

From: Business Management Daily

Subject: Practical HR strategies to boost your career

## In The News ...

**MIT: AI-boosted résumés generate more hiring offers**

Job applicants who use artificial intelligence software to tweak their résumés are 8% more likely to be hired than those who do not, according to an experiment conducted at the Massachusetts Institute of Technology Sloan School of Management.

Researchers studied nearly half a million job seekers using an unnamed online employment platform, intercepting them as they input their résumés. Half were randomly invited to use a tool that offered résumé-editing suggestions—simple spellchecking and grammar and usage advice.

Applicants who accepted AI assistance received 7.8% more offers during their first month on the platform, with starting wages 8.4% higher than the unassisted group.

**Amazon drivers in California are first to join labor union**

Drivers who deliver Amazon packages in Southern California have voted to join the International Brotherhood of Teamsters union. “The Teamster contract is the first union agreement covering workers in Amazon’s massive delivery network,” a statement by the union said.

The drivers work for Battle Tested Strategies, which handles Amazon deliveries on a contract basis. The company agreed to voluntarily recognize the union. The contract sets driver pay at \$30 per hour.

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**Retention: Why employees decide to stay or go**

Gallup, the polling company that has quietly become an influential source of management intelligence, has uncovered some key trends that should interest HR pros determined to retain their best employees. The clear conclusion: Your employees are keeping their eyes open for new job opportunities.

Fully 49% of employees polled said they are watching for or actively seeking a new job. With half your staff at risk of bolting, HR professionals need to understand why employees are interested in leaving and what they’re looking for in their next job opportunity.

**Why employees jump ship**

Gallup found that the most common reason employees left their jobs in

2022 was to gain higher pay and better benefits—the primary motivator for 20% of poll respondents. More opportunities for advancement and the desire for better management tied for the second most-common reason for leaving.

**What attracts job-changers**

Most employee retention strategies focus on what is causing dissatisfaction within the organization. However, it’s also crucial to understand what might attract them to your competitors.

“Effective employee attraction and retention strategies require both an understanding of what people are looking for in a great career and the follow-through of bringing that employee value proposition to life,”

*Continued on page 2*

**Heed these new EEOC anti-harassment lessons**

A new EEOC report on workplace harassment of government employees offers important lessons for private-sector employers, too. The report—titled “Promising Factors for Preventing Harassment in the Federal Sector”—urges all employers to take a multi-pronged approach to creating an anti-harassment culture in their workplaces. Among the recommendations:

**Engage leaders in anti-harassment efforts.** Train senior managers and executives about your anti-harassment policy. They have a front-line role in assessing harassment risks within their functions. Distribute department-by-department analyses of past harassment complaints so they understand the scope of the problem. Make preventing and correcting harassment a performance measure for all leaders.

**Review your anti-harassment policy.**

Does it promise full and fast inves-

tigations? Does it explicitly prohibit retaliation against employees who file complaints? Other policy pointers:

- Make it clear the policy protects everyone, including applicants, interns and volunteers.
- State that harassment away from work, over social media and during virtual meetings is also prohibited.
- Emphasize that HR will investigate every instance of alleged harassment.
- Require managers and supervisors to submit “bystander” reports whenever they learn about harassing incidents or suspect harassment has occurred. Encourage employees to do so, too.

**Create a system for addressing harassment.** The EEOC says an effective anti-harassment program allows anonymous complaints through

*Continued on page 2*

## Retention poll

(Cont. from page 1)

the Gallup researchers write.

The report identifies these top attributes employees are seeking in their next job:

1. Better work-life balance and personal well-being
2. Significant improvements in pay or benefits
3. Ability to do what they do best, in roles that better align with their skills
4. Greater stability and more job security
5. Working for a diverse and inclusive organization

### Advice for increasing retention

Regularly survey employees to determine how satisfied they are with their pay and benefits, their access to advancement opportunities and the performance of their managers. Address the same topics in face-to-face stay interviews with top performers you can't afford to lose.

Use the results to understand what's important to your employees, what they might be looking for next in their careers and how to target your retention efforts.

