

To:

# The HR Specialist

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Get in compliance and have a blast! March 16-18 at ARIA in Las Vegas! See page 8

From: Business Management Daily

Subject: Practical HR strategies to boost your career

## In The News ...

### The mandate lawsuit: Roadblock or speed bump?

Some employers are holding off on complying with OSHA's new vaccine-or-test mandate while its legality is debated in court. But employment law experts are advising employers to keep planning as if the mandate will be upheld by the courts, because there's still a 50-50 chance it will.

**At issue:** Is OSHA's order within the scope of the agency's emergency powers? If so, is it constitutional?

Challenges to the mandate have been filed nationwide. Already, one court (the conservative Louisiana-based U.S. Court of Appeals for the 5th Circuit) has ruled against OSHA, putting a temporary freeze on the mandate. As a result, OSHA has suspended enforcement of the mandate while it's being appealed.

But that was just the opening round of litigation. These legal challenges will now be consolidated and heard in the 6th Circuit Court of Appeals, another conservative-leaning circuit. The issue could eventually rise up to the U.S. Supreme Court before the standard is set to take full effect on Jan. 4.

**Outlook:** So far, the U.S. Supreme Court has refused to stop vaccination mandates in three states. And Biden's mandate is more lenient because it gives the option of weekly testing. On the flip side, this is the first case to address a *federal* requirement. Stay tuned, but plan for compliance.

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## Mandate deadlines loom: Vax or test by Jan. 4

**H**R professionals have scrambled in recent weeks to understand and start getting in compliance with OSHA's far-reaching emergency temporary standard (ETS) on COVID vaccinations. The ETS requires larger employers (100 or more employees) to develop and enforce a COVID vaccination policy.

Under the upcoming new rule, employers have a choice: Either mandate that all employees get vaccinated (allowing, of course, for legal religious and medical exemptions) or adopt a policy requiring employees to elect to either get vaccinated or to undergo weekly COVID testing and wear a face mask. (*See page 7 on making the vax-or-test policy decision.*)

Many of the ETS deadlines take effect on Dec. 5, including establishing a policy and determining the vaccination status of employees (*see box, page 2*). The deadline for workers to be fully vaccinated or submit to weekly

### INSIDE: OSHA's vax-or-test mandate



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testing is Jan. 4. The ETS will be in place for at least six months.

**A game of legal chicken.** As expected, OSHA's mandate faced a swift legal challenge. A federal court placed a temporary halt to the ETS just days after it was published. You can expect the case to pinball around lower courts for weeks and possibly end up in the hands of the U.S. Supreme Court (*see at left*).

But waiting for these legal battles to play out isn't a wise strategy.

"As of now, an employer's best course of action is to familiarize yourself with the (ETS) and prepare to implement those requirements," advises the Fisher Phillips law firm.

*Continued on page 2*

## Remote work: Solving 'the Great Disconnect'

**A** study of 61,000 Microsoft workers who were sent home to work during the pandemic found that those employees spent 25% less time collaborating with co-workers.

Work at Microsoft became more siloed and static, making it harder for employees to acquire and share new information. And as more workers switched to asynchronous methods of communication (email, IMs, etc.), it has become more difficult to convey the meaning of complex information.

A separate study by Principles software found that 94% of companies onboarded new employees during the

pandemic who only interacted with co-workers virtually. Of these companies, almost a third (31%) say this virtual onboarding caused employees to struggle to make meaningful connections with colleagues. Even worse, 10% of companies have no idea how their virtual new hires are adapting at all.

"We are now dealing with a workforce that is disconnected and disengaged due to the challenges of remote onboarding and operating," says Jeff Taylor, GM at Principles.

"HR professionals need to find a way

*Continued on page 2*



## Mandate deadlines

(Cont. from page 1)

“After all, OSHA will most likely have little patience with noncompliant employers who claim they held off implementing the mandate-or-test rule while awaiting a final court ruling.”

