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Employment Law Letter

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WHISTLEBLOWING

Recent pandemic decisions embolden NLRB, OSHA collab

by Jacob Monty, Monty & Ramirez, LLP

The COVID-19 pandemic wreaked havoc on employers' balancing of in-person policy with potential health risks, and recent court decisions have highlighted the National Labor Relations Board's (NLRB) and Occupational Safety and Health Administration's (OSHA) concerted collaborative efforts in protecting whistleblowing employees speaking out about on-the-job safety.

NLRB, OSHA doubling down on workplace protections

Top officials from the NLRB and OSHA announced in late 2023 that their agencies will be working more closely to improve on-the-job safety at U.S. workplaces, committing to enforcing antiretaliation laws to protect workers who speak out about safety issues.

OSHA Assistant Secretary of Labor Douglas Parker said the agency partnership should strengthen everyone's ability to exercise their legal rights in the workplace without fear of losing their job or other forms of punishment.

Outspoken nurse comes out on top

The U.S. 5th Circuit Court of Appeals (whose rulings apply to all Texas employers) recently upheld an NLRB ruling on March 7, finding that Texas health company Renew Home Health unlawfully fired Ann Bornschlegl, a nurse who had raised issues about how the company handled the pandemic. Renew fired her after she relayed a group of employees' safety concerns regarding protective equipment shortages and other pandemic-based issues in a signed letter to management. She was considered a hardworking employee but was outspokenly critical of the company's leadership and pandemic working conditions.

The letter sent to management inadvertently included a worker's name who hadn't explicitly agreed to sign the draft. Renew leaned in on this factor, stating it had fired Bornschlegl for falsifying a document against company policy. The court didn't buy this argument, lending deference to the fact that her actions complaining about working conditions were behind the decision to fire her and that the company's provided reasoning was an excuse to cover its true motive.

The 5th Circuit considered that other employees who had been fired for falsifying documents had falsified time cards or visit logs rather than merely signing another employee's name to an email. As such, the court affirmed that Bornschlegl had been unlawfully fired for engaging in the protected act of "engag[ing] in other concerted activities for the purpose of . . . mutual aid or protection," referencing Section 7 of the National Labor Relations Act (NLRA).

Renew was ultimately ordered to make Bornschlegl whole for any loss of earnings and benefits suffered from her discriminatory discharge, as well as for her reasonable search for work interim employment expenses.

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Diversity
Taking a policy-driven approach to achieve lasting DEI impact
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Employee awarded $195,000 in back pay

In March 2020, at the start of the pandemic, an employee at a Staten Island community health center asked for a regularly scheduled meeting to be held by teleconference rather than in person in a windowless conference room. The CEO insisted the meeting be in person, so the employee didn't attend because of concerns of exposure to the virus.

The employee was suspended two days later for unspecified insubordination before being fired a few weeks later without explanation. The employee promptly filed a whistleblower complaint with OSHA.

In 2021, OSHA filed suit, alleging a violation of antiretaliation provisions for reporting a hazardous work condition. Litigation and mediation concluded in January 2024, and the health center agreed to pay $195,000 in back wages and compensatory damages, among other concessions. Regional Solicitor Jeffrey Rogoff in New York said, "The outcome of this case sends a clear and strong message to employers that the U.S. [Department of Labor] DOL will investigate and pursue appropriate legal action when employers disregard or discourage their employees' efforts to address legitimate health and safety concerns."

Ever-evolving landscape

You should take note of the growing collaboration between OSHA and the NLRB because the necessity of workplace safety continues to evolve with current global events. The collaboration between the agencies will not only facilitate interagency cooperation and information-sharing but also bolster protections for workers to speak out about unsafe working conditions.

Times have changed for employees who have been fearful of blowing the whistle on workplace conditions and will likely only continue to grow in strength as trends continue.

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ARBITRATION

Common sense (barely) prevails in El Paso arbitration case

by Michael P. Maslanka, UNT-Dallas College of Law

A recent case from West Texas reminds us yet again that lawyers representing employees fight tooth and nail to keep their clients out of arbitration—and to get their claims to a jury of their peers.

