

To:

The HR Specialist

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Last call:
HR Specialist
Summit: Join us
Sept. 4-6 in Vegas ... see p. 8

From: Business Management Daily

Subject: Practical HR strategies to boost your career

In The News ...

HR's strategic voice grows stronger. More HR leaders feel they have a voice in company strategy and decisions today (90%) than in the previous two years (80% in 2018 and 2017), according to Paychex's Pulse of HR Survey. The report says, "With more time, information and resources, HR professionals are better positioned to successfully address the evolving HR needs of both employees and the organization."

Expense report fraud on the rise. More than half (56%) of chief financial officers say they've seen an uptick in fishy expense report entries in the past three years, according to a new Robert Half Management Resources survey. Some of the more eyebrow-raising reimbursement requests: cat litter, pet sitting, a pogo stick and a Lamborghini. Find five tips to rein in expense account fraud at www.theHRSpecialist.com/expensefraud.

California & New York: first states to ban hairstyle bias. Following on New York City's heels, California and New York have become the first two states to make it unlawful to discriminate against employees or applicants on the basis of the person's hairstyle. Both laws say hairstyles are "traits historically associated with race." Expect other states and cities to follow. Read more details and tips on how to respond at www.theHRSpecialist.com/hairbias.

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Retaining hourly staff: Are bonuses the key?

The unemployment rate is hovering near a 50-year low, and for 15 straight months the number of job openings—around 7.3 million—has exceeded the number of Americans actively seeking work.

No wonder you're having trouble finding employees to fill open positions. And no wonder you have a sneaking suspicion that some of your employees may be looking for new jobs elsewhere.

It's going to take some creativity to win today's recruitment and retention battles.

An increasing number of employers have decided that significant investments in bonus plans are worth a try. They're making even low-level retail and restaurant staff eligible—even part-timers.

Example: Fast-casual eatery Chipotle has started a new bonus program for hourly employees that can add up to a month's worth of extra pay over a full year.

Bonuses will be paid quarterly if crew teams meet revenue and other goals. The bonus is then one week's pay, calculated using the worker's average weekly pay that quarter. The plan is available for all employees, including part-time workers.

Continued on page 2

Cash or credit?

Would you rather get a \$500 bonus or be recognized for your accomplishments in a companywide email from the CEO? BambooHR asked 1,000 U.S. employees that question. The result: 2 of 3 workers said they'd take the cash.

Compliance training: Follow the 3 E's

For some employers, it's mandated by the state. For all employers, it's simply a smart move.

Training managers on their legal risks and responsibilities not only helps build a culture of respect and civility, it educates supervisors on the risky behaviors that can land your organization (and managers, themselves) in court.

Instructor-led live training is still the gold standard. But the quality of online and software-based training has improved in recent years.

"It used to be that if you didn't do live training, you were a 'check the box' company when it came to liability training," says attorney Joe Beachboard, managing director of Ogletree Deakins. "But that's not really true anymore with all the

advancements in technology."

No matter what medium you use to train, Beachboard says the best training includes these three elements:

Engaging. Use multiple voices; avoid having one talking head. Include interactive components (polling, quizzes). Personalize the training to the audience. Give them a reason to stay and remain engaged (giveaways).

Continued on page 2

'Must have' training topics

- Sexual and other types of harassment
- Discrimination (including unconscious bias)
- Electronic communication etiquette
- Diversity and inclusion
- Workplace violence/bullying
- Documentation

Retaining hourly staff

(Cont. from page 1)

If you think a bonus program might help recruit or retain hourly workers, get help designing and implementing it so you'll avoid the wage-and-hour legal traps.

In some circumstances, you may have to adjust overtime payments because bonuses may affect the "regular rate of pay" on which overtime is based.

A recent Department of Labor opinion letter highlights some of the potential pitfalls. If a bonus is nondiscretionary (as in the case of Chipotle's plan, since it's paid based on meeting a series of stated goals), then it counts as part of the regular rate of pay for overtime purposes.