If the mandate does take effect, it’s unlikely an OSHA inspector will randomly show up at your door sniffing around for vaccine mandate violations. In reality, most OSHA investigations are prompted by employee complaints to the agency. No doubt, some employees will be happy to report their noncompliant employers to OSHA.

According to OSHA, companies that fail to comply with the ETS could face up to a \$13,653 fine for a single serious violation, or up to \$136,532 for willful disregard of the rules. Other important compliance notes about the ETS (see a full FAQ on page 4):

- **Paying for tests.** If your organization allows the option for unvaccinated employees to be tested weekly, you are *not* required to pay for the COVID tests.
- **Which employees?** The vax-or-test rule, which will cover two-thirds of the U.S. workforce, does not apply to employees “who do not report to a workplace where other individuals are present, employees while working from home, or employees who work exclusively outdoors.”

## Disconnect

(Cont. from page 1)

to fill in this gap or else they will run the risk of increased turnover.”

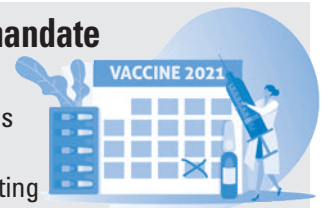
**Key point:** Employers need to consider remote working completely separate from previous work styles, and not try to recreate an “on-site” feel virtually.

Irene van der Werf, people manager at Omnipresent, a global remote-only firm, says, “Remote work can increase the existing flaws that an on-site company has. If people didn’t already communicate well in the office, then remote work will make it more difficult ... If companies don’t adapt to new ways of working, silos will naturally become more common.”

Van der Werf suggests these strategies to help connect remote workers:

## Compliance calendar: OSHA’s vaccine mandate

**December 5, 2021** If the courts uphold OSHA’s vaccine mandate, employers with 100 or more employees must take these actions by Dec. 5:



- **Establish a policy on vaccination.** Creating, implementing and enforcing a vaccinate-or-test policy is step one to compliance. See OSHA’s sample policy at [www.tinyurl.com/VaxPolicySample](http://www.tinyurl.com/VaxPolicySample).
- **Determine the vaccination status** of each employee, obtain acceptable proof of vaccination, maintain records and roster of vaccine status.
- **Establish systems** to provide “reasonable” paid leave to employees to get their shots and recover from side effects.
- **Require employees to notify you** if they test positive for COVID or are diagnosed with the disease. Immediately remove those employees from the workplace.
- **Make sure employees who are not fully vaccinated wear face masks** when working indoors or when inside a vehicle with another person for work purposes.
- **Notify all employees** about the OSHA standard and your policies. Provide information on COVID vaccines, and inform them that knowingly providing false documentation of vaccination status is a criminal offense.
- **Prepare to report** work-related COVID fatalities within eight hours and hospitalizations within 24 hours.

**January 4, 2022** By this date, employees must be fully vaccinated. If your organization decided to permit the option of weekly testing for unvaccinated workers, the requirement to test also begins on this day.

- **Time off.** The ETS requires covered employers to provide up to four hours of paid time off to employees to get vaccinated. It also requires employers to provide “reasonable time” (including paid sick leave) to recover from vaccination side effects.
- **Recordkeeping.** The ETS requires some additional HR recordkeeping, including keeping a roster that lists employees’ vaccination and testing status. Keep those records confidential, just as you would any other medical document.
- **Masks.** Workers who are not fully vaccinated must wear face masks when working indoors or riding in a vehicle with a co-worker.

**Online resource** For more details on OSHA’s workplace COVID vaccination rule, see OSHA’s portal page on the topic at [www.osha.gov/coronavirus/ets2](http://www.osha.gov/coronavirus/ets2).