Slip and fall

Mary Horton Keele worked at a medical facility in El Paso and slipped and fell because of water on the floor of a patient's room. The facility didn't subscribe to workers' compensation—it had an Employee Retirement Income Security Act (ERISA)-based employee injury plan instead, which Texas allows—so she was free to file a negligence lawsuit in state court.

The company asked the court to compel arbitration, but the court denied its request. No arbitration here, so off to an El Paso jury!

Here was the agreement the company relied on:

> I also acknowledge that this Summary Plan Description (SPD) includes a mandatory company policy that claims or disputes relating to the cause of an on-the-job injury . . . must be submitted to an arbitrator rather than a judge and jury. I understand that by receiving this SPD and becoming (or continuing my employment) with the Company . . . I am accepting and agreeing to comply with these arbitration requirements.

Keele signed, and Savannah Hayes signed as the "HR Coord. Or Administrator." The trial court denied the request to compel arbitration, but what was the major malfunction?

Meeting of the minds

The trial court bought the employee's argument that there was no "meeting of the minds"—that is, an agreement—between the employee and the company. Why? Because the name of her employer wasn't identified in

the quoted caption above. Thus, or so went the argument, there can be no meeting of the minds because only one mind was identified. The name of the employer was missing! Who could it possibly be?

The appeals court intervened, and by a vote of 2–1, it disagreed with the trial court and sent the case to binding arbitration.

Take a cognitive breath. Turns out, the Texas Supreme Court decided a similar case in 2009 and remarked that the employee there provided "no explanation [for] why she would agree with anyone other than her employer on a health-related benefits plan or arbitration for on-the- job injuries." The high court further remarked that the employee's lawsuit was regarding the failure to provide a safe workplace, just like this El Paso case.

In short, the failure to list a company name makes no difference when everyone knows the employer's identity. *Mountain View Health & Rehabilitation Center et al. v. Keele* (Tex. App.—El Paso, 2023).

Bottom line

While the employer won, it still needed to spend time and money to do so. So, go through your policies, and clamp off the bleeders (that is, the loose ends). Make sure the company is identified. Require signatures? Be sure the person both signs and prints their name, and have the person initial next to paragraphs of a policy/agreement, requiring they identify what their initials look like. Make every agreement look tight and squared away.

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LITIGATION

'One pork chop! One!!' exclaims Texas court

by Michael P. Maslanka, UNT-Dallas College of Law

In 1977, Hollywood actor John Travolta's breakout role was Tony in the movie Saturday Night Fever, set in an Italian, blue-collar Brooklyn neighborhood. Tony's life centered on going to the disco every Saturday night. An early scene takes place at the family dinner table, where, as Tony goes for another pork chop, his unemployed father yells, "One pork chop! One!!" I thought about this movie when I read a recent case in which a Texas appeals court said essentially the same thing to a suing employee. Read on.

Employee claims pregnancy discrimination

Vanessa Quintero worked in El Paso for the state of Texas. Two weeks after being hired, she told her managers she was pregnant. The announcement allegedly didn't go over well (think of a really unsuccessful reveal party), and she was fired three months later.

So Quintero filed a dual charge of pregnancy discrimination with both the federal Equal Employment Opportunity Commission (EEOC) and the Texas Workforce Commission, which is standard operating procedure. After receiving a right-to-sue notice from the EEOC, she filed a lawsuit in federal court alleging violations of both Title VII of the Civil Rights Act of 1964

Cutting-Edge HR

Report highlights benefits Gen Z employees expect. In February, benefits and rewards platform Benify released findings outlining the generational differences between Gen Z workers and older employees as well as the key benefits organizations must provide to attract, engage, and retain the youngest members of the workforce. Benify's report points out factors that set Gen Z employees apart and says those factors must be considered if organizations want to win the war for talent. The report, "Zooming in on Gen Z," shows that the top benefits Gen Z employees want are paid leave and flexible hours, work-life balance, and mental health support. Another of the report's findings is the differences in engagement rates between baby boomers and Gen Z. In total, roughly 62% of Gen Z report being highly engaged, which is significantly less than their older counterparts.

