

From: Business Management Daily

Subject: Practical HR strategies to boost your career

## In The News ...

**Forecast: Health premiums to spike in 2021.** Revisit your health plan budget for next year; industry experts are predicting significant increases over the next two years. How high? Health premiums could jump by as much as 40% for 2021 coverage, depending on the path of COVID-19, predicts the director of California's marketplace for Affordable Care Act plans. Because insurers hadn't factored in any of the billions spent on coronavirus this year, they'll be seeking to recoup those costs in 2021.

**Have you displayed the new leave law poster?** Since April 1, covered employers have been required to display a new U.S. Department of Labor workplace poster to notify employees of their new rights to expanded paid sick leave and paid FMLA leave (see page 2). Display the printed poster in a "conspicuous place" at work. Or, if many employees are working remotely, you can satisfy the requirement by emailing this notice to employees or posting it on an internal network. Find a link to the poster and an FAQ about its distribution at [www.theHRSpecialist.com/corona](http://www.theHRSpecialist.com/corona).

**Job demands of applicants have plummeted.** In a February 2020 survey of upcoming college grads, 75% said they were NOT open to a temporary role and 80% wouldn't take part-time work. But when LaSalle Networks surveyed again in April, 89% said they are willing to work part-time and 93% were broadening their job search beyond their original targets. Also, 92% of grads are now willing to adjust the compensation expectations because of the virus-fueled recession.

## HR's crisis response: Benchmark your actions

Employers and HR departments have been forced to make sweeping changes to their workplace practices and benefit programs over the past two months. How is your organization adapting to the coronavirus crisis?

One way to evaluate your organization's actions: Review the findings of WorldatWork's *COVID-19 Employer Response Survey* of 1,500 HR departments. Key findings of the April survey:

**Staffing changes:** Nearly three-quarters (72%) of employers have instituted hiring freezes. Other actions taken or planned for the next few months: furloughs (39%), layoffs (25%), shift to more online work (22%) and partial business closure (18%). Three percent are planning full business closures.

**SPECIAL ISSUE: The Coronavirus Crisis**

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**Salary changes:** While most organizations (56%) have already paid out salary increases for 2020 or are still planning to do so, another 21% are putting a hold on salary increases and waiting to decide. Six percent said they are canceling salary increases for 2020.

**Communication:** About a third (35%) of employers are sending

*Continued on page 2*

## HR plays key role in continuity planning

As businesses worldwide have adapted operations in response to the pandemic crisis, HR professionals sit at the center of most organizations' efforts, according to a new Gallup survey.

Data from Gallup's Chief Human Resource Officers Roundtable found that most larger U.S. organizations have created internal crisis-management teams, task forces or committees to gather and disseminate information on workplace hygiene and workplace changes made to cope with the pandemic. By mid-March, a great majority of CHROs had developed and implemented business continuity plans that included:

- Succession plans for major executives.
- Directives to work remotely when

possible (and technology needed).

- Travel restrictions.
- A focus on "business-critical operations."
- Cross-training staff to ensure critical functions can continue if team members are absent or quarantined.
- Extensive documentation of essential business functions, processes and procedures.
- Scripts and communication guidelines so customer-facing staff can notify of the organization's status.

CHROs also said they've made it a point to be included in companywide monitoring of supply-chain partners. HR can lend expertise that helps assess whether suppliers have effective business continuity systems of their own.

(Cont. from page 1)

COVID-19 related communications to staff daily, while a similar amount (32%) communicate every few days and 19% once a week. Email (89%) and virtual meetings (81%) are the most popular methods. Top information being shared: health tips (84%), company benefit info (81%), work-from-home tips (78%) and government guidance (73%). Only 33% are sharing company financial data.

**Benefit plan changes:** Among organizations that made quick changes to their benefit plans in response, waiving co-payments/deductibles was the most frequently cited action (60%). Other employer actions: implementing telemedicine (30%), change in prescription access such as home delivery (30%) and changes to mail-order limits (28%).

**Hazard pay:** Among organizations requiring staff to work on-site during the pandemic peak, 23% were providing those employees with some sort of cash incentives or spot bonuses. Retail (46%) and health care workers (29%) are most likely to receive hazard pay. Another 5% of companies are offering perks instead of extra cash (meals, daycare assistance, etc.).