## Anti-harassment lessons

(Cont. from page 1)

confidential means and tracks all complaints. Develop procedures to stop harassment while HR investigates, such as separating alleged victims and perpetrators. Establish disciplinary sanctions based on the severity of proven harassment.

**Provide anti-harassment training.** It's important to deliver role-specific training. Train managers and supervisors separately from rank-and-file employees. *Reason:* Employers are automatically liable when supervisors harass; courts assume they are acting as agents of the company.

**Online resource** Download the EEOC report at [tinyurl.com/EEOC-preventing-harassment](https://www.tinyurl.com/EEOC-preventing-harassment).

## Spotlight on Benefits

# Help employees get out from under the crushing burden of student-loan debt

Chances are, your most valuable employees are eager to improve their skills and advance their educations. But many employees hesitate to obtain undergraduate or graduate degrees because higher education is so expensive.

In 2021, full-time college students paid an average of almost \$20,000 per year for tuition and fees alone. Part-time students paid an average of \$456 per credit hour. Seventy percent of students who receive a bachelor's degree have education debt by the time they graduate.

But employers can address the fear of incurring student-loan debt by offering to offset at least some educational expenses with a tuition-reimbursement program.

It works like this: The IRS allows employers to deduct up to \$5,250 per employee per year in tuition-reimbursement payments. Employees who receive the benefit aren't taxed on the reimbursement, again up to \$5,250 per year. Employers typically require employees to pay tuition upfront and then submit a transcript showing successful completion before being reimbursed.

### Alternatives to reimbursement

For some employees who have already completed their educations, tuition reimbursement may not be as valuable a benefit as student-loan repayment.

You probably have employees who soon will be on the hook for hefty loan payments now that a pandemic-era student-loan repayment pause is expiring. Some of them may have begun contributing to a 401(k) plan with some of that money they saved by not having to make student-loan payments.

Employers can help those employees in two ways: By directly repaying employees' student loans and by designing defined-contribution retirement plans such as 401(k)s that allow funds to be used to pay down student debt. The first is currently allowable. The second will be in 2024. Here are details on both:

#### Student-loan

**payments:** The IRS allows employers to help employees repay their student loans if they're not taking advantage of an employer's tuition-reimbursement plan, up to \$5,250 per year. If employees have both student

loans and are still taking college classes, the total payment through both policies cannot exceed \$5,250 per year.

Some special rules apply, including a requirement that you let employees know about the program and ensure the payments don't disproportionately benefit your highest earners.

**Retirement contribution:** As part of the SECURE Act 2.0, beginning in 2024, employers will be able to help workers who are repaying their student loans by making a contribution into their workplace retirement plan equal to the student-loan repayment—with some statutory limits.

**Advice:** All the benefits discussed above require employers to work closely with their accountants to make sure the plans are IRS-compliant and allowable under ERISA—the Employee Retirement Income Security Act, which sets minimum standards for most voluntarily established private-sector retirement plans. Your retirement-plan provider can provide important guidance, too.





# What to leave out of your handbook: Details about benefits plans

Your handbook probably states you reserve the right to amend it at any time for any reason. That disclaimer helps protect against claims that your handbook is a binding contract. But that kind of language can cause problems if your handbook describes benefits that may be covered by the Employee Retirement Income Security Act.

**Recent case:** When Bristol Compressors needed to close a factory, it first decided to cancel a severance plan it had embedded in the employee handbook. The handbook included a contract disclaimer saying it could only be amended in writing by the HR department. Before closing the plant, the company's board of directors voted to

terminate the severance plan and cut it from the handbook.

Several workers sued, arguing that the severance plan was covered by ERISA and could only be changed by HR. After all, the handbook said changes had to be carried out by HR.

The 4th Circuit Court of Appeals ruled the workers were right; the company hadn't followed its own rules. Therefore, the ERISA-covered severance plan was still in effect at the time the plant closed. (*Messer, et al., v. Bristol Compressors*, 4th Cir., 2023)

**Advice:** Review your handbook and consider removing any references to potential ERISA-covered benefits.

# Handle requests for religious accommodations by holding interactive talks about options

Title VII requires employers to reasonably accommodate employees' sincerely held religious beliefs and practices. Currently, the standard for employers that want to deny a reasonable religious accommodation request is whether making the accommodation would create an undue burden on business operations.