Census report examines commuting trends since pandemic. The U.S. Census Bureau has released a brief highlighting statistics on commuting behavior in the United States and Puerto Rico. The brief, "Commuting in the United States: 2022," explores recent trends with comparisons to 2019 and 2021. Among the highlights, the report says almost 140 million people routinely commuted to work in 2022, and more than 20 million worked from home. Among U.S. workers, 15.2% worked from home in 2022, down from almost 17.9% in 2021 but still higher than the 5.7% that worked from home before the onset of COVID-19. The share of U.S. workers driving alone to work was 68.7% in 2022, about 7 percentage points less than the 75.9% in 2019. Public transportation commuting remained well below the 2019 share of 5.0% of workers, at 3.1% in 2022. This represented an increase from 2.5% of workers commuting by public transportation in 2021.

Statistics show rise in number of people with disabilities who are employed. The U.S. Bureau of Labor Statistics reported in February that 22.5% of people with a disability were employed in 2023, the highest recorded ratio since comparable data were first collected in 2008. This rate increased by 1.2% points from the prior year. Similarly, the employment-population ratio for those without a disability, at 65.8%, increased by 0.4% in 2023. The unemployment rate for people with a disability (7.2%) was little changed in 2023, while the rate for those without a disability was unchanged over the year at 3.5%. The report also showed that half of all people with a disability were age 65 and over, nearly three times larger than the share for those without a disability. For all age groups, the employment-population ratio was much lower for people with a disability than for those with no disability. ■

and the Texas Labor Code—namely, sex and pregnancy discrimination.

The federal trial court ultimately dismissed Quintero's claims. But while the federal lawsuit was still pending, she filed a pregnancy discrimination lawsuit in state court alleging sex and pregnancy discrimination but only as a violation of the Texas Labor Code. Backup? Who knows.

Court declares, 'You get only one pork chop'

The Texas Labor Code anticipated this scenario and thus included the following provision, 21.211:

> A person who has initiated an action in a court of competent jurisdiction . . . based on an act that would be an unlawful employment practice under this [section] may not file a complaint for the same grievance.

What does this legalese mean? The employee gets to pick federal or state court for the lawsuit. This is called an election of remedies. The employee must make a choice and stick with it. So the trial court erred by not dismissing the lawsuit, and the appeals court let it know! *State of Texas Health and Human Services Commission v. Quintero* (Tex. App., El Paso 2023).

Bottom line

This ruling is only fair play. Choices matter, and they matter a lot. Here, the state trial court—despite the clarity of the Texas Labor Code and the case law interpreting it—denied the employer's request to dismiss the claim. Some of our state trial courts are like that. This will be a good case to take into the trial court if you find yourself in this scenario.

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DISABILITY DISCRIMINATION

Jury awards $1.675M to hearing-impaired applicant in EEOC lawsuit

by Michael P. Maslanka, UNT-Dallas College of Law

I like to tell you about areas of deep interest to the Equal Employment Opportunity Commission (EEOC), regardless of where the case pops up. Here's an update from New York that still has much to teach Texas employers.

EEOC does end zone victory dance!

When the EEOC wins a case, it celebrates with a press release as a way to, well, boost morale but also—and more importantly—as a warning to other employers: Do not do what this employer did. So let's start with an EEOC press release for a recent win. Then, we'll get into the details of the case. Here's the start of the press release from February 8, 2024:

> After a 3 ½ day trial, the jury found, following two hours of deliberation, that McLane Northeast, a distribution company with a large [warehouse] facility, . . . violated the [Americans with Disabilities Act] ADA. . . . The jury awarded the deaf applicant $25,000 in back pay, $150,000 in emotional damages, and $1.5 million in punitive damages.

That will get any employer's attention. One of the winning EEOC lawyers said, "The law requires an even playing field to ensure that applicants with disabilities have the same job opportunities as all other candidates for open positions; but, as the jury found, that plainly did not happen here."