**Performance metrics:** Most employers are not sure yet whether they'll adjust performance hurdles based on the crisis, but 42% are considering it.

**Recording hours:** Over two-thirds (68%) of employers are using an online timekeeping system (Workday, Timesheet, etc.) to record hours for nonexempt workers who can't be on site. Another 14% say they're defaulting to a standard workweek to keep track, and 12% say they're having workers submit hours manually to managers.

**HR tech spending:** More than a third (37%) of employers say they'll be spending less this year on HR technology because of COVID-19. On the flip side, 19% say the crisis will cause them to spend more.

**Back to normal:** Here are respondents' predictions as to when their organizations will return to "normal operations": May: 39% ... June: 24% ... July: 9% ... August: 32% ... September: 4% ... not this year: 4%.

# Emergency paid leave: Which employees are eligible and which are not?

For HR, the key part of the new Families First Coronavirus Response Act (FFCRA) are the provisions granting emergency paid sick leave and paid family leave to certain affected employees. However, there is much confusion over who can take leave and how much they will be paid.

Generally, employees are eligible for up to 80 hours of paid sick leave if they meet certain criteria. Some are eligible for up to a total of 12 weeks of combined paid sick leave and paid family leave under limited circumstances.

Paid leave is available to staff unable to work or telecommute if they:

1. Are subject to a government quarantine or isolation order related to COVID-19.
2. Have been advised by a health care provider to self-quarantine.
3. Are experiencing COVID-19 symptoms and seeking a diagnosis.
4. Are caring for someone who meets criteria 1 or 2.
5. Are caring for their child whose school or care facility is closed for

Learn more about FFCRA compliance at our coronavirus advice site:

[www.theHRSpecialist.com/corona](http://www.theHRSpecialist.com/corona)

COVID-19 reasons.

6. Are experiencing a similar condition specified by the Department of Health and Human Services.

### How long, how much?

However, not everyone who meets those criteria is entitled to the same paid leave benefits.

- Employees who meet criteria 1, 2 and 3 qualify for up to 80 hours of leave at 100% of their regular rate, up to \$511 daily (\$5,110 total).
- Employees who meet criteria 4 and 6 qualify for up to 80 hours of leave at two-thirds of their regular rate, up to \$200 daily (\$2,000 total).
- Employees who meet criteria 5 qualify for up to 80 hours of paid sick leave and an additional 10 weeks of expanded paid FMLA leave at two-thirds of their regular rate, up to \$200 daily (\$12,000 total).

## New leave law: How to document requests

New IRS guidance says employees must submit *written requests* to document their need for paid sick leave and paid family leave under the FFCRA (see above).

Employers must keep those requests on file to qualify for the tax credits used to recoup leave expenses (see box, page 3). Tell employees their written requests must include:

- The employee's name.
- The dates leave is requested.
- A statement of the coronavirus-related reason the employee is requesting leave (and written support for such reason).
- A statement that the employee is unable to work, including telework.

If the leave request is based on a quarantine order or self-quarantine advice, the employees' statement should include the name of the government entity ordering quarantine or the name of the health care professional advising self-quarantine. If the person subject to quarantine is not the employee, the request must include that person's name and relation.

For family leave requests—based on a school or daycare closing—the statement must include the name and age of the children and the school name.

Keep these records for four years.

**Online resource** Read this IRS guidance at [tinyurl.com/IRS-leave-documentation](http://tinyurl.com/IRS-leave-documentation).

## Understand the payroll, retirement and health changes in economic stimulus law

Most Americans' knowledge of the \$2.2 trillion Coronavirus Aid, Relief and Economic Security (CARES) Act stops at the \$1,200 or \$2,400 stimulus checks they're receiving. But the new law also includes



several measures that may directly affect your organization.

The law is designed to encourage employers to avoid laying off workers because of the pandemic fallout. It substantially expands federal support for unemployment benefits and includes these key provisions:

### 1. Employee retention credit.

For wages paid after March 12, 2020, through the end of the year, employers that continue to pay and provide health benefits to employees who were furloughed or whose work hours were reduced qualify for a refundable tax credit against their share of Social Security taxes.

For employers with up to 100 full-time employees, the credit equals 50% of employees' wages and health benefits, up to \$10,000 per employee. *Catch:* If you take out a loan, you can't take this credit.

