November Mental Health &
DIVERSITY, EQUITY, AND INCLUSION UPDATE

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Whatever You Do, Don't Call Me a "Queenager"

When I first came across the term "queenager," I knew I was supposed to be flattered. I wasn't. Women have been leaning in for years. Now, here was another label we were supposed to embrace. Coining a term to draw attention to a cause often comes with good intentions. But sometimes it falls flat.

Queenager is one of those. The portmanteau refers to women who started their professional careers in the 1980s, and have reached a stage where they have disposable incomes and freedom, but tend to become overlooked as they reach middle age. I am all for bringing attention to the challenges they face in the workplace. But I am not convinced another clickbait label is it. Far from being empowering, it feels somewhat pitying.

And that's just it — women need to constantly prove and reinvent themselves throughout their working lives. They do it in their 20s and 30s, then years later they have to do it again to show they remain relevant. If you are a woman of color, it's even harder to overcome prejudices and advance your career. Workplace discrimination still affects women disproportionately and those in the second part of their careers are a prime target of ageism. If the aim is to acknowledge our value with catchy tags, this one misses the mark. It might be well-meaning, but it feeds stereotypes. Most of us are not entitled queens or temperamental teenagers.

To push through the barriers to gender parity, women need to be supported, valued and recognized at every stage of their careers. Instead, there is a "never-right" age bias throughout their working lives, Amy Diehl, Leanne M. Dzubinski, and Amber L. Stephenson recently wrote in the Harvard Business Review.

In a survey of 913 US female leaders, they identified a series of concerns: gendered "youngism" (under 40 years) fueled by the belief that age equals competency; gendered "oldism" (over 60 years) where women are not seen as valuable or relevant as their male counterparts; and

gendered “middle-ageism” (between 40 years and 60 years), a group overlooked because of “too much family responsibility and impending menopause.”

Women between the ages of 45 and 54 make up 20% of the female workforce in the US. The prime-age (25 to 54) participation rate (those who have or are looking for a job) for women hit a record high in June. And still, few are leading companies, managing money and heading financial institutions. Senior female executives are throwing in the towel in frustration at the slow progress in corporate diversity. The gender pay gap persists and women will retire with less in their pension funds than men.

That’s why it’s even more imperative to ensure that women in their 20s and 30s feel confident they will have career opportunities in their 40s and 50s and even 60s. The working-life trajectory must recognize strengths and contributions at different stages. It must also accept that priorities shift. A woman in her 20s and 30s will have different career objectives than one in her 50s. What doesn’t change is the unique perspectives and experiences they all bring, and what they can learn from each other.

Employers are supporting the careers of mothers who return to work after having children. But there are few initiatives aimed at those who’ve hit middle age. This is a missed opportunity. Not only do they have significant spending power, but authority, autonomy, experience, and a deep wealth of knowledge. They have a role to play as mentors and role models, as well as leaders. Careers shouldn’t be snuffed out when you hit a certain age.

“Little girl, troubled teenager, sex object, career woman, mum, old woman waiting to die.” These are the stages of a woman’s life depicted in the media, Jane Evans and Carol Russell wrote in their 2021 book Invisible to Invaluable — Unleashing the Power of Midlife Women. They noted: “Women aged between 45 and 70 are both young and old: We have a life well lived and have half a life to create. We are past our childbearing years with a quarter of a century of work years ahead. But we don’t exist. We’re skipped over.”

Things are changing. Companies are now addressing issues affecting middle-aged women, such as menopause. But something that is mostly seen as a condition women suffer through runs the danger of becoming what we associate with working women in the latter half of their careers, and obscures all their other contributions.

There are some other bright spots. Middle-aged women are finally having their Hollywood moment — they are winning awards and speaking out about what it’s like to get older. Look at director Jane Campion and actors Reese Witherspoon, Kate Winslet and Cate Blanchett. Brooke Shields is writing a book on aging. Some, like Naomi Watts, are even talking about menopause.