What happened?

Shelley Valentino is deaf. She was minimally qualified for a warehouse position at McLane and applied for it. The HR director reviewed all applications and determined her résumé met the qualifications, although her résumé didn't indicate she was deaf. The HR director called her to obtain more information about whether she would be a good fit for the job and left a message asking her to call back.

Valentino called back the same day using a telecommunications relay service (TRS). When using a TRS, the recipient of the call speaks to the operator, who types the message to the deaf person, who then types an answer. The operator tells the receiver either that the caller is using an Internet service to call or the caller is deaf or hard of hearing. However, the HR director was busy at the time and couldn't take the call.

Then something happened that apparently made the jury angry enough to award over $1,000,000: The HR director "dispositioned" Valentino's application almost right away.

Here's the rub: Testimony was that the HR director generally waited 24 to 48 hours—or a "day or two"—to disposition applicants. In this case, she did so less than 24 hours after leaving the voicemail for Valentino. What could the jury have concluded? Just what you may have: Upon learning Valentino was deaf, there was a rush to dump the application. And that's a violation of the ADA. *EEOC v. McClane/Eastern, Inc.* Case No. 5:20 -cv -1628 (BKS/ML) (N.D.N.Y).

Bottom line

The EEOC is always on the lookout for cases involving the ADA rights of hard-of-hearing applicants and employees, and the EEOC offices in Texas are no exception. Prepare now and train staff to understand the workings of TRS and to accept it as standard operating procedure.

Know that deaf workers and applicants are ADA-protected, and don't make the assumption that hiring

them will pose a safety risk to them or others. Remember: The ADA focuses on individuals, not barroom generalities. Know, too, that reasonable accommodations must be considered in both the application process and the workplace. Be open to suggestions, and, if needed, seek expert help.

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PERFORMANCE STANDARDS

Adjust job expectations for employees on FMLA leave

by Michael P. Maslanka, UNT-Dallas College of Law

An employee's performance is measured by the amount of work done. Fair enough. The employee takes Family and Medical Leave Act (FMLA) leave. Must the metrics of performance measurement be adjusted as a result? Earlier this year, by a 2-to-1 vote, a federal appeals court gave an emphatic "yes" in response.

High-pressure job

Marianne Wayland worked for OSF Healthcare System, which was on an acquisition binge gobbling up other healthcare providers. Her job was to integrate the new employees into OSF. It was a big task with high expectations and the responsibility of supervising 30 employees.

These events intersected with her need to take FMLA leave, both continuous (one month) and intermittent (one to two days per week). The leave resulted in her taking leave for 20% of her full-time work period, but the company laid down the law: You have "no choice" but to keep pace with our accelerated acquisition schedule.

The employees in Wayland's department felt the heat of the mounting stress, complaining to HR about the workload and her management style. She was put on a performance improvement plan but wasn't told her job was in jeopardy. In fact, she was actually meeting most of OSF's expectations, only falling somewhat short. Ultimately, she was fired two months after she stopped taking FMLA leave and a month after the start of the performance plan.

Merit to her FMLA lawsuit?

Wayland sued OSF for violating her rights under the FMLA. The company argued she received all the FMLA leave she was entitled to, she failed to meet performance expectations, and she therefore had no viable claim.

The trial court agreed and tossed the lawsuit. But the appeals court said not so fast. It sent the case back for a jury trial and laid down its version of the law:

> A jury reasonably could find that when an employee is available for work only 80% of a full-time schedule, and the reason for the 20% shortfall is because she has taken protected leave, the employer must adjust expectations to comply with the Act. . . . This evidence of unadjusted performance standards, despite her approved absence for 20% of full-time work, would allow a jury to conclude that OSF both interfered with her leave-taking and retaliated against her by firing her. . . . [OSF] deprived her of the benefits of that leave by insisting on 100% of the workload to be performed in only 80% of the time.

And believe me, a jury will agree 110%! *Wayland v. OSF Healthcare,* (7th Cir., 2024).