According to the DOL opinion letter, "the employer must retrospectively recalculate the regular rate for each workweek in the bonus period and pay the additional overtime compensation due on the bonus."

Note: Other employers are trying different approaches to lure and keep front-line staff. For example, the Shake Shack burger chain is trying a four-day workweek.

Compliance training

(Cont. from page 1)

Educational. Provide real-life examples of manager mistakes that have led to lawsuits (this newsletter provides many). If possible, have those examples be related to your industry. Explain how the training is important to the company and to the managers personally. Remind them that some employment laws can hold supervisors *personally* liable for violations, meaning their own nest eggs are at risk.

Entertaining. Use storytelling—it's a powerful tool that helps the audience make an emotional connection to the message. Require active participation—from a show of hands to phone-based polling tools (such as TurningPoint or Poll Everywhere). Be careful with humor. It can backfire into liability itself.

Termination notices: Must they specify a reason for the firing?

No federal law requires employers to provide a warning or written notice of termination to at-will employees, unless the person is terminated under a contract, a union agreement or part of a mass layoff.

In fact, employers aren't even required by federal law to identify the reason for a termination when an at-will worker is fired verbally or via pink slip. (Some state laws may differ.)

That said, silence is NOT a golden strategy in firings. As many court cases have shown, providing no reason for a termination simply opens the door for the employees to assume the reason was inappropriate or unlawful.

Best bet: Make a thought-out decision on why the employee is being terminated, based on your previously documented reasons. Keep the explanation short and sweet, and stick to it. Don't tack on extra reasons to justify the decision or change your story later. Document the discussion.



Recent case: A city worker in San Francisco routinely left her office in the middle of the day to help at her parent's nearby restaurant. She never asked permission to do so. Surveillance confirmed her on-the-job moonlighting.

When confronted, she confessed to fudging her time sheets to cover her extended lunch breaks. She was fired and received a termination letter. It didn't state a reason for the firing.

She sued, citing age discrimination. The city told the court the real reason (the time theft), but the employee said the lack of an original reason proved discrimination. The court dismissed the case, saying time theft was a legit reason. But the city may have avoided the suit by giving a simple explanation upfront. (*Ramirez v. San Francisco*, Court of Appeal of California)

Online resource Find tips on creating a termination policy, plus three sample policies to adapt, at www.theHRSpecialist.com/terminate.

World Cup scores more equal-pay inquiries

While the U.S. Women's National Team took home the World Cup soccer trophy this summer, they also gained something else: lots of national exposure to the team's Equal Pay Act class-action lawsuit demanding to be paid at least as much as the men's team.

The added focus has some U.S. workers taking a closer look at pay inequities in their own workplaces.

The EPA requires employers to pay members of each sex the same for performing work that is substantially the same. The only way for an employer to defend an EPA lawsuit is to prove that the jobs aren't substantially similar—or that the pay difference is attributable to some factor other than sex.

Case in point: Irma, a fine-arts teacher in Arkansas, filed an EPA

lawsuit, saying she was paid less than a male fine-arts teacher for doing the same work.

The court said Irma had to prove the man's work was "substantially equal" to her own, considering "all the facts and circumstances ... including level of experience, training, education, ability, effort and responsibility."

But the school successfully showed that the jobs weren't equal. Irma worked solely with elementary-school students, while the male teacher worked with secondary students, too, which required a more demanding curriculum and planning. (*Routen v. Suggs*, 8th Cir.)

Online resource In addition to the federal EPA, more states are passing their own pay-equity laws. Find a summary of those state laws at www.theHRSpecialist.com/equalpay.



Criticizing poor performance isn't harassment

Supervisors should never fear calling out employees for poor work. Unless those workers have some kind of evidence that they are being singled out due to their membership in a protected class (age, race, sex, religion, disability), they can't claim that being pushed to do a better job is anything but an unpleasant consequence of doing a lousy job.

Recent case: Robert, a 56-year-old black male, worked maintenance at a hotel. He complained to HR that he was being harassed by supervisors. His examples: A boss called him "lazy and incompetent" and another said aloud

to other employees, "Look at him ... he ain't doing nothing."