- Set up rituals for remote workers to actively share relevant work, and to find new ways to socially interact (not awkward video happy hours).
- Prioritize transparency and team-building initiatives. Create a flat structure to help ensure teams are working across departments.
- Focus on engaging your employees. Create a culture where people feel well supported, and challenge them in a positive way.
- Link the company’s vision and values to team actions. That includes building an environment of care, trust and inclusivity, as well as providing mobility and career advancement.
- Provide regular feedback, public praise and transparency about what is done well—and not done well.

## Employees want raises soon, or they’ll jump ship



Nearly half of U.S. employees (49%) believe they’re earning less than they deserve, according to a new Robert Half survey. Gen Z (57%) and women (52%) are most likely to feel short-changed by their employers.

Workers say they may hit the road without a raise and, as a result, salaries are beginning to rise.

Remote employees are also seeing a bump in pay. How should you set salaries for those workers? The survey says pay for remote employees is based on the *employee’s* location 38% of the time, and on the *employer’s* location 62% of the time.



## Insist on HR's OK before revoking job offer

**T**rain all your supervisors to seek HR's input before acting on any hiring or firing decision.

One best practice: Have HR do the task of transmitting termination (or offer revocation) news, not the supervisor who made the decision. And, for heaven's sake, never communicate bad news via text or social media.

**Recent case:** A Louisiana restaurant manager hired a server, not realizing she was pregnant. When he found out, he withdrew the job offer without talking to HR. Instead of calling the woman, he sent her a message on social media saying, "I'm



*not gonna be able to hire you. I didn't realize you were expecting a baby."*

She reapplied weeks later, but someone had written "pregnant" on her application and turned her down. She sued and will likely be cashing a healthy settlement check soon.

Employers can never make assumptions about a person's ability to perform a job based on pregnancy status. (*EEOC v. Bourne's House*, ED LA)

**Online resource** For answers to 20 key employment-law questions relating to pregnancy, go to [www.theHRSpecialist.com/pregnant20](http://www.theHRSpecialist.com/pregnant20).

## Duties, not title, decide workers' FLSA status

**J**ust calling someone a manager has no effect on whether they are eligible for overtime pay. You must always analyze their actual duties to make the exempt or nonexempt call.

**Recent case:** Topgolf classified its sales managers nationwide as exempt. They received salaries and commissions but weren't eligible for overtime.

The U.S. Department of Labor determined these "managers" didn't meet the Fair Labor Standards Act's supervisory requirements and were, therefore, eligible for overtime. Now

Topgolf must pay \$750,063 in back wages to 255 employees.

Employees can be considered exempt supervisors if they:

- Customarily and regularly direct the work of at least two other full-time employees or their equivalent (e.g., four part-time employees).
- Have the authority to hire or fire employees, or their recommendations carry particular weight.

In addition, employees must be paid at least \$684 a week, and they must be paid in any week they do any work.

## COVID raises risk of 'association bias'

**M**ake sure your managers understand the growing risk of COVID association discrimination and retaliation claims.

**Association discrimination** is bias against an worker or applicant because of that person's association with a member of a protected category. *Example:* refusing to hire someone because she has a disabled child.

**Association retaliation** occurs if you punish a worker because of her association with another worker who

has engaged in protected activity.

*Example:* firing a man because his wife/co-worker filed an EEOC claim.

**New risk:** Long-haul COVID is already accepted as a potential ADA disability. Discriminating against a worker because he or she is associated with someone who has long-haul COVID could be deemed associational discrimination.

Also, discriminating against an employee because a member of her household is unvaccinated is unlawful.



## Give enough notice of employees' shifts & changes

Philadelphia is one of a growing number of locations with new laws requiring employers to give hourly workers advance notice of their upcoming schedules and any changes. When a Target in Philly failed to post weekly work schedules in advance, it was forced to pay \$22,450.

**The lesson:** Predictive-scheduling laws are becoming more popular. Even if you don't have such a local law, providing plenty of advance notice of schedules and changes is a good employee-retention strategy.