Employers must handle requests for religious accommodations just as they do requests for disability accommodations under the ADA—through an interactive process in which the employee's and the employer's competing needs are discussed. Never skip that process.

**Recent case:** Mercy Health St. Mary's operates a hospital in Michigan. It interviewed a qualified applicant for an open position and offered him a job. That's when the man explained that his reli-

gious beliefs prevented him from being vaccinated with an employer-required annual flu shot. The hospital immediately withdrew the offer.

The EEOC sued on the applicant's behalf, claiming rescinding the job offer violated Title VII. The case now goes to trial. (*EEOC v. Mercy Health*, WD MI, 2023)

**Note:** Employers currently have great leeway to turn down religious accommodation requests. However, that doesn't mean they can ignore a request entirely or make no effort to arrive at a compromise or accommodation.

**Final note:** The U.S. Supreme Court is expected this month to rule in a case that could significantly expand employee rights to demand religious accommodations. Watch your email in-box for news from *The HR Specialist* about the disposition of *Groff v. DeJoy*.

### Job segregation by sex costs employer \$1.25 million

Buying into old stereotypes about the kind of work men and women do can be a costly error. One employer recently found that out the hard way, paying \$1.25 million when it was caught placing women in traditionally female roles and reserving more physically strenuous (and higher-paying) jobs for men.

**Recent case:** The EEOC received a pay-discrimination complaint against R&L Carriers, an Ohio-based trucking company. An investigation concluded the company was engaged in a pattern of sex discrimination in which it refused to hire qualified female applicants for jobs like dock worker or loader.

In 2017, the EEOC sued on behalf of a class of female applicants. It then filed a sex-discrimination lawsuit in 2017, alleging female applicants were either told directly by hiring managers that the company didn't hire women for dock-related work, or that their applications would be considered instead for office positions.

According to the lawsuit, the practice resulted in a segregated workforce, one in which far fewer women were hired than men.

Now, after six years of litigation, the company has agreed to settle the case. It will create a pool of \$1.25 million from which former female applicants not hired for dock work will be paid. In addition, the company must revise its recruiting and hiring materials to clarify that all positions are open to both men and women. (*EEOC v. R&L Carriers, et al.*, SD OH, 2023)

**Takeaways:** HR can prevent illegal sex discrimination with a few simple steps. Review all recruiting materials to ensure they don't create the impression that some jobs are segregated by gender. Train all hiring managers to avoid sex discrimination. Conduct routine hiring audits to determine if inadvertent bias is screening out members of any sex.



### Remote inspection of I-9 documents set to end July 31

On May 4, the Department of Homeland Security and U.S. Immigration and Customs Enforcement announced an end to pandemic-era rules that allow employers to remotely inspect new hires' I-9 documents.

Since 2020, employers that hire fully remote workers have been permitted to inspect via fax, video link or email documents such as driver's licenses, passports and birth certificates that employees present to establish their identities and authorization to work in the United States.

The flexible rules will expire on July 31. Employers will then have another 30 days to reach full compliance with I-9 documentation requirements.

By Aug. 30, DHS expects that all employees hired after March 20, 2020, whose documents have not been reviewed in the physical presence of an employer representative will have met with the employer and presented their documents. DHS will require employers to add a notation to employees' previously submitted I-9 forms specifying the date when the documents were physically examined.

#### What employers should do now

In coming weeks, employers should:

- **Identify affected employees.** Create a list of all employees you hired since March 20, 2020, and for whom you used the flexible I-9 rules to verify their documents. Most employers limited remote inspection to workers hired for jobs that were fully remote at the time of hire. Per DHS's flexibility policy, employers were supposed to physically inspect the documents once newly hired employees began reporting to a physical location. If you did not do so, now is the time to get into compliance.
- **Process their I-9 paperwork.** For employees who now report to a physical location, this should be simple.

For those who continue to work remotely, you will have to arrange for travel to a physical location for the inspection. Alternatively, you may designate someone as your authorized representative to meet with employees and inspect their documents. Most payroll processing companies can provide this service for you.