While the term irks me, Noon, the website that coined queenager, is helping draw attention to a female age bracket still seen as past its prime. That’s a good thing, but catchwords alone won’t

fix workplace discrimination. Let's dispense with them altogether and work for real reforms. Until then, please don't call me the Q word.

https://www.washingtonpost.com/business/2023/08/13/equality-queenager-label-downplays-women-s-workplace-discrimination/c4192600-3a22-11ee-aefd-40c039a855ba_story.html

EEOC Adopts New Strategic Plan

WASHINGTON – Today the U.S. Equal Employment Opportunity Commission (EEOC) announced it has approved its Strategic Plan for Fiscal Years 2022-2026 https://www.eeoc.gov/eeoc-strategic-plan-2022-2026. Implementation will begin immediately.

The Strategic Plan serves as a framework for achieving the EEOC's mission to prevent and remedy unlawful employment discrimination and advance equal employment opportunity for all. The Plan also sets forth its vision of fair and inclusive workplaces with equal opportunity for all.

To accomplish this mission and advance the agency's vision, the Strategic Plan outlines the EEOC's strategic goals and objectives to: combat and prevent employment discrimination through the strategic application of the EEOC's law enforcement authorities; prevent employment discrimination and advance equal employment opportunities through education and outreach; and strive for organizational excellence through its people, practices, and technology.

Highlights of the new Strategic Plan include:
Increased focus on systemic discrimination. The Plan emphasizes expanding the EEOC's capacity to eliminate systemic barriers to equal opportunity in the workplace, including training staff to identify and investigate systemic cases and devoting additional resources to systemic enforcement.

Improved monitoring of conciliation agreements to ensure workplaces are free from discrimination after the EEOC makes a finding of discrimination.

Enhanced intake services to potential charging parties, respondents, and representatives. Under the Plan, the EEOC will focus on improving and expanding access to intake services, increasing the availability of intake interview appointments, and improving overall service to the public. Leverage technology and innovative outreach strategies to expand the agency's reach to diverse populations; vulnerable communities; and small, new, and disadvantaged or underserved employers.

Promote promising practices that employers can adopt to prevent discrimination in the workplace.

“The new Strategic Plan reflects our thoughtful assessment of the agency’s mission, goals, and objectives in light of current conditions and what we expect in the next few years,” said EEOC Chair Charlotte A. Burrows. “It emphasizes expanding the EEOC’s capacity to eliminate systemic barriers to equal opportunity in the workplace, using technology and other tools to improve our services to the public, and achieving organizational excellence with a culture of accountability, inclusivity, and accessibility. I am grateful for the hard work of our staff across the agency who assisted in developing this plan and look forward to its successful implementation.”

The process for developing the Strategic Plan was an inclusive and collaborative effort by working groups comprised of staff from EEOC’s headquarters, field offices, Commissioner’s offices, and the agency’s union. The agency also sought public comment on the draft Strategic Plan and carefully reviewed and considered all comments received in developing the final Strategic Plan.
The Government Performance and Results Act (GPRA) Modernization Act requires executive departments, government corporations, and independent agencies to develop and post a strategic plan on their public websites every four fiscal years. These plans direct the agency’s work and lay the foundation for the development of more detailed annual plans, budgets, and related program performance information in the future.

The EEOC also publishes a Strategic Enforcement Plan (SEP), which is a separate document that establishes the EEOC’s substantive area priorities for its work to advance equal employment opportunity and prevent and remedy discrimination in the workplace.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

https://www.eeoc.gov/newsroom/eeoc-adopts-new-strategic-plan

How to avert burnout in HR

Often tasked with addressing the causes of overwhelm and stress in their organisations, HR professionals themselves can struggle with feelings of burnout. Emily Pearson highlights the organisational, team and individual factors that can help minimize burnout in the profession, as well as the workforce.

Over the past decade, employee mental health and wellbeing have become significant components of HR professionals’ responsibilities, but recent studies have shed light on a prevailing mental health crisis among HR professionals themselves.

With record rates of staff attrition and a substantial number considering leaving the HR profession altogether, the burden of burnout is disproportionately affecting HR staff compared to other disciplines.