Learn more about this credit at [www.tinyurl.com/creditCARES](http://www.tinyurl.com/creditCARES).

### 2. Paycheck protection loans.

The Act said small employers that take out loans through June 30 to continue employees' pay will have those loans guaranteed by the federal government, up to 100% of their payroll. Payroll costs include—in addition to wages—payments for vacation, parental, family, medical or sick leave; group health and retirement benefits; and payroll taxes. Ultimately, loans will be forgiven if you continued to pay employees for the duration of the pandemic.

While the PPP quickly exhausted the initial \$349 billion in funding in two weeks, Congress injected another \$300 billion in late April. Learn more at [www.tinyurl.com/coronaSBA](http://www.tinyurl.com/coronaSBA).

**3. Retirement benefits.** Employees can now make early withdrawals of up to \$100,000 from 401(k) plans without incurring the usual 10% penalty. Income attributable is taxable over three years. Employees have three years to recontribute their funds.

Distributions can be made to employees who are diagnosed with COVID-19 (or whose spouse or dependent is diagnosed) or who suffer financial hardship.

In addition, 401(k) plans can make coronavirus-related loans to employees, up to \$100,000.

## 5 smart strategies to cut unemployment expenses

With layoffs hitting record highs this spring, the CARES Act aims to boost unemployment benefits (*see at left*). As a result, your state unemployment contribution rate will likely spike this year and next.

To secure the lowest contribution rate possible, you need to keep extraneous benefits charges off your state unemployment account.

Here are strategies any organization can take right now:



### 1. Revise job descriptions.

Managers should review job descriptions to ensure they accurately represent how the work gets done. That will help ensure new hires fit in from the start.

### 2. Look for transfer opportunities.

Instead of letting valuable but misplaced workers go, put them at the top of the list for transfer. Throw in training. Remember, workers who turn down reasonable transfers usually can't get benefits because they voluntarily quit without cause.

### 3. Enforce workplace rules.

Records should accurately reflect the dates and details of employees' work refusals, performance appraisals, verbal and written warnings and other circumstances. This will bolster your case that an employee was fired for misconduct.

### 4. Avoid constructive discharges.

A major change in employees' responsibilities or work schedules without a documented business reason may hand them good cause to quit. Employees who quit under those circumstances are usually eligible for UI benefits.

**5. Pay for terminations.** Let employees who've given notice either work to the end of their notice period or let them go immediately, but pay what's due. If you tell terminated employees to leave without paying them their notice-period wages, they'll probably qualify for benefits.

## How employers can recoup FFCRA paid leave

The new FFCRA requires employers to provide paid leave to their employees and pay for it up front. Then, it establishes tax credits that let employers recoup those costs after they have been paid out.

The FFCRA creates a tax credit equal to the employer's share of FICA taxes—including a proportionate amount of group-health benefits—that are attributable to leave paid to eligible employees. The IRS is also letting employers retain employees' withheld income taxes and the employees' share of FICA taxes from all employees, as well. That pool will cover the costs of paid leave for some employers.

If it doesn't, employers can seek an expedited advance from the IRS by submitting a streamlined claim form. Here's how this will work:

**Example:** Mega Corp. pays \$5,000 in sick leave and is required to deposit \$8,000 in payroll taxes, including taxes withheld from its employees. Instead of depositing the \$8,000, Mega could use up to \$5,000 for making qualified leave payments. It would only be required to deposit the remaining \$3,000 on its next regular tax deposit date.



### Is your organization still hiring? Don't skip the background check

With many courts closed and background-checking vendors working at reduced capacity, some employers may be tempted to skip the background check on new hires. But if you're still hiring, it's best not to take that shortcut. The Fair Credit Reporting Act still applies to employers and screeners—and lawyers will be looking to file negligent hiring lawsuits against employers who skip this step.

### New I-9 rule: You can accept expired licenses for identity proof

For the past two months, many states have closed their DMV branches, meaning some new hires have only an expired driver's license to show as identity verification for completing their I-9 forms. The I-9 rules say you typically can accept only *unexpired* documents. In response, the U.S. Citizenship and Immigration Services has eased its rules, saying:

"If the employee's state ID or driver's license expired on or after March 1, 2020, and the document expiration date has been extended by their state due to COVID-19, then it is acceptable as a List B document for Form I-9. Enter the document's expiration date in Section 2 and enter "COVID-19 EXT" in the Additional Information field. Employers may also attach a copy of the state motor vehicle department's webpage or other notice indicating that their documents have been extended.