Given the passage of three years since the flexible rules took effect, it's possible employees have misplaced documents they used to establish their identities and authorization to work. While you were obligated to reverify work authorizations with expiration dates, if you did not, this is your chance to fix that.

**Final note:** DHS is still expected to issue proposed rules sometime later this year that may once again allow for remote I-9 documentation inspections. The proposed rules are currently moving through the regulatory process. However, those rules won't be in force before July 31. Prepare to begin in-person document inspection by then.

### Download brand-new FMLA poster

The Department of Labor's Wage and Hour Division has released a new poster informing employees of their FMLA rights. The new poster replaces a version last updated in 2016.

All employers with 50 or more employees in at least 20 workweeks in the current or preceding calendar year must display a poster in a "conspicuous place" explaining key FMLA provisions and telling employees how to file FMLA-related complaints.

Where employees typically work indoors, employers usually post the information in a breakroom or other common area where employees are likely to see it. On external jobsites, the poster must be displayed where employees are likely to see it.

Download the new poster for free at [www.dol.gov/agencies/whd/posters/fmla](http://www.dol.gov/agencies/whd/posters/fmla).

**Note:** It's fine to continue displaying earlier versions of the FMLA poster issued in 2013 and 2016.

## HR Q&A

### Must we grant terminated employees access to their personnel files?

**Q:** Can terminated employees have copies of information in their personnel files? Do they need a subpoena, or can they just call and request it? A former employee was terminated about a month ago. He wants to obtain a copy of his timesheet because he says he is going to court and wants to prove when he was at work. — *Anonymous, Missouri*

**A:** It is unclear from this question exactly what the purpose of the request is, though it sounds as if the former employee may be embroiled in a legal matter in which he needs to prove his whereabouts at a particular time and place.

by *Anniken Davenport, Esq.*

Typically, such requests would be accompanied by a subpoena and a request for the recipient to certify the record as genuine and one kept in the ordinary course of business. You may want to get clarification as to exactly what the former employee is requesting.

Alternatively, the former employee may be seeking information to use in a planned lawsuit against your organization. If you do not have a policy on employee records, it is best to consult an attorney to discuss in detail what approach to take.

*Anniken Davenport is an employment law attorney and Business Management Daily legal analyst and senior editor. She serves as a speaker/trainer for many events and webinars produced by Business Management Daily.*

## Prepare to welcome this summer's corps of aware teen workers

Despite economic headwinds, the unemployment rate was 3.4% in April, the lowest since 1969. Employers in many industries are desperate for willing workers, and they're looking to hire teenagers to fill seasonal positions. The Challenger, Gray and Christmas employment agency predicts employers will add 1.1 million new temporary jobs this summer, many in the red-hot hospitality sector.

If you plan to hire teens for seasonal jobs, brace yourself for a teen workforce like no other before it. Prepare to deal with more than the usual amount of teenage angst.

This year's summer labor pool

is hyper-aware of the culture wars. They've learned firsthand about book banning. They're fearful of mass shootings. They live on social media, where TikTok videos explain their workplace rights in easily digestible bites. And last but not least, they're more likely than ever to identify as transgender, nonbinary and under attack.

How you handle your teenage workforce may mean the difference between a successful summer and a fall full of EEOC complaints.

### Child-labor laws

The Fair Labor Standards Act codifies many of the rules for employing

workers younger than 18.

Yes, a number of states recently passed laws allowing minors to work longer hours and in dangerous environments such as factories, construction sites, slaughterhouses and restaurant kitchens.

But the federal Department of Labor, which enforces the FLSA, says unequivocally that the FLSA preempts state laws with lesser protection for children. Before implementing new hiring and work conditions based on these state child-labor laws, consult your attorney. The FLSA says:

- You cannot hire children under age 14 except in extremely limited circumstances.
- Fourteen- and fifteen-year-olds cannot work more than eight hours per day and 40 hours per week when school is out for the summer. DOL also only allow those teens to work in jobs deemed safe enough. Workers who are 16 or 17 can't perform "dangerous" work, as defined by DOL regulations.

**Online resource** Download a summary of the FLSA child-labor rules at [tinyurl.com/FLSA-child-labor](https://www.dol.gov/eis/whd/child-labor).