There is an urgent need for targeted intervention. According to CIPD research, a staggering 44% of HR professionals report experiencing mental health challenges at the workplace, while a Sage survey showed 81% personally identify with feelings of burnout.

These concerning trends are not confined to HR; they resonate across various professional domains. But HR professionals are often tasked with addressing the causes of burnout in their organisations.

Failure to tackle poor mental health and burnout can lead to severe consequences, compromising both personal wellbeing and professional trajectories. And is possible for HR to address these in their organisations when they often struggle themselves?

Burnout materializes as a consequence of unmanaged, chronic workplace stress, resulting in emotional and physical depletion.

The HR profession, in particular, faces a unique set of challenges and demands that exacerbate burnout, including:

Compassion fatigue: Navigating workplace stress and supporting colleagues through empathy and compassion places HR professionals under immense strain. The rise in work-related stress and efforts to tackle mental health stigma contribute to this overwhelming burden.

Self-neglect: Prioritizing the needs of others often leads to neglecting one's own wellbeing. HR professionals, who champion the needs of their colleagues, can find their own needs overshadowed.

Chronic stress and heavy workloads: Prolonged exposure to work-related stress, compounded by the added responsibilities brought on by the pandemic, can culminate in burnout. The continuous high-stakes workload placed on HR professionals compounds this challenge, despite the prevention of work-related stress being a legal obligation.

Being a bridge between management and workforce: HR professionals shoulder the weighty responsibility of translating management decisions into actionable plans for the broader workforce. This responsibility adds an extra layer of complexity to their role.

In addition to these specific HR challenges, several overarching issues contribute to the prevailing crisis:

Discrepancies between expectations and realities can lead to conflict and dissatisfaction
Lack of recognition for efforts made can diminish motivation and disrupt harmony
Isolation, exacerbated by the rise of hybrid work models, hampers a sense of community and support

A values misalignment, particularly poignant in compassionate professions (care workers, clinicians, social workers but not excluding HR) impacts job satisfaction and purpose.

Compassion fatigue
HR professionals often find themselves in the position of addressing colleagues' calls for help, especially in distressing situations. This heightened responsibility places immense pressure on HR professionals, a pressure that intensified during the pandemic."

As mental health and wellbeing have become integral to HR responsibilities, compassion fatigue has emerged as a real concern. While conversations about mental health are more open, the lack of appropriate support, training, and development for managers to confidently engage in these conversations compounds the challenge. HR professionals often find themselves in the position of addressing colleagues' calls for help, especially in distressing situations. This heightened responsibility places immense pressure on HR professionals, a pressure that intensified during the pandemic.

Interestingly, as the go-to experts on wellbeing and mental health within their organisations, HR frequently report insufficient training and support to manage these issues at an individual level. Moreover, they lack specialized development for crafting and executing mental health and wellbeing strategies.

Fortunately, organisations are now recognizing that establishing these fundamentals leads to a thriving culture that attracts and retains talent. Employees who feel happy, engaged, and motivated contribute to improved business performance.

To counter the mounting HR crisis, there are several organisational, team, and individual approaches that need to work together at the same time:

Organisational level: Providing robust support for leaders, emphasizing reward and recognition, is pivotal. Implementing effective systems for pre-emptive work-related stress management, coupled with cultural enhancements that promote mental health and wellbeing, are imperative.

Equipping managers to confidently prevent work-related stress and address employee concerns fosters positive work cultures. Distributing these responsibilities more broadly among managers can alleviate HR's burden and encourage specialist development in crucial areas such as mental health, wellbeing, and EDI.

Team level: Nurturing a culture of care and community within teams, encouraging open dialogues about personal impacts and required support, is essential. Regular stress risk assessments, not merely to meet legal requirements, but to actively seek opportunities for growth, should be implemented. Leading by example reinforces shared values and encourages positive change.

Individual level: Encouraging education on burnout, compassion fatigue, and recovery empowers individuals. Prioritizing self-compassionate care, reducing stress levels both at work and home, and addressing stressors are key steps. Employees should prioritize their wellbeing, allocate time for it, and seek assistance when needed. Accessible wellbeing provisions and drawing on support from colleagues at work and family at home contribute to individual wellbeing.