Robert was fired for performance reasons and then sued for race discrimination. The court tossed out his case, saying Robert never alerted HR or managers that he believed the unpleasant interactions were somehow motivated by race. (*Sykes v. Driftwood*, Court of Appeals of Texas)

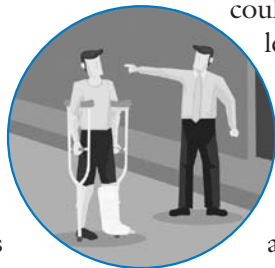
Final tip: Even rude critiques aren't illegal until they cross the line of protected characteristics. Still, it's wise to train managers how to give performance-related feedback in a constructive and respectful manner.

100%-healed policy? A \$950k mistake

Do you have a policy requiring injured workers to be 100% healed before returning to work? Do you automatically terminate workers who request more time off?

Such policies can violate the ADA and should be rewritten. As soon as you learn a worker may not be 100% healed by the end of his medical or FMLA leave, begin the interactive process to discuss accommodations, including possible additional leave.

Recent case: An Arizona healthcare



company required staff returning to work after medical leave to show they were *completely* healed and had no medical restrictions. Employees who couldn't (and didn't have any leave remaining) were fired.

The EEOC sued, saying employees should be entitled to accommodations like reassignment, modified schedules or additional unpaid leave. The company settled for \$950,000 to be shared by 23 disabled workers. (*EEOC v. Corizon Health*, DC AZ)

Found retirement account error? Fix it fast

Small employers don't always get everything right when dealing with the complex rules governing employee retirement accounts.

Making an honest mistake and then fixing it generally doesn't violate the law. Just make sure you fix the error as quickly as possible.

Recent case: An ex-employee of a small, nonprofit arts center sued, alleging that money was taken from her 403(b) retirement account without her permission.

The center explained it had discov-

ered that her money had accidentally been co-mingled with another former employee's retirement money. When it found the mistake, the company hired an outside firm to fix the problem.

The court said the error didn't warrant a successful lawsuit because the center was trying in good faith to correct the past mistake. (*Brenton v. Kirby Center*, MD PA)

Final note: This case illustrates that when an employee loses her job, her attorney will go through every possible legal claim with a fine-tooth comb.

Legal Briefs

Prepare to prove that your discipline was consistent

The Federal Reserve Bank fired Gerard after security scanners caught him bringing a taser in his bag. He sued, alleging race discrimination.

The court tossed out his case, saying the employer had treated similar situations the same. For example, it refused to hire an applicant who was caught carrying a gun. (*Nguedi v. FRBNY*, SD NY)

The lesson: When firing for rule breaking, check to see how you punished others who broke the same rule. Be prepared to show how the situations compared.

Don't assume disability because of prescription

Paul refused to give details after testing positive for opiates. But when he was suspended, he said the drugs were prescribed for post-traumatic stress. He quit and sued, saying the company regarded him as disabled. The court said no because the employer hadn't asked about a disability when inquiring about the test result. It only learned after he quit. (*Voss v. Housing Authority*, 8th Cir.)

The lesson: If you learn an employee is taking a prescription containing a controlled substance, don't make assumptions about disability.

Make returning worker sign arbitration agreement again

When hired, Kathy signed a mandatory arbitration agreement. She quit but was rehired a year later. She never signed the arbitration pact again. When she sued for sex discrimination, the court let her take her case to trial, saying her resignation ended the first agreement. (*Hartley v. Yucca Valley Auto*, Appeal Court of California)

The lesson: If you use arbitration agreements, require "boomerang employees" to sign and date fresh copies when they return.