### Guard against harassment

The EEOC has made it an enforcement priority to ensure teenage workers aren't targets for exploitation and harassment. The commission's Youth@Work website ([www.eeoc.gov/youthwork](https://www.eeoc.gov/youthwork)), aimed at teens, uses simple language to define harassment and explain what young employees should do if they encounter it at work. *Tip:* Review the site yourself.

In addition, the EEOC is at the forefront of government efforts to protect gender identity and expression in the workplace—a topic of great interest to many teenagers.

**Advice:** Remind supervisors of their obligations to identify and report any suspected harassment of teenage employees. Be prepared to promptly investigate and resolve all harassment complaints.

## Boost productivity, retention with job rotation

Small and midsize organizations, by necessity, often temporarily rotate employees between jobs due to small staffs and turnover.

So why not turn an informal necessity into a formal career development program? A rotation plan can teach new skills, increase engagement and provide career paths for stagnated top performers who've outgrown their positions.

**The pros:** Job-rotation programs help exempt employees improve business skills more than technical and admin abilities. Also, nonexempt workers enhance technical skills over admin know-how.

Organizations can identify promising candidates for promotion and give them experience they need to advance.

Institutional knowledge increases because workers know more about the business and can perform more jobs.

**The cons:** Productivity drops temporarily as workers learn new jobs, make mistakes and possibly fail some assignments.

The workload will increase for those who don't rotate. As a result, department managers may balk at including their most productive employees.

### 5 guidelines to a smart program

**1. Create a job-rotation policy** that defines eligibility and explains which jobs are included. It's difficult to include highly specialized jobs that require special training or degrees.

**2. Make it clear that job rotation is voluntary**, not mandatory. Employees who do it willingly are more likely to succeed.

**3. Include professional, management, exempt and nonexempt employees of all ages and experience.** Don't rotate new hires and younger employees faster. *Reason:* Broad inclusion helps managers and employees discover hidden talents that can benefit the organization.

**4. Prior to each rotation, define the skills** that employees should learn and explain management's expectations.

**5. Don't rotate employees too quickly.** People should spend enough time in each task to learn the skills required to perform it well.

**Final tip:** Job rotation requires teamwork from the entire organization, including managers and employees who don't participate directly.

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

Date: June 2023  
 Re: Tough talks

## Communication How to confront mistake-prone employees

It's never easy for managers to confront an employee whose performance is slipping or who has begun making more mistakes.

That's why so many supervisors take a head-in-the-sand approach to slip-ups. One recent survey said only 31% of U.S. employees agreed with the statement that "My manager confronts poor performance."

### Feedback: Easy as A, B, C (and D)

Confrontation is necessary—for the employee and the organization. That's why it's vital to approach employees in a fair, problem-solving manner. When you do that, employees will improve or you'll have a clear, documented reason to proceed with discipline or termination, if needed. Some key rules of engagement:

**Accurate** Offer an objective, concrete description of the problem,

not vague statements. Provide specific examples and dates, backed by documentation. Avoid words like "always" and "never." They don't usually reflect realistic frequency.

Instead of saying, "You seem to be making more mistakes," say, "Three of your last five reports had enough errors that I had to spend at least an hour fixing the numbers."

**Business-oriented** Focus on the business reason for corrective comments. Stay away from personality critiques. Be able to point to written employee goals and company guidelines that are being affected by the mistakes or performance problem.

**Consistent (and timely)** Don't just dump all your criticism on an employee during a performance review or discipline meeting. To truly impact performance, it's vital to provide regular feedback throughout the year. Performance reviews should be just that—a *review* of the discussions held throughout the year.

Try to give employees feedback as close in time as possible to the behavior you want to correct—or behavior you want to praise.

*One tip:* Don't try to give corrective feedback when a person is upset or emotional; wait until the employee has calmed down.

**Document** Good documentation allows you to easily identify recurring mistakes and performance issues. It could also help if the employee decides to sue.

*Best bet:* Keep an ongoing performance log for each employee. When you hold corrective meetings, jot down the date, problem, action taken, result that occurred and any comments from the employee.