## Can you fire employee for saying, "Let's go, Brandon!"?

Southwest Airlines is investigating a pilot for saying "Let's Go, Brandon!" during an in-flight announcement. The phrase is a euphemism in place of saying "F\*\*k Joe Biden." (*A Google search will explain.*) Southwest sent a reminder to staff that "public expressions of personal opinions while on duty is unacceptable."

A key issue in this case is how the airline handled other public expressions of political opinions. For example, did it let flight attendants wear Biden or MAGA buttons in 2020?

For tips on where to draw the politics-at-work line, go to [www.theHRSpecialist.com/politics](http://www.theHRSpecialist.com/politics).

## Hold it! Don't prevent extra bathroom breaks

Terry worked doing product demonstrations in the Costco aisles. She submitted a doctor's note saying she needed more than her two scheduled bathroom breaks, due to a bladder condition. The employer refused. That triggered an ADA lawsuit, which the company settled for \$50,000. (*EEOC v. Club Demonstration Services*)

**The lesson:** Alert managers that some medical conditions do require more frequent visits to the restroom. It's up to you to hold an interactive discussion to arrive at a reasonable accommodation. For more advice, go to [www.theHRSpecialist.com/ADALimits](http://www.theHRSpecialist.com/ADALimits).

## FAQs on the ETS: What OSHA's vaccine mandate means to you

On Nov. 4, OSHA issued its much-anticipated COVID vaccine emergency temporary standard, which is currently being debated in the courts (see page 1). Here is a Q&A on the details:

### Who is covered?

The ETS applies to employers with 100 or more employees, measured on a company-wide basis. That includes all part-timers but not independent contractors. The ETS does not apply to federal contractors or health care entities, which are subject to their own (often stricter) mandates.

The vax-or-test mandate does not apply to employees who “do not report to a workplace where other individuals are present, employees while working at home, or employees who work exclusively outdoors.”

### What does the ETS require?

The ETS gives employers a choice: Either mandate that all employees get vaccinated against COVID (allowing, of course, for legal religious or medical exemptions) or adopt a policy requiring all employees to elect either to get vaccinated or to undergo weekly testing—and wear a face covering at work—in lieu of vaccination.

If an employee is not fully vaccinated, they cannot work in the workplace unless tested at least once every seven days. The test cannot be self-administered or self-read unless observed by the employer. Importantly, the ETS *does not* require employers to pay for this COVID testing.

### What are the deadlines and the penalties?

By Dec. 5, covered employers must establish a policy on vaccinations, determine the vaccination status of each employee, obtain proof of vaccination and maintain records of each employee's vax status. Then, the ETS says, covered employers will need to ensure that their employees have received their final vaccine doses on or before Jan. 4.

If covered employers have decided to permit a testing option for unvaccinated employees, the requirement to test also begins on Jan. 4.

Employers may face penalties of up to \$13,635 for each serious violation, or \$136,532 for deliberate, willful violations. The ETS will be in place for at least six months.

### What proof of vaccination is required?

Employers are required to obtain proof of vaccination from employees. Acceptable proof includes a vaccine card or a record from a doctor or pharmacy (or other medical record).

If an employee is unable to produce such records, you can accept a signed/dated attestation document from the employee indicating their vaccinated status. The attestation must include acknowledgement that the employee is subject to criminal penalties for lying. These proof documents can be provided in digital format, such as PDFs or digital photos. The proof cannot be submitted verbally.

### What about masks?

Each employee who is not fully vaccinated must wear a face covering when working indoors or in a vehicle with a co-worker. Certain exceptions may be allowed, particularly for employees who can't wear a mask for disability or religious reasons.

### What recordkeeping and reporting is required?

You must maintain an employee roster that lists the employee's vaccination and testing status, and those records must be maintained as you would any other confidential medical documents. The roster must be provided to OSHA upon request, along with your COVID policy and testing records.