Here are 12 pieces of bite-sized advice from the recent Society for Human Resource Management (SHRM) annual conference in Las Vegas:

1 DROP RATINGS FROM REVIEWS? “More employers have gone rating-less (in performance reviews) and it’s worked for them. The jury is still out whether that’s the best move. But there’s no question that having more frequent conversations between employees and managers is critical.” — *Jeremy Spake, principal, Cornerstone OnDemand*

★ ★ ★

2 GET A POLICY ON POT PRODUCTS. “There are all types of new CBD products out there, from CBD lip gloss to CBD hand lotion. It’s not psychedelic, but it is a marijuana derivative ... it’s a whole new area and you need to decide if you’ll make rules about it.” — *attorney Lara de Leon, Ogletree Deakins*

★ ★ ★

3 DAY 1: MORE INTERACTION, LESS HR. “What if we took HR out of the new employee experience? On Day One, the more that new hires engage with the new people who will be part of their work family—and less with HR—the better.” — *Wade Larson, chief HR officer, Wagstaff Inc.*

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4 DEFINE ‘YEAR’ IN FMLA POLICY. “Make sure you define what the ‘leave year’ is in your FMLA policy, whether it’s a rolling year or a calendar year or whatever you choose. Otherwise, the employee can use whichever calendar is most beneficial to them.” — *attorney Eric Meyer, FisherBroyles*

★ ★ ★

5 SMART OFFBOARDING HELPS YOU RECRUIT. “How are you at exiting employees and what are they saying on the way out? ... Your goal is that they are saying great things and giving you a five-star rating in the way they’re treated.” — *Raymond Lee, CEO, CareerMinds Group*

★ ★ ★

Teach your managers to confront, not cower

“We don’t know how to have the hard conversations—people don’t have that hard-conversation skill set ... But courage is teachable, observable and measurable. We can teach people how to be braver. We can teach people how to show up and do the hard things.” — *Brené Brown, best-selling author and researcher*



6 EVERY NEW HIRE IS A FLIGHT RISK. “All new hires are a flight risk because if they have the guts to leave their last job, they have the guts to leave you ... You have to get creative with the carrots you’re dangling.” — *Cara Silletto, president, Crescendo Strategies*

★ ★ ★

7 AT STARBUCKS, IT’S ABOUT CULTURE, NOT COFFEE. “At Starbucks, we talked early on about values—not the business ... (In your onboarding), instead of talking to employees about what you do, talk to them about the values of this place and how they come to life in your business ... HR are the ones who have to change the language.” — *Howard Behar, former president of Starbucks*

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8 HOW SAFE IS YOUR DATA? TEST TO FIND OUT. “The same way you do elevator tests and fire drill tests, your company should be doing tests on its cybersecurity plan ... there are a lot (of vendors) you can hire that will try their hardest to hack into your system.” — *attorney Louis Lessig, Brown & Connery*

★ ★ ★

9 TAKE RAISES OFF AUTOPILOT. “You should give 20% of your employees a 0% raise to allow you to have enough money in your salary budget to truly reward the high performers.” — *John Rubino, president, Rubino Consulting*

★ ★ ★

10 THE NEW VOICE OF HARASSMENT. “If you get a complaint like, ‘He yelled at me,’ or ‘He was mean to me,’ HR still needs to investigate even if that’s not your typical sexual harassment claim ... With the increased awareness of the #MeToo movement, that’s something you should look into.” — *attorney Shayna Balch, Fisher Phillips*

★ ★ ★

11 SET THE BAR HIGHER FOR MANAGERS. “If you want to build better managers, you need to set higher expectations for them.” — *Mack Munro, CEO, Boss Builders*

★ ★ ★

12 WHAT’S IN A NAME? IN A LAWSUIT, A LOT. “If you work for a large corporation, take a look at your handbook and agreements to make sure your organization is precisely identified and that corporate separation is maintained. Otherwise, you could have problems in a lawsuit ... The goal is to keep any lawsuit or claim confined to the subsidiary because the employee will go after the deepest pockets.” — *attorney Pavneet Uppal, Fisher Phillips*



\$15 minimum wage approved by the House, but don't expect action in Senate

The U.S. House of Representatives approved legislation on July 20 that would more than double the federal minimum wage from \$7.25 to \$15 per hour over the next six years. The current wage floor hasn't been changed since it was last boosted in 2009. Many states and cities set their minimum wages higher than the federal level. *Outlook:* Don't expect the Republican-led Senate to take action on this bill anytime soon.