"The Section 2 expiration date should be the actual expiration date printed on the employee's document and not an auto-extension date."

### National Guard call-ups can trigger employer USERRA responsibilities

If any of your employees are part of the National Guard or military reserves, realize that if they're called up to deal with the coronavirus crisis (as is happening in many states), those workers have rights to reemployment and continuing benefits under the Uniformed Services Employment and Reemployment Act. Learn more about your USERRA employer responsibilities at [www.esgr.mil/USERRA](http://www.esgr.mil/USERRA).

## HR Q&A: Coronavirus and the Law

*The HR Specialist is hosting several upcoming webinars offering advice on workplace aspects of the ongoing coronavirus pandemic (see [www.theHRSpecialist.com/events](http://www.theHRSpecialist.com/events)). Here are questions from a recent webinar, answered by attorney Alice Gilman, editor of the Payroll Legal Alert newsletter.*

### Co-worker tests positive: How to notify staff

**Q. Should we tell employees that a co-worker tests positive for COVID. If so, how?**

**A.** Yes. The CDC recommends you inform employees of their potential workplace exposure. But to comply with the ADA, that notification must be done *without* revealing the person's name (unless otherwise directed by the CDC or state authority). You can also communicate to appropriate vendors, customers and others who may have come in contact with that worker.

### Eligibility under the new Families First law

**Q. What are the eligibility requirements under the new Families First Coronavirus Response Act, and how does that differ from the traditional FMLA?**

**A.** For the new emergency paid FMLA leave, employees are covered if they have been on the payroll for 30 days. They don't have to work 1,250 hours over 12 months, which is the standard FMLA criteria. Also, employees taking paid FMLA leave may take it only if their chil-

dren are home because their school or care provider is unavailable. The regular FMLA rules apply to employees who need to take FMLA leave for any other reason. (*Learn more on page 2.*)

### Asking employees if they have the virus

**Q. Can we ask an employee if he or she has been diagnosed with the coronavirus?**

**A.** To safeguard the health of all of your employees, it is allowable during a pandemic to make discreet inquiries into an employee's health. That can even include taking an employee's temperature. The EEOC, however, notes employers "must maintain all information about employee illness as a confidential medical record in compliance with the ADA."

### Laying off a worker on emergency leave

**Q. If an employee is out on the Family First FMLA and then we have a layoff, can that person be laid off even though they were on FMLA?**

**A.** I don't see anything in the law that changes the regular FMLA rules regarding layoffs. As always, it's best to have solid business-based documentation of the reason for the layoff and why this employee was chosen.

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

## FLSA & WFH: Pay remote staff the legal way

The sudden shift to remote work may mark a big change in how work is performed, but it doesn't change your need to maintain efficiency and follow the Fair Labor Standards Act rules for paying employees.

**EXEMPT EMPLOYEES** are relatively easy: If they perform any work during a workweek—regardless of where—you must pay them their full salaries.

**NONEXEMPT EMPLOYEES** must be paid for all hours they work. The trick is accurately tracking those hours. A recent WorldatWork survey found that 68% of employers use some sort of automated timesheet software for remote nonexempts to record their hours.

Keep your new teleworkers and their supervisors on the same page by drafting a work-from-home policy. Cover all the relevant details about

employees' work environment, including break and meal times and start and stop times.

### Your written WFH policy should include:

- The core hours during which employees will be working and accessible by phone, email, Slack, Zoom, etc.
- A statement that the company's policies regarding attendance, etc., remain in effect.
- An acknowledgment that employees are responsible for accurately reporting their working time and that they must still seek their supervisor's permission to work overtime.
- Assurances that employees won't tinker with company-provided computers or software or disclose confidential information.

## Train workers to document extraordinary duties

Not only has the location changed for many jobs in the past two months, the jobs themselves have been radically altered in many ways.

So many people working from home means normal processes have been disrupted—for the person at home and the workers still in the workplace.