The ETS also requires you to report work-related COVID fatalities to OSHA within eight hours of

learning about them. You must report work-related COVID hospitalizations within 24 hours.

### What training & information for employees is required?

Covered employers must provide employees with information—in a language the employee understands—about the requirements of the ETS and the company policy, protections against retaliation and criminal penalties for showing false vaccine documents. Plus, you must provide staff with the CDC document “*Key Things to Know about COVID-19 Vaccines.*”

### How do you handle positive COVID cases?

Employers must require employees to promptly notify management if they receive a positive COVID test or diagnosis. When learning of a positive result, you must immediately remove that employee from the workplace, regardless of vax status. Keep removed employees out of the workplace until they meet CDC criteria to return.

### What about time off for shots and side effects?

OSHA's mandate requires that employers support employees' vaccinations by providing “reasonable time” (including up to four hours of paid time off) for employees to receive each vaccination dose.

Covered employers must also provide “reasonable time” (including paid sick leave) for their employees to recover from any side effects experienced following each dose. The ETS says necessary PTO for side effects may run concurrently with existing sick time. But employers can't require employees to use stand-alone vacation pay to cover side effects. Instead, additional sick time must be provided.



## Pandemic caused changes to HR costs, staffing, skills

The pandemic flipped the workplace on its head, and it's apparently doing the same thing to HR departments.

A great majority of HR leaders (85%) say they are currently restructuring their HR departments or are planning to restructure in the next two years, according to a new global study of larger companies by benchmarking firm APQC. The top goals of restructuring: improve HR's use of technology, better align with the business and increase HR automation.

Other key findings:

- **HR spending.** More than half (54%) say HR spending is on the rise, while 28% say it's declining.
- **HR staffing.** About half (51%) of companies experienced an increase in the number of full-time HR employees in the past 12 months, while 26% saw a decrease and 23% saw no change. A full 60% anticipate an increase in HR staffing in the coming year, compared to 17% who see a decrease.
- **HR skills gap.** HR pros say their top skills deficits are in analytics, cost management and change management.
- **HR tech decisions.** More than a third (34%) say HR is the final decision maker on HR technology purchase decisions, compared to CEOs (34%), IT (16%) and CFOs (15%).
- **Top barriers to HR.** When HR pros were asked what's preventing HR from making a better contribution to the business, they replied:

**Leaders too cost-focused**

**49%**

**Skills gap in HR staff**

**45%**

**Leaders resist HR change**

**42%**

**Leaders misunderstand HR**

**41%**

**Inadequate HR data**

**34%**

**HR staff resists change**

**34%**

## Handing out year-end bonuses? 6 questions to ask

To make sure your end-of-year bonus program aligns with your overall compensation strategy, ask these questions before writing checks:

**1 What's the plan?** Make sure you understand management's plan and strategy for all year-end awards and recognition. If bonuses will be cut, notify employees as soon as possible and give a solid business reason.

**2 Will bonuses drive improvement?** Will they boost morale, increase productivity or help retain your best? How much do you need to pay to accomplish those goals? Also, do employees understand what they specifically achieved to earn the bonus?

**3 How does this bonus compare to years past?** Employees typically expect to receive the same or more. If you can't match that, clearly explain why to employees before you reveal their bonus amounts.

**4 Who will get bonuses?** Will bonuses reward exceptional performance or serve as an across-the-board employee holiday gift? HR pros agree that bonuses awarded just because it's Christmas do not motivate for more productivity.

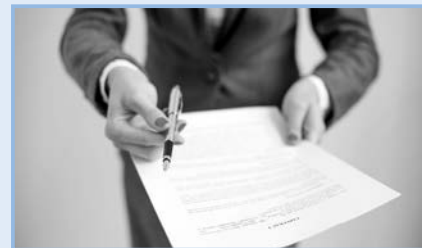
**5 Will everyone get the same amount?** If every employee will get a bonus, be consistent about figuring the amount each person will receive. Be prepared to explain how the amounts were calculated. If only some employees will receive bonuses, make that clear well before the holidays start. Otherwise, it's likely all employees will expect the extra cash.