Penalties rise for employers filing incorrect W-2 forms

Procrastinators beware: On Aug. 1, penalties increase from \$100 to \$270 per form for these W-2 missteps: failing to file 2018 W-2s in the first place or filing incorrect 2018 W-2s that you haven't yet corrected. You can correct errors on W-2s by filing Forms W-2c/W-3c with the Social Security Administration. Employees must receive copies of Form W-2c, as well.

EEOC's new ally it's its war on age discrimination: organized labor

Here's another reason to make sure your employment decisions are blind to age: Unions are becoming a bigger force in ferreting out age discrimination in the workplace. *Example:* The Communication Workers of America launched a litigation campaign to teach employees about the topic and help fund lawsuits. So far, the CWA has filed more than 70 age-discrimination claims with the EEOC, and many are tailor-made for turning into class-action lawsuits. For a free training handout, *What Managers Need to Know About Age Discrimination*, go to www.theHRSpecialist.com/age.

IRS will allow shortened SSNs on employees' W-2 forms

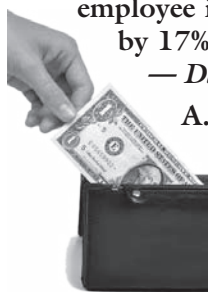
Starting in 2021, the IRS will permit employers to shorten Social Security numbers (SSNs) that are printed on employees' W-2 wage statements. The goal: help workers protect themselves from identity theft. SSNs can be masked with the first five digits replaced with asterisks or XXXs. *Example:* ***-**-1234. *Note:* The rule does not allow you to send truncated SSNs on W-2 forms to the IRS or Social Security Administration.

HR Q&A

Employee is relocating: Can we reduce his salary due to lower cost of living in new city?

Q. An employee is moving within the company from near Los Angeles to Arizona. When discussing compensation, would it be discriminatory to remove some pay after relocating? For example, if the employee is making \$64k, can we lower the pay by 17% because of the lower cost of living?

— *David, Arizona*



A. Lowering pay to fit within your pay structure at the new facility would not be discriminatory, as long as it is actually tied to the cost of living and imposed for that reason.

You don't say why the employee is moving locations, and he or she may not wish to accept the transfer under these circumstances, of course. For that reason, you should be frank about the option or request for transfer, the salary being offered, the opportunities for advancement and other factors the employee would consider relevant in making the decision.

Must we accommodate employee's request to keep his Social Security number private?

Q. An employee has asked that his Social Security number be removed from the payroll system. He wants all tax and wage reporting to show "Employee Refused to

Provide" in the space for the SSN. I can enter a dummy SSN into the payroll system, but I'm unclear about our legal obligations. Since we know the number, would we be penalized for filing a false W-2? — *Anonymous*

A. It sounds like you have a tax protestor on your hands. The answer is no, you can't keep this person's SSN secret. If you know the employee's SSN, you must use it. And you should never use a dummy SSN on a W-2.

Note: If the employee wants to keep his SSN private due to identify-theft fears, let him know that your organization can print shortened SSN numbers on W-2s starting in 2021 (*see article above*).

How do we handle health insurance reporting if both of the spouses work for us?

Q. A married couple both work for our company. The wife has family health coverage and covers her husband as a dependent. For whom should the employer complete Form 1095-C? Likewise, on whose W-2 should the cost of the coverage be reported? — *Anonymous*

A. The employer should complete Form 1095-C for both because both were offered coverage. However, the employer should report the cost of the coverage on only the wife's W-2, in Box 12, with Code DD.

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

To: _____
From: _____

Date: August 2019
Re: Employee engagement

Engagement

Reignite the passion in your employees: 6 simple steps

The percentage of U.S. employees quitting their jobs has reached an all-time high this summer, fueled by a strong economy and lots of available jobs.

Even your long-term employees may be wondering about greener pastures. While familiarity and routine can make an employee passively content, it also can make them feel stale in their jobs.