Bottom line

Always ask yourself: What's fair in the circumstances? This is exactly the question a jury will ask itself. It will then dive back into deciding whether there was an FMLA violation. So engage in prospective hindsight by asking the question of yourself before taking an adverse employment action!

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WORKFORCE DEMOGRAPHICS

FAQs of life: Answers to questions about upcoming EEO-1 reporting

by Audra Hamilton, Mitchell Williams

It's that time of year again! No, we're not referring to spring. On Tuesday, April 30, 2024, the Equal Employment Opportunity Commission (EEOC) will open its portal for filing 2023 EEO-1 data. The deadline for submissions is Tuesday, June 4, 2024. Are you ready to report? Here are some frequently asked questions (FAQs) about EEO-1 reporting.

FAQs on EEO-1s

What is an EEO-1 report? Since the mid-1990s, the EEOC has required qualifying employers to submit workforce demographics on a yearly basis—known as an EEO-1 report. It allows the agency to view, in broad strokes, the gender, race, and ethnicity makeup of the American workforce across industries and job types.

Who is required to file an EEO-1 report? Private employers with 100 or more employees and federal contractors that have 50 or more employees who aren't otherwise exempt (and most aren't) must file EEO-1 reports each year.

What data is collected? The EEOC collects data on job categories (for example, executives, midlevel managers,

professionals, technicians, sales workers, craft workers, laborers and helpers, etc.) and the breakdown of employees by gender, race, and ethnicity (for example, Asian, Pacific Islander, White, Hispanic or Latino, and Black or African American) in each job category. Employers will designate the type of industry the location operates in using North American Industry Classification System (NAICS) numbers.

Are employees identified by name or another designation? No, employees' identity isn't included, just their demographic information.

How do we know employees' gender and race/ethnicity? The EEOC encourages the use of self-reporting identification forms. You can include the forms when onboarding employees or ask them to fill them out before you file your EEO-1 reports for the year. Self-reporting identification forms are voluntary. If an employee declines to self-identify, you may make an assessment based on observation, but this is the least-recommended method for collecting the data.

The self-identification forms should be kept confidential and in a separate location from employees' basic personnel files and away from persons who are responsible for personnel decisions. A good practice is to allow access only to the person or persons responsible for preparing and filing the EEO-1 reports and/or Human Resources (HR) managers. Many HR information system (HRIS) programs will compile the information in a way that limits visibility to those who need to access it, and many HRIS programs also are able to prepare the data for easier filing.

What about employees who leave employment during the year? The EEOC only collects a snapshot of an employer's data, consisting of workforce data for one pay period during a quarter that's designated by the EEOC—likely to be October 1 through December 31, 2023.

How do we report nonbinary employees for gender-reporting obligations? In 2022, the EEOC provided only binary options (male or female) for reporting employee counts by job category. However, it allowed employers to voluntarily choose to report employee demographic data for nonbinary employees in the comments section. If an employer used the comments section to voluntarily report nonbinary employees, they shouldn't have been included in the male or female categories for any of the other data.

The EEOC is expected to release the instruction booklet for the 2023 EEO-1 by March 19, 2024, on the EEO-1 portal (known as the EEO-1 Component 1 Online Filing System). Employers should check the EEOC portal (www.EEOCdata.org/eeo1) to review the instructions before compiling EEO-1 reports.

How do we report for different locations? The EEOC requires employers to report each "establishment" separately. An establishment is a single physical location where business is conducted or where services are performed. All establishments must be reported separately, even if they perform the same type of work. For multi-establishment employers, there's also a "headquarters" report.

How do we report remote workers? Remote workers should be assigned to the establishment (or headquarters) where they report.

We've heard a lot about the collection of pay data since 2016. Do we have to report that, too? As many of you probably (painfully) remember, there's been a whiplash effect surrounding the collection of pay data (also known as EEO-1 Component 2 data) over the last eight years. The EEOC planned to begin collecting Component 2 data in 2017, which was halted by then-President Donald Trump after he took office. After litigation, a federal judge ruled the halt was unlawful and ordered the EEOC to collect data for 2017 and 2018. But the collection of Component 2 data was lawfully discontinued in 2019.