**6 What made bonuses possible?** If this year's bonuses are happening because your organization achieved certain financial goals, let employees know that. And let workers know how they contributed to that success. When employees understand what made their bonuses possible, they know the money reflects the organization's appreciation of their work.

## Fix your noncompete; don't wait for fed crackdown

President Biden this year directed the Federal Trade Commission to pursue new rules to limit (or possibly ban) employers' use of noncompete agreements, which restrict where people can work after leaving a job. And this month, the FTC took the first steps toward those new limits by hosting a workshop on the topic.

The FTC is unlikely to recommend outlawing all noncompetes. Instead, it may urge earnings limits on the type of employees who can be required to sign noncompetes, plus other restrictions.



**Advice:** Don't wait for the FTC's action to review your use of noncompetes, which many employers use too broadly.

For example, if your organization is concerned about protecting confidential information, you may only need a nondisclosure agreement, not a full noncompete. And if you're worried a departing employee may poach customers or co-workers, then a nonsolicitation agreement (plus a nondisclosure) could do the trick.

If the employee's skills are so unique that your company will be legitimately hurt moving to a competitor, then a noncompete may be in order (along with the other two agreements).

Still, that noncompete should be narrowly drafted to the direct interest you're trying to protect, and it should avoid overly broad location or year/month restrictions. In other words, the agreement can't be so restrictive that the ex-employee can't earn a living.

**Sample policy** For more advice and a model noncompete policy that you can customize, go to [www.theHRSpecialist.com/noncompete](http://www.theHRSpecialist.com/noncompete).

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

Date: December 2021  
 Re: Job descriptions

## Writing a great job description: 7 key questions for managers

Job descriptions are a cornerstone of communication between you and your employees. After all, it's hard for managers to measure job effectiveness unless you and your employee both know what you expect.

Carefully drafted job descriptions can also become a useful tool if the employee ever decides to file an employment lawsuit.

When drafting a job description, here are key questions managers should ask themselves:



**1. Is the title accurate?** Titles may seem unimportant, but they carry a lot of weight in the workplace ... and in court. Titles should always match the level of authority and responsibility. Cross-check titles against others in the workplace.

Inappropriate titles could also factor into discrimination charges. For example, if your "director of distribution" is really a shipping clerk, be prepared to explain why he isn't being paid the same as other "directors."

**2. Does it cite the department and supervisor?** Many job descriptions include the title of the employee's supervisor, the department name and other identifying details. Make sure it refers to a supervisor's *title*, not name.

**3. Does it cite the correct skills, experience and education needed?** List only skills that are necessary to perform the job. A laundry list of skills that may never be used could scare off applicants—and it could become legal trouble later. Cite experience needed and prepare to show it's essential.

Include any education level or credentials needed. Make sure these also are essential to job performance. Indicate any unusual working conditions like exposure to chemicals.

**4. Does it cite essential and nonessential job duties?** The most important part of a job description is an item-by-item list of responsibilities and duties. For legal reasons, identify which are the "essential" job functions and which are nonessential.

What's the risk? Disabled employees can only file ADA lawsuits if they can prove they can still perform the "essential functions" of the job. If those essential functions aren't in writing, they're left open to a court's interpretation.

To identify essential functions, look at their frequency and the significance if they aren't performed. You can include physical skills (standing, walking, lifting); learned skills (equipment proficiency, industry experience); job duties (travel, hours, shifts); and behavioral skills (communication, leadership, etc.).

**5. Does it explain results expected?** What do other employees, departments and customers count on this person to do? Include expectations relating to deadlines, customer service and company success. Linking duties to company goals helps employees see how the position fits into the "big picture."