Don't let your employees grow flat. Happy and fulfilled employees are more productive, collaborative, creative and willing to go the extra mile. They also tend to stick around longer.

Here are six tips to help keep the spark alive in your employees:

1. Find out what gets them excited

Talk with employees individually about professional goals. Chances are they'll become chatty and enthusiastic. Run with those interests, and offer support such as training, visibility and office resources.

Ask them what they enjoy most about their job—and least. Then, think of ways you can give them more of what they love and less of what they don't love.

2. Assign something different

With the passage of time, fewer opportunities generally exist for workers to face challenges and gain the pride that comes with succeeding at something outside of their comfort zone.

Shake up the status quo from time to time by presenting workers with an alternative. They'll benefit from the mental stimulation of learning something new, and you'll gain a more versatile staff.

Similarly, partnering people differently for projects or brainstorming sessions can break the monotony and improve communications.



3. Give regular feedback

Bosses typically keep a closer eye on new employees. Seasoned workers sometimes can fall off the radar until a problem arises or an annual review comes around. That's a breeding ground for mediocrity.

Combat this scenario by offering appreciation and constructive criticism on a consistent basis. Clear guidance helps people know what they can improve upon and excel at, and heartfelt words show efforts are noticed.

4. Point out purpose

Feeling that what they do truly makes a difference will inspire greater commitment and energy from employees. So make sure your employees realize their own importance.

Share the bigger picture with them—not just telling them what to

do, but why and how it supports the goals of the department and entire company.

When people understand the “why” of what they are doing, you are setting your employees up for success in achieving these goals.

5. Encourage relaxation

How can employees be passionate if they're burnt out? Everybody needs time to recharge. Workers who remain connected to the office 24/7, fail to take lunch breaks or don't use their vacation time are ticking time bombs. Encourage workers to take their allotted breaks and vacation time—and to unplug during that time.

6. Monitor your own passion level

Realize that dedicated managers who put their heart and soul into tasks will set an awesome example and encourages others to perform the same way.

Spend time figuring out how to rekindle your own passion. Your personal contentment is reason enough to do so, but the ripple effect to your team is icing on the cake.

Case study What employees really, really want

Twice a year, Facebook surveys its employees to ask what they value most in the workplace. According to *Harvard Business Review*, here are the three main motivators the company identified after examining hundreds of thousands of answers:

CAREER: Employees want a position that provides autonomy, allows them to use their strengths and promotes learning and development.

COMMUNITY: They want to feel respected, cared about and recognized by others. This drives people's sense of connection and belonging.

CAUSE: People want to feel they have a purpose and make a meaningful impact in their jobs. They want to identify with the organization's mission and believe their employer (and their job) is doing some good in the world.

These three buckets create the psychological contract—the unwritten expectations—between employer and employee. If that contract is fulfilled, people bring their whole selves to work. When it's not, people become less committed and they perform worse.





HR & managers: Here's how to get over your fear of conflict

What's the hardest part about being a leader? Confrontation. Especially if you're naturally averse to conflict.

It's that queasy feeling you get when you have little choice but to corner a well-liked, happy-go-lucky employee and point out his shortcomings as he bats that "Who? Me?" look at you. Or worse, you have to lead a layoff.

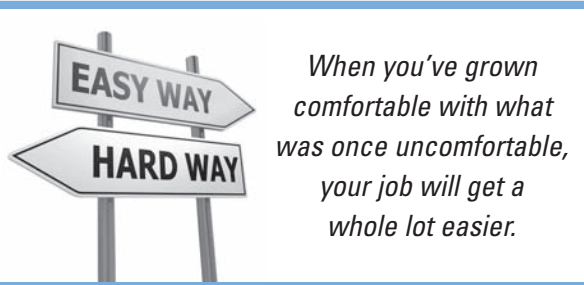
Conflict is not about you acting tough or testing out some nifty bullying tactics. It's about solving problems before they turn into a workplace meltdown, which is what will happen if you avoid confrontation.