Don't let the log become a little black book of mistakes. Also include examples of positive performance.

### 7 questions to pinpoint why mistakes occur

Errors slow productivity and frustrate everyone. So it's tempting to chastise or quickly terminate employees who repeatedly make mistakes.

But don't be so quick with that trigger finger. Employees make slip-ups for different reasons—miscommunication, carelessness, lack of training, unfamiliarity with the process and more.

Good management means finding out why mistakes occur.

First, determine the circumstances under which mistakes tend to occur. Are errors connected to certain tasks? Find how often an employee makes mistakes and whether other workers are involved. Then ask questions like these:

- 1. Do you feel more likely to make mistakes while working fast or juggling several things simultaneously?** Determine whether the employee habitually makes errors under pressure.
- 2. Do you feel comfortable asking questions about assignments?** Some employees believe questions signal incompetence.
- 3. Do you feel the need to always figure things out yourself when you don't know what to do?** You don't want employees guessing.
- 4. Do you know when you make mistakes or do you find out afterwards?** Self-awareness helps self-correction.
- 5. Do you feel comfortable reporting mistakes to management?** You want to know they don't try to hide slip-ups.
- 6. Do you sometimes feel you lack the job knowledge to avoid mistakes?** Perhaps the employee feels that training is an issue.
- 7. What do you think needs to be done to avoid repeating the mistake?** Most employees will know.

### How to come out on top after you mess up

Managers make mistakes, too. But mistakes can be a valuable learning opportunity and even a chance to improve your standing at work. Here's how:

- Deliver the news yourself before anyone else.** You control the message when you're the first to deliver it.
- Come with a plan in hand.** People will be less concerned about your mistake when you follow its revelation with a great plan to make things right.
- Focus on the future.** Keep the conversation directed toward what is going to happen next, not what has already happened.
- Resist the urge to over-apologize.** Apologies draw attention back to the past. Keeping the focus on the future puts you in a position of strength.



# Essential AI querying skills for HR professionals

Artificial intelligence is transforming HR, streamlining operations, driving employee engagement and enhancing talent strategies. But to unlock AI's true potential, HR professionals must learn to effectively query and interact with AI platforms. After all, AI platforms are only as good as the language you speak to them.

Here are some fundamental principles and techniques of querying or prompting AI platforms so you can fully leverage AI-powered answers and insights.

**Be clear and specific.** It's important to use precise, natural language when you query AI platforms. Avoid jargon or acronyms that may not be familiar to the platform. Provide as much context as possible.

Let's say you use an AI-powered performance management tool to evaluate employee performance. Instead of asking a blanket question like "How did John do this year?" try using precise language and providing additional context. For example, you could ask, "What specific achievements and contributions did John make to the company in the past year? How do those align with his job responsibilities and performance

goals? Tell me the best way to discuss this with John."

**Use natural language.** AI platforms like ChatGPT are large language models designed to understand natural language. They are effective because they process large amounts of information and produce an output that takes into account the relationship between words and phrases, and predicts what should come next. Phrase your query in a way that is conversational and easy to understand. Avoid overly complex or technical language.



**AI platforms are only as good as the language you speak to them.**

**Provide relevant details.** To get the most valuable results from AI, provide as much relevant data as possible. For example, if you are querying an AI-powered recruitment tool, give information on the job requirements, the skills and experience you are looking for and any other relevant criteria. Define a specific role to help AI answer the query.

*Example:* "What candidates with

5+ years of experience in marketing, a bachelor's degree in marketing and a track record of success in a similar role have applied for the marketing manager position in the past month?"

**Let AI help you query.** AI platforms learn from the data they receive, so be open to suggestions the platform may offer. Those recommendations can help refine your query to obtain more accurate and relevant results.

**AI can also analyze user feedback and search histories to identify areas where users may struggle to articulate queries effectively and provide targeted suggestions or tutorials to help people improve their query-writing skills.**

**Validate the results.** After receiving results from an AI platform, assess them to ensure they are accurate and relevant.

If the results differ from what you expected or do not provide the insights you need, try refining your query or prompting the platform differently.