**6. Is it realistic?** The job description must match the reality of the job, not the lofty standards of management. Unrealistic job descriptions can trigger confusion and all sorts of legal trouble.

**7. Is the writing clear & specific?** Instead of saying the position "requires heavy lifting," say it requires the ability to lift 25 pounds repeatedly overhead 10 times per hour. Write with action verbs in the present tense, such as supervise, produce and motivate.

### Do's and don'ts of job descriptions

- ✓ **Do describe the job, not the prior employee.** If you describe a position in terms of how its previous occupant performed it, you will find yourself looking for a clone.
- ✗ **Don't use super-creative job titles.** A non-standard title increases the odds that the right candidate will never see the job listing. Job seekers search for terms like "marketing associate," not "marketing ninja." Save the creativity for elsewhere in the job description and stick with a search-engine friendly title.
- ✓ **Do use direct language.** Sentences should be short and simple. Language should emphasize the specific skills of the job. For example, instead of requesting "good communication skills," say the person needs "the ability to communicate company policies to nonmanagerial groups in person and in writing."
- ✗ **Don't use gender-based terms.** Search all new and old job descriptions for outdated, discriminatory terms like "salesman" or "waitress."
- ✓ **Do describe what's in it for them.** Providing a salary range allows you to weed out applicants and determine if you're on the same page. Also, be sure to tout benefits, job training and career development. Don't over-inflate these offerings.
- ✓ **Do describe your company culture.** Let employees know what makes your organization a great place to work. How does the company's mission help customers and the world at large?
- ✗ **Don't fail to update the description.** Review descriptions periodically to make sure they accurately reflect employees' responsibilities. Amend the document anytime the employees' duties change.



# The mandate: To test or not to test, that is the question

OSHA's "vaccine or test" emergency temporary standard requires that every employer with 100 or more employees make a choice—require all employees to be fully vaccinated against COVID-19 by Jan. 4, or permit those employees who do not want to receive the vaccine to provide a negative COVID test on a weekly basis. (Unvaccinated employees must also wear a facial covering indoors while at work, with limited exceptions.)

The question for employers is which choice to make: require vaccines for all, or permit employees to opt out and test in lieu. There is no one-size-fits-all solution, and each employer will have to choose what's best for its business.

Here are four questions to ask yourself to help guide that decision:

## 1. How will your employees respond if you mandate the vaccine for all?

We need to keep in mind that we are in the midst of The Great Resignation. If too many employees quit because you are requiring them to get vaccinated, will you (a) be able to fill those vacancies quickly, and (b) if you cannot, will you be

able to operate? If not, then you should strongly consider permitting employees to opt out and test.

You may not know, however, how many employees will quit, until it is too late. For this reason, I recommend surveying your workforce to determine their intent if you mandate. That data will enable you to make an informed decision about whether to mandate for all employees.

Survey your workforce to determine their intent if you mandate the vaccine. That will help you to decide whether to mandate the shot for all or allow the testing option.

## 2. How many employees need reasonable accommodations?

The OSHA ETS makes clear that the appropriate reasonable accommodation from the vaccine mandate is weekly testing. If enough employees need such an accommodation, it might be simpler to provide that option for all.

## 3. Do you want the administrative burden of collecting and maintaining weekly test results?

If you allow for weekly testing, you must collect and maintain those test results each and every week. This

will add an administrative burden to your supervisors, managers and HR staff, who are likely already burdened enough after managing through the past 20 months of the pandemic.

## 4. Are your employees covered by a different federal mandate?

Separate from the OSHA ETS, there are other vaccine mandates for employees of federal contractors and subcontractors, and for employees of health care employers. Those mandates *do not* have an option to test in lieu. Thus, if some of your employees are covered by one of these other mandates, it may be simpler to mandate for all instead of setting up and managing two different protocols.