In the last year, under President Joe Biden, the EEOC indicated it intends to begin collecting Component 2 data again. However, it hasn't issued a statement that it will collect Component 2 data for the 2023 EEO-1, which indicates it may not be included this year. You should continue to monitor the EEOC's portal leading up to April 30.

I still have so many questions! What should I do? The EEOC typically releases an instruction booklet and its own more detailed FAQs before opening the portal for filing. It has indicated it will provide an instruction booklet on its portal on or before March 19.

In the meantime, employers that are new to reporting can read last year's FAQs and instruction booklet to get more general information on how the process works. But be careful to read the most current information when the EEOC puts it into the portal. The agency will also have a help desk, known as the "Filer Support Message Center," beginning April 30. You can also always contact your friendly employment counsel for assistance. ■

WORKPLACE CULTURE

Wondering what workers want? Research gives employers some clues

by Tammy Binford

There's no denying that all the upheaval over the last few years has had an outsized effect on the workforce. Among other things, employees weathered a worldwide health crisis and its resulting economic disruption along with the rise of artificial intelligence, which to many workers seems as scary as it is promising. With so much turmoil and uncertainty, it's not surprising employees have a lot on their minds. Researchers have been busy trying to sort everything out. Here's a look at what a couple of efforts turned up.

Monster 2024 Work Watch Report

Monster's 2024 Work Watch Report identifies seven key takeaways:

- Most workers surveyed said they are looking for new jobs.
- Most said their wage hasn't kept up with rising costs.
- Burnout is taking its toll as staffing shortages increase workloads.
- Flexible work hours are vital to most workers.
- Employees are returning to the office.
- Despite technological advancements, workers aren't always taking advantage of the tools they have available.
- Nearly three-fourths of workers said they would apply to a company even if it doesn't have significant diversity, equity, and inclusion policies.

One of the takeaways employers must not ignore is the finding that 95% of workers are looking for or plan to look for a new job this year. Just because many people are making themselves available doesn't mean employers are able to quickly find the candidates they want.

The Monster report noted that employers' top priorities for 2024 are to improve the success rate on hard-to-fill roles and to reduce the time to fill positions.

Even though many workers say they want to look for new opportunities, they often don't stick around throughout the employer's hiring process. Why? According to Monster, 47% of employees surveyed said poor communication from a potential employer was to blame. Examples of poor communication include not being updated on their application status or their messages not being responded to quickly or at all.

The research found that 46% of respondents said the interviewer's attitude or behavior was a turnoff. A similar number, 43%, said it was the recruiter who was the problem.

Burnout is another issue on employees' minds, according to Monster's research, with 75% of respondents saying they feel burnt out because of staffing shortages that increase their workloads.

Another finding: 75% of respondents said they don't think their employer is doing enough to address their mental wellness Fifty-seven percent of respondents said they would rather quit and 32% would rather be laid off than work in a toxic workplace.

Randstad Workmonitor 2024

Randstad's Workmonitor 2024 report also delves into what employees have on their minds and advises employers to focus on a new talent "ABC." The A stands for ambition, the B balance, and the C connection.

In a foreword to the report, Randstad CEO Sander van't Noordende said, "Ambition is no longer viewed in its traditional sense of career progression." Instead, people are rethinking ambition and "putting work-life balance, flexibility, equity and skilling at the heart of career decisions."

Regarding how employees feel about balancing their work and personal lives, the report says that balance now ranks as highly as pay on workers' lists of priorities. Also, 60% said their personal lives are more important than their work lives, and 51% of those surveyed are happy to stay in a role they like even if there is no room for career progression.

On connection, the report says employees "favor employers whose opinions, values, and world views reflect their own as like-minded partners who they can forge connections with and improve equity in the workplace."

The report also notes that 38% of those surveyed wouldn't accept a job if they didn't agree with the views of the organization's leadership, with 54% considering their employer's stance and actions on social and political issues important.