*Jason Averbrook is senior partner and global leader of digital HR strategy with Mercer\Leapgen. Leapgen, which Averbrook founded, was acquired by the Mercer consulting firm in March. Read Averbrook's blog at [tinyurl.com/Leapgen-blogs](http://tinyurl.com/Leapgen-blogs).*

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# New rules would extend HIPAA privacy protections to employees seeking reproductive care

The U.S. Supreme Court's 2022 decision in *Dobbs v. Jackson Women's Health Organization*, which repealed a nationwide right to abortion, prompted a host of unintended consequences. For employers that sponsor group health plans, *Dobbs* triggered a review of plan compliance with privacy requirements written into HIPAA—the Health Insurance Portability and Accountability Act of 1996, which governs employee health benefits.

A year after *Dobbs* was handed down, the federal government has formalized the new privacy rules affecting employees who seek reproductive care covered by group plans.

HIPAA requires group health plans, health-care providers and other entities to protect individuals' personal health information, unless courts or law-enforcement agencies subpoena HIPAA-protected medical records. Crucially, HIPAA doesn't override state criminal laws and doesn't protect non-health-care information retrieved from cell phones, like maps, texts or call logs.

Proposed regulations issued in April by the Department of Health and Human Services would extend the scope of HIPAA's privacy protections specifically to women who travel to other states to receive reproductive health-care services where those services are legal, and would apply to almost all judicial or administrative proceedings related to this care.

Under the regs, HIPAA-covered entities such as employers would be prohibited from disclosing employees' personal health information for these purposes:

- A criminal, civil or administrative investigation into or proceeding against any person in connection with seeking, obtaining, providing or facilitating reproductive health care, where these health-care ser-

VICES are lawful in the state provided.

- Identifying any person for the purpose of initiating investigations or proceedings.

In addition, the regs would apply HIPAA's privacy protections when reproductive health-care services are protected, required or expressly authorized by federal law, regardless of the state where the health-care services are provided. The regs provide the example of a woman who is experiencing a miscarriage and seeks emergency care.

To enforce the new privacy protections, parties requesting an individual's personal health information would be required to provide HIPAA-covered

entities with a signed attestation that the use or disclosure would not be for a prohibited purpose. Attestations would be required when the request for PHI is for any of the following reasons:

- Health oversight activities
- Judicial and administrative proceedings
- Law-enforcement purposes

HIPAA-covered entities could still disclose personal health information, provided the request to disclose isn't made primarily for the purpose of investigating or imposing liability on any person for seeking, obtaining, providing or facilitating reproductive health care.

**Online resource** Read the proposed privacy rules at [tinyurl.com/proposed-HIPAA-privacy-rule](https://tinyurl.com/proposed-HIPAA-privacy-rule).



## Americans less confident about retirement security

Americans are increasingly worried they won't have enough money saved to retire comfortably, according to the Employee Benefits Research Institute's 2023 Retirement Confidence Survey. A major concern: the effects of inflation on their retirement plans.

"The confidence both workers and retirees have in their ability to finance their retirements dropped significantly in 2023. The last time a decline in confidence of this magnitude occurred was in 2008 during the global financial crisis," said Craig Copeland, director of wealth benefits research at EBRI.

The 2023 survey, conducted in January and early February, marks the group's 33rd annual tally of retirement confidence among both employees and people who have already retired. Key findings:

Americans are less confident they will have enough money to live comfortably throughout retirement. Compared with 2022, both workers' and retirees' confidence in having enough money to live comfortably throughout retirement significantly dropped from 73% in 2022 for those being very or somewhat confident to 64% among workers, and from 77% to 73% among retirees.

Eighty-four percent of workers and 67% of retirees are concerned that higher costs of living will make it harder for them to save money. Four in 10 workers and three in 10 retirees are not confident their money will be able to keep up with inflation in retirement, significantly more than last year.

Decreases in retirement accounts have caused concern. Forty percent of workers and 58% of retirees report that their retirement account balances have decreased over the past 12 months.

**Advice for HR:** Work with your retirement benefits provider to educate employees about retirement savings planning. The survey found that 40% of workers turn to their family or friends when seeking information about retirement planning, while only two in 10 turn to their workplace retirement plan provider.