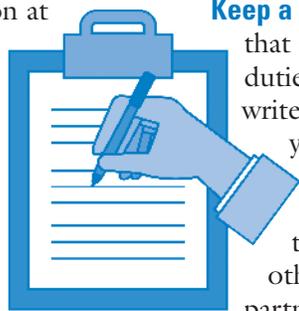
Because it's impossible to know when we will fully get back to normal, it's more important than ever to make sure job descriptions reflect the reality of how employees really accomplish their tasks. After all, most job descriptions cover only the day-to-day tasks employees perform.

**Important note:** Job descriptions must match the reality of the job, not what management thinks the job entails. Those differences could become a key piece of evidence if the employee ever sues. That's why employee input is so essential.

**Advice:** New every-once-in-awhile

duties may eventually become essential job functions. To ensure they get documented, train employees to track the unusual aspects of their jobs. These tips for employees will help capture the details:

### Keep a weekly log of tasks



that are outside normal daily duties. There's no need to write down every phone call you take and every time you water the plants, but note any additional work you do and other departments you partnered with to complete the task.

**Record when you were asked** to do the task or how you determined it needed to be done. Note how long each task took and, if relevant, when in the workday or workweek the task occurred.

**Describe the circumstances** that made the task necessary. Does it come up regularly enough that it should become a regular part of the job?

## How to reimburse WFH costs for best tax breaks

As the U.S. workforce went remote this spring, it raised a question: How much of employees' personal work-from-home costs can employers reimburse to employees tax free? A lot, says the IRS.

As long as employees are working from home for the company's convenience (most are), you can reimburse employees tax free for their internet access, printer cartridges, paper and any special software or equipment. How it works: Employees must keep track of their business and personal use of these costs and submit to you monthly bills related to business use.

If you'll be communicating with employees via their cell phones, you can reimburse them tax free for basic monthly and data plan charges. You don't have to keep track of their business and personal use.

## 4 ways to support your remote staff with kids

You don't have to accept an inferior work product during temporary work-from-home situations, but a bit of flexibility will help boost productivity and retention. Four tips:

- 1. Offer scheduling flexibility.** As much as possible, let staff arrange their schedules, as different people can be more productive in the morning or afternoon or weekends. Accept some interruptions.
- 2. Focus on results.** Avoid the temptation to use "time in seat" as a measure of success. Instead, clarify goals and set concrete, measurable ways to gauge productivity. Workers appreciate this trust and freedom.
- 3. Offer resources.** Consider a channel on your company's communication platform that lets parent/employees share advice. Point workers to online advice, such as a FlexJobs article on working from home with kids during emergencies (see [www.tinyurl.com/WFHkids](http://www.tinyurl.com/WFHkids)).
- 4. Demonstrate empathy.** Remind managers to ask all employees, "How can I help during this time?"

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

Date: May 2020  
 Re: Conducting staff reviews from afar

## COVID-19 crisis How to conduct reviews and 1-on-1s with remote staff

In the past two months, many supervisors have been forced to learn how to manage their employees from afar for the first time.

Whether you're having one-on-one calls with employees to stay connected or delivering critical conversations like performance reviews, here are four simple tips to help get the most out of these virtual meetings:

### 1. Don't just phone it in

Sensitive conversations like performance reviews are far more streamlined when you can see the employee's facial

expressions and reactions—even if the review is positive. So conduct the meeting on Zoom or other videoconferencing tool rather than a call.

If you're conducting a formal review, schedule at least one hour and let employees know what will be the dedicated focus of the meeting.

Give employees several days' notice so they can prepare for a private and professional exchange while working from home. This is especially important for employees who have to juggle their jobs with children and other responsibilities.

### 2. A conversation, not a lecture

Everyone is collectively dealing with uncertainty and anxiety these days. In any remote one-on-one talk with employees, first check in to see how they're doing and if they need anything from you.

If you're conducting a remote performance review, you can still focus on the basics—recent successes and challenges, compensation adjustments, growth opportunities. But realize that, in this new environment, employees are probably more concerned with the present and future than the past.

Approach the review first and foremost as a collaborative conversation. Plan to listen more than you talk. Invite the employee to ask questions about the "new normal" in the company as you review past performance. (See sample questions at left to create a two-way conversation.)

### 3. Discuss changed priorities openly

Business priorities may have shifted in the past few months. Your employees may now fear for their job security.