The Randstad research also says employees want to future-proof their skills, especially considering the rise of artificial intelligence (AI).

"Despite more complex attitudes to career progression and ambition, there is a continued thirst for training and development in both current roles and for future career moves (72%)," the report says. "Around a third (29%) would even go as far as quitting a job that didn't offer adequate learning and development (L&D) opportunities."

Learning to use AI is at the top of the list of skills employees want to develop, and they see responsibility for training and development "residing with both themselves and their employers." ■

WORKFORCE DEMOGRAPHICS

Worried about brain drain? Focusing on older workers can help

by Tammy Binford

A recent study from Guild, a workplace education provider, explored what keeps employers up at night. Topping the list of worries business leaders named for 2024 was a loss of institutional knowledge as workers retire, with 82% of respondents citing that issue. That same study found that 93% of the business leaders responding were eager for HR to offer innovative solutions. Another recent report, from management consulting firm Bain & Company, focused on the importance of keeping older workers—not because it's a nice thing to do, but because it's a business imperative.

A look at numbers

Bain's report, titled "Better with Age: The Rising Importance of Older Workers," found that the share of workers 55 and older is on the rise around the world. In the U.S., Bain's analysis of numbers from the U.S. Bureau of Labor Statistics and the Organisation for Economic Co-operation and Development shows that workers 55 and older made up 20% of the workforce in 2011, 23% in 2021, and is projected to be 25% in 2031.

Other countries also are seeing increases in the number of older workers, with Japan seeing the most. The statistics show that workers 55 and older made up 28% of the workforce in Japan in 2011, 31% in 2021, and is projected to hit 38% in 2031.

Bain's analysis also shows that the share of younger workers is declining as older people have begun to work longer over the past 20 years. And the report says that by 2030, 150 million jobs around the world will have shifted to older workers.

Citing research from polling giant Gallup, the Bain report says 41% of American workers expect to work beyond age 65. Thirty years ago, that number was 12%.

"Even the spike in retirements during the peak-COVID Great Resignation now looks more like a Great Sabbatical, a blip in the long-term trend data, with a higher percentage of retirees reentering the workforce than in February 2019," the report says.

Even with more older people wanting to work, "it's rare to see organizations put programs in place to integrate older workers into their talent system," according to the report, which cited a 2020 AARP finding that fewer than 4% of firms were already committed to such programs, and only a further 27% saying they were very likely to explore such programs in the future.

The Bain report points out the importance of realizing not all older workers and their situations are the same. Some jobs are more practical for older workers than others, and the motivations of older workers vary from individual to individual.

Benefits and risks

Workplace safety firm Fit for Work points out benefits of having an aging workforce. For example, older workers tend to show professionalism and a work ethic that provides strong leadership.

Also, older employees possess valuable experience that adds skill and expertise within various roles. In addition, aging workers can be good mentors to younger workers, fostering loyalty from the younger workers and reducing training costs.

Risks posed by older workers must also be considered, according to the Fit for Work report. For example, aging employees, while often the most skilled team members, also can be the most vulnerable.

Older employees experience a decrease in maximum physical strength, as well as problems with balance and vision. Side effects of medicines also can increase the likelihood of falls or musculoskeletal disorders, according to the Fit for Work report. Also, as workers age, injuries are less common but are often more serious and require a longer recovery than injuries to younger workers.

Tips for retaining older workers

Monster has compiled a list of ways employers can retain their older workers. Here are a few ideas:

- Keep older workers in mind when providing training and reject stereotypes that say older workers are resistant to change and don't want to learn anything new. Also, employers are advised to not fall for the thinking that training people who may retire in a few years is a waste of resources.
- Offer flexible schedules and remote opportunities.
- Support phased retirement plans that allow older workers to work less over a period of time. Such a plan benefits the remaining employees by letting them transition gradually into being senior contributors.
- Offer seasonal work and short-term assignments. Even after retirement, some workers might be willing to help during busy seasons.
- Provide accommodations and flexible benefits options. Making sure older workers are able to access all the accommodations they need will help them continue on the job. ■

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