Whatever option you choose, the time to make that decision is now. Employees need to know as soon as possible whether they *must* get fully vaccinated by January 4, 2022. The clock is ticking for them to obtain their first dose to meet that deadline.

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## Did the COVID pandemic help or hurt HR's reputation?

COVID forced HR to take on dramatically new roles and tasks. So how did the pandemic affect how your HR function is viewed by employees and the C-suite? According to a survey by global consulting firm APQC, 37% of HR professionals say the pandemic has improved their HR department's reputation within the company. A slightly smaller percentage (32%) say their pandemic response has actually hurt HR's in-house reputation. Another 32% say it caused no change.

## Amazon's fiasco may trigger worker scrutiny of your pay, leave

Amazon got lots of public heat recently after a media report detailed major glitches in the company's handling of employees' paid and unpaid leave. Paycheck errors shortchanged workers at 180 locations for years. *The impact:* Count on this high-profile payroll problem to prompt some of your employees to look closer at their own pay stubs to verify the accuracy of their leave accruals. Now's a good time to self-audit your leave system.

## Paid family leave passes in House, but fate in Senate is cloudy

The nation's first paid family and medical leave program was included in the \$2 trillion Build Back Better bill that passed the House on Nov. 19. Starting in 2024, it would provide U.S. workers with up to four weeks of paid leave for childbirth or personal or family health issues. Outlook: It's a less than 50-50 chance that this provision is included in the final package. The Democrats have a razor-thin majority in the Senate, and a couple of key moderate Democrats have voiced opposition to paid leave's \$200 billion price tag.

## Does an employee's passion for a job = success in that job?

Your most passionate employees may not necessarily be your top performers. A new study in the *Harvard Business Review* says "calling-oriented" employees spend more time and effort at their work, and they have stronger life satisfaction than "job-oriented" employees who do the job primarily for the money. However, those calling-oriented workers don't perform their jobs any better than people who are working mainly for the cash. "In other words, if you do what you love, it doesn't necessarily follow that you do it well," said the report.

The report said calling-oriented workers did tend to achieve higher pay and status. Why? Managers tend to be biased toward those with a calling orientation. Supervisors need to check themselves for this bias.

## EEOC clarifies how to handle religious-based exemption requests to your vaccine mandate

If you require your staff to be vaccinated against COVID—either by choice or because of a government mandate—you must allow exemptions for employees whose "sincerely held" religious beliefs prevent them from receiving the shots. Making that decision can be tricky and legally risky.



The good news: The EEOC has issued guidance on when and how to accept, process and grant religious exemptions to vaccine mandates. Here's what the EEOC calls for:

**Establish a request process.** Give workers information on how to ask for accommodations of their religious beliefs and where to direct requests. (The EEOC published an internal form the agency uses for its own employees' religious accommodation requests. It's not COVID specific, but may be helpful. Find it at [www.tinyurl.com/EEOCreligiousform](http://www.tinyurl.com/EEOCreligiousform).)

**Have employees explain their objection.** When employees request an accommodation, you can require them to explain their objections and how they relate to their religious beliefs.

**Ask for more information.** If you have an objective reason to question the religious basis for the request or its sincerity, you can request supporting information from religious sources. However, the EEOC says employees may have sincere, faith-based objections to vaccines even if they do not practice a mainstream religion.

**Be alert for beliefs that are not religious in nature.** The law says you don't have to grant vaccine exemptions for social, political or personal preferences, nor does it apply to "nonreligious concerns about the possible effects of the vaccine."

**Online resource** Access all the EEOC's COVID advice at [www.eeoc.gov/coronavirus](http://www.eeoc.gov/coronavirus).

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- **Fringe benefits: taxable or non-taxable?** How to reward fringe benefits to employees without crossing swords with the IRS
- **W-2s, W-3s, 1099s and more: What errors will land you in the IRS hot seat?** We'll tell you how to avoid them
- **What's the law in your state?** Check out the appendixes for the requirements in your state.

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