Dedicate time during one-on-ones and reviews to discuss how the employee's job may evolve and how



Remote performance reviews can still focus on the basics. But realize that, in this new environment, employees are more concerned with the present and future than the past.

he or she can remain a valuable contributor. Clearly outline duties that may change in the coming months so the employee understands where to focus and why. It's never legally wise, however, to make promises to workers about their future job security.

### 4. Support employees: Create a plan

There's plenty of evidence to suggest that remote workers, on average, are more productive than those who work in a physical office. However, those stats are based on employees who have *chosen* to work remotely.

The fact is, newly remote employees may not feel as connected to company culture or their co-workers. The work-from-home world can be isolating and requires a level of self-direction, motivation and discipline that's not intuitive for every employee.

Check in with employees often to discuss how they can still collaborate with you and co-workers in this new normal. How much coaching, guidance and support does the worker need from you while working from home? Does the employee understand the priorities and goals? Do they have the tools and skills to achieve them?

Every employee has a different workstyle and varying needs when it comes to succeeding remotely. Now is the time to get to know what your employee enjoys doing, where she feels capable and where she's struggling. Agree on a plan that will fuel your employee's success moving forward.

Just as important, assure each employee that his or her mental, emotional and physical health is important.

### 10 questions to turn reviews into two-way conversations

Too often, employees sit silently during performance reviews while supervisors talk. It shouldn't be that way. Here are 10 sample questions managers can use to encourage employee participation:

1. Which do you see as the most important responsibilities of your job? Least important? Why?
2. What would you change about your job?
3. What do you like best about your job? Least?
4. What accomplishments are you most pleased about?
5. What or who has contributed to your success?
6. In some areas, has it been difficult to reach your objectives? How could I help you with these areas in the future?
7. Are there ways we could use your talents more effectively?
8. In what areas do you feel you could do a more effective job? And how can we help you improve in that area?
9. What skills and abilities would you like to improve, and why?
10. What developmental opportunities would be helpful to you?



# Fill your talent pipeline with layoffs from other companies

I know. It is hard to imagine anything positive coming from this pandemic. But we should be focused on what things will be like *after* we move past this challenge. What decisions should we be making now with an eye to the future?

As other organizations struggle to keep their teams employed, an opportunity presents itself. There are many talented people now unemployed. If your workplace could benefit from this surprise talent surplus (or if you see the rebound coming soon) it is important to approach this period wisely:

**Commit to building a talent pipeline.** Review your current staff. Review your future needs. Ensure you have a plan that provides the organization with the right number and performance levels needed to provide the service vision and deliver the planned results.

**Create a “performance profile” on each role.** This summarizes what the job does and the behaviors, skills, education and experience of someone who would do it well. Most organizations instead use outdated job descriptions that don’t clearly identify the job’s success attributes. With a sudden amount of talent on the market, it is important to be



The best people released to the workplace will be snatched up in a hurry. Be sure you know what you are looking for when things turn around.

clear about what you want and need.

**Upgrade your website’s career center.** Your mobile-friendly page should aim to:

- **Attract** through videos, community presence, job fairs or other means.
- **Inform** what the organization believes and does, what each role does and how the jobs add value to the organization (i.e., purposeful work).
- **Engage** by providing something of value (white paper, fast-track job consideration, a talent assessment) in exchange for their email to be able to stay in touch.
- **Assess** those job seekers with key performance or skill questions so you have a preliminary idea of their core abilities. This helps easily identify possible candidates as positions become available.

**Redefine the interview process.**

It is important now to refocus on *hiring for fit*—both for the role and the organizational cultural. Develop

the prove-it-to-me approach in your interviews by including more activities and more proof of performance abilities, particularly in remote environments. Also, be aware that more

of your interviews may need to be remote, which means you will have to redesign your interviews.

A changed world means a change to some of the things we habitually do. Times like these provide an interruption, showcasing our outdated and ineffective habits when it comes to hiring. Consider the benefits to adopting more effective ways to define, source and interview talent.

**Take action.** Review the roles where you require new talent or a change in talent. Even if you don’t actually hire at the moment, consider the improvements you can make to your process of defining, sourcing and interviewing.

The best people released to the workplace will be snatched up in a hurry. Be sure you know what you are looking for and you are ready to get it when things turn around.