Why do folks shun conflict? It's all about losing: losing the argument ... losing face ... losing a friend. But if you don't want to lose your job, you're going to have to confront confrontation. Here are some tips:

- **Pick one battle; notch one victory.** Isolate one problem you need to fix. Just one. The problem you're attacking first is your confidence builder. Pick an easy one. Say you need to talk

to an employee who is coming in later and later each day. Lay it out in a firm but professional tone why she's got to come in on time. Give her a business reason: Others are counting on her.

Her opinion of you may change, but not for the worse.



She'll begin to see you in an authoritative light, and believe it or not, with newfound respect.

- **Don't ad-lib.** Plan and practice your speech. Better yet, recruit your spouse or trusted friend (outside of work) to play the part of the employee you need to confront. Have the friend/spouse deliver typical but varied responses that you may get from the employee. Then establish and rehearse your comeback lines. Although the practice won't make perfect, it'll help

shoo most of the butterflies.

- **Address ASAP.** Dragging your feet is the purest form of avoidance. The longer you put it off, the more you'll conjure up seemingly rational reasons why it's best to dodge. Stewing in silence will begin to make sense. Don't fall for it. Set a sharp deadline, say a day or two, after you've thought about and practiced some lines.

- **Think business.** All business. This is the zone you need to be in. Everything you do as a boss in the workplace is essentially a business move. Strive to be efficient and fair. You need to separate personal feelings and fears from the work at hand: getting the most out of your employees with as much harmony as possible.

When you've grown comfortable with what was once uncomfortable, your job will get a whole lot easier.

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HR & the future workplace: Start planning for these 5 realities

You have probably heard the phrases “fourth industrial revolution” and the “future of work.” Both refer to coming changes in the way people live and work. Here are five things you should know about advanced technologies and the workplace:

1. It's not just AI. While artificial intelligence is making important changes to the world of work, there are additional technologies about which we should all be aware.

Organizations are using more intelligent robotics, performing tasks that historically required human intelligence. Biometric technology, which authenticates workers based on their unique traits (e.g., facial recognition, fingerprints and voice), are becoming more common as a secure way to authenticate employee identity.

Organizations are also increasingly using wearable technology like smartwatches, smartglasses, and exoskeletons to augment employees' physical capabilities. Finally, virtual reality is being used in recruiting, training and collaboration activities.

2. If you aren't ahead, you aren't behind ... yet. Organizations are all at different stages of digital maturity. For better or worse, business leaders will look to HR to lead their organi-

zations' digital transformations. Staying current with the best practices (and the legal and practical risks) associated with new technologies will be increasingly important.

3. Potential bias isn't the only legal concern.

Most media and regulatory attention has focused on the potential for AI to unintentionally treat one group (for example, women) differently than another. Employers need to also be aware of other labor and employment issues.

For example, many new technologies collect, analyze or store sensitive data. The ever-growing list of federal and state laws regulating data use and collection (as well as common laws concerning privacy) could create compliance concerns. Additionally, wearables raise health and safety issues.

4. Expect new (and more) regulation. One factor that may inhibit organizations from adopting advanced technologies is concern about compliance risks. The fit between 21st century technology and 20th century laws is not always a good one, leading some organizations to hesitate before, for example, incorporating AI into



For better or worse, business leaders will look to HR to lead their organizations' digital transformations. Staying current with the best practices (and the legal and practical risks) associated with new technologies will be increasingly important.

— Jen Betts, Ogletree Deakins

their talent acquisition processes.

There has been an uptick in regulatory activity in this space. So consider state-by-state analyses before adopting new technologies.

5. Legal compliance isn't enough.

While compliance is a necessity, the advance of technology into the workplace presents an equally important employee relations challenge. Employees are anxious about what technological developments will mean for their jobs. In advance of implementing any new technology, pay attention to communication strategies and the potential for retraining or upskilling.

Author: attorney Jennifer Betts, of Ogletree Deakins in Pittsburgh. At the 2019 HR Specialist Summit, she will lead a keynote panel on Using Artificial Intelligence and Data to Boost Compliance and Do Your Job Better.



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- **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
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