conditions will establish a baseline for future decisions.

2 How is productivity holding up? Use your latest performance reviews to see which employees are high performers and who isn't keeping up. Cross-tabulate performance ratings against work locations. Do employees on a hybrid schedule outperform teleworkers or those in the office full-time?

3 Have turnover and absenteeism been problems? Who has quit? Where did they work? Was it hard to recruit replacements? Has it been difficult to monitor attendance of remote workers? Did absenteeism become a problem when remote work began?

4 What do workers (and applicants) want? A tight labor market makes this factor critical. Ask employees which model they prefer. Some may welcome a hybrid model or full return to the office, while others decidedly prefer remote work.

Final note: If you decide to end a remote-work option, some employees may insist they need that flexibility as a reasonable accommodation to their disability (medical or mental). Handle those requests as you would any other ADA accommodation request. When in doubt, talk to your attorney.

FYI

The new push for union organizing is real

High-profile union drives at Amazon and Starbucks have grabbed headlines, but new stats show that the organizing fire is burning across the country. Union representation petitions filed with the National Labor Relations Board spiked by 56% in the first half of 2022—a total of 1,935 petitions, up from 1,240 at the same time last year. Meanwhile, the number of unfair labor practice charges by employees has climbed 14%—from 11,451 in the first half of 2021 to 13,106 this year.

The best (and worst) things about working at home

Remote workers say that not having to commute is the number one best thing about working from home, with freedom/flexibility second. The worst thing? Feeling isolated and having little or no contact with coworkers, according to a new survey by the Myers-Briggs Company.

While 42% of hybrid workers would like to work from home more often, only 23% would like to work in the office more often. Women have a slightly higher preference for remote work than men.

Less than half of HR took their allotted PTO

New research from Qualtrics shows that, due to an increased workload, less than half (49%) of HR professionals took their allotted PTO time last year. But help is on the way. A great majority of HR pros say they expect to have more resources (i.e., budget, staff, vendor help) to help them do their jobs this year. The survey reported that 81% of HR professionals are currently working remotely in some capacity.

Is there anything more dangerous than crossing the IRS?

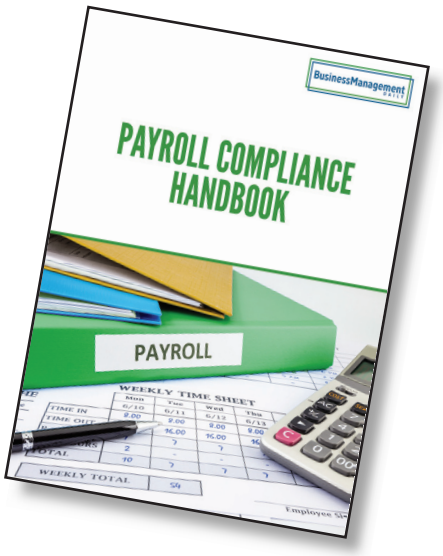
Payroll Compliance Handbook

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

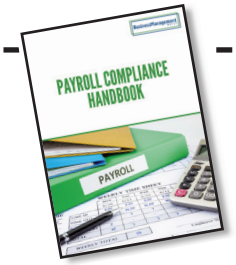
We've Made Payroll Easy Again!

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.)

OR, ATTACH YOUR BUSINESS CARD HERE!

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

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

Please allow 3 weeks for delivery.

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.