*Kristin Allaben is a certified corporate coach and COO of the Forte Factor training company ([www.theForteFactor.com](http://www.theForteFactor.com)).*

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## Make sure work-from-home decisions aren't biased

As this crisis ebbs, some employees are going to want to retain their telecommuter status, either full-time or part-time. When deciding who gets this perk, remember to have objective, concrete, business-based decisions. Otherwise, you could spark a discrimination claim. *Case in point:* Kim sued her employer for racial bias, saying she was micromanaged while working at home while the other accountants had more freedom. The court sent her case to trial, saying differences in WFH approval and management can be evidence of discrimination. (*Tolbert v. CCSFDPH*, ND CA)

## What should the day after a layoff look like?

After a layoff, most organizations try to get back to business as usual, with everyone keeping their heads down and slogging through a joyless day. Now is not the time to try to hot-wire positivity; it'll feel forced and fake, as will offering a free meal. But do try to schedule some short group meetings (or companywide Q&A) so workers feel less isolated and are less prone to obsess over negative thoughts.

## COVID-19 considered an OSHA-reportable illness

If an employee comes down with COVID-19 as a result of exposure to the coronavirus at work, employers must report it to OSHA, the agency announced last month. OSHA says it is serious about taking compliance action if there is reason to believe workers became sick because they were working too close together without adequate protection against contagion. **Tip:** Remind managers to notify the company safety officer if they suspect an employee may have contracted coronavirus at work.

## Build connection & support with creative WFH ideas

When Homes.com, a 400-employee Virginia company, went all remote in March, company leaders launched a plan to provide emotional support, boost morale and recognize achievement. Some initiatives: the Daily Dose positive email messages, "Show us your workspace" video tours, webinars on sleep enhancement, virtual birthday parties and happy hours, manager workshops on managing remotely, live yoga sessions, spirit weeks, daily "Orange Alerts" praising project completion and video chats for parent/employees.

## Layoffs can be a trigger for lawsuits: Here are the 4 biggest mistakes to avoid

More than 22 million Americans filed for unemployment in the first four weeks of the coronavirus national emergency, an unprecedented spike in jobless claims. In addition to being gut-wrenching for HR, layoffs are a legal landmine. Here are four often-overlooked RIF errors to avoid:

### 1 No clear criteria.

It's critical to carefully choose which jobs will be selected for a RIF. The process is highly discretionary, but also risky. To avoid discrimination liability, focus on specific categories of employees, not specific employees. Consider eliminating a department or closing down an entire shift.

It's not impermissible to focus a RIF on individual employees. You might target employees who scored below a certain threshold on performance evaluations. But ask: Evaluated objectively, was the evaluation process legitimate and fair?

### 2 Flimsy excuse for the layoff.

Failing to articulate and document the need for a RIF can lead to proof problems if the RIF is challenged as discriminatory. Merely blaming the suddenly poor economy is probably insufficient.

Be ready to answer questions like: Specifically how has the virus-fueled recession affected the company? Are specific departments overstaffed or underperforming? What alternatives to a RIF have you evaluated?

To avoid discrimination liability, focus on specific categories of employees, not specific employees.



### 3 Lack of RIF notice.

The federal Worker Adjustment and Retraining Notification (WARN) Act requires employers with 100 or more employees to give 60 days' advance notice of a mass layoff or plant closing. Failing to give adequate notice can result in significant liability.

A mass layoff is any RIF or combination of RIFs within 30 days that results in a layoff of either one-third of a company's employees (if it's 50 or more) or at least 500 employees. Learn more at [www.dol.gov/agencies/eta/layoffs/warn](http://www.dol.gov/agencies/eta/layoffs/warn). Note that many states have their own versions of the WARN Act.

### 4 Incorrect usage of severance, waivers.

You may be able to avoid future liability for post-employment claims by seeking releases of liability in exchange for severance benefits. There are a few things to consider.

Employees with employment contracts, for instance, may be entitled to severance benefits regardless of a release. And some states don't allow employees to waive their rights in exchange for severance benefits.

Also, the federal Older Workers Benefit Protection Act affords special treatment to affected employees 40 and older. In the case of a RIF, they must be given 45 days to consider any severance package that includes a release of age-discrimination liability. The employees must be allowed seven days in which to revoke acceptance of any package that includes a release. And such employees must be provided information about the scope of the layoff.

Is there anything more dangerous than crossing the IRS?

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