Adopting these approaches constitutes a winning strategy. By addressing these issues at their core, organisations can cultivate a thriving environment that attracts, retains, and empowers talent. Employees who are content, engaged, and motivated not only enhance their personal lives but also bolster business performance.

Through strategic intervention and proactive steps, the tide of the burnout crisis in HR can be stemmed, leading to a brighter, more sustainable future for all.

https://www.personneltoday.com/hr/how-can-we-avert-the-burnout-crisis-in-hr/

More people call in sick on Aug. 24 than any other day

(Bloomberg) — Perhaps it's the inexplicable craving for a day off ahead of the big Labor Day holiday. Perhaps it really is a stomach bug, or that more recent fiend — the coronavirus. And of course, it might just be the blues at the end of summer.

Whatever the reason, Aug. 24 is when American workers most often tell their bosses they simply cannot work that day.

Return-to-office numbers in Chicago lingering just above 53%.

The other day workers typically fail to show up? Feb. 13, usually around the Super Bowl and Valentine's Day. Tough to guess why.

These dates came from a study by Flamingo, a firm which helps companies manage employee absences and medical leaves, which analyzed data on sick days taken by American workers over the past five years.

Some 300 businesses with over 10,000 employees participated in the study which found an average 0.9% of those employees were out sick on Aug. 24, a higher percentage than on any other day of the year, according to David Hehenberger, Flamingo’s founder.

People cited stomach bugs more than half the time as the reason for calling in ill, with the majority of sick-day requests mentioning symptoms such as vomiting or diarrhea. These issues

surpassed coronavirus, which accounted for about a quarter of total absences. Injuries like broken bones and muscles strains, which caused 6% of people to stay home from the office, were also cited.

Beyond physical ailments, Paaras Parker, chief human resources officer at payroll software company Paycor, said her organization observed a notable uptick in workers staying home with anxiety or stress-related conditions, which accounted for almost 9% of sick leaves in the Flamingo survey. “It's not necessarily that they have strep or a fever, but that they need a day for themselves,” she said.

With employee burnout reaching a post-pandemic high earlier this year, workers feeling emboldened to take mental-health sick days is a “welcome change” in workplace attitudes, Parker said.
The advent of remote work is also changing the culture around sick leave. A new survey by WFH Research shows that workers feeling ill but without an option to work remotely are nearly twice as likely to come to the office with symptoms as their hybrid counterparts.

That spells trouble on the health front as return-to-office mandates harden and office densities increase, contributing to a rise in breeding grounds for contagious illnesses such as influenza and the common cold. “People clearly feel more comfortable working from home when they're coughing or when their nose is very stuffy,” said Jeff Levin-Scherz, population health leader at insurance company WTW, formerly Willis Towers Watson. “If they feel well enough to work, they can feel more comfortable knowing they're not going to pass anything to anybody else.” But for employees that are still tied to the office, he stresses the importance of continuing good hygiene such as hand-washing and insisting their companies consistently check air quality, practices that became routine during the pandemic.

“These days, where many knowledge workers just don't come to the office, some of these efforts to make healthier workplaces might actually be amenities that help encourage people to show up,” Levin-Scherz said. He adds that perks like access to healthy food and exercise facilities could serve a dual purpose of boosting employee health as well as office attendance.

In any event, it’s never a good practice to poke holes in an employees’ reason for claiming a sick day, Parker said. “I don't think it's our place to guess why somebody is taking time off, but to realize that human beings need time off and to create environments and policies that allow them to exercise this right, when need be,” she said.

https://www.chicagobusiness.com/workplace/most-popular-day-workers-call-sick

When Silence Speaks: Addressing the Neglected Issues of Mental Health at Work

This article features insights from twelve industry leaders, such as CEOs and founders, who share their thoughts on a commonly overlooked aspect of mental health in the workplace. The experts discuss topics such as addressing invisible burnout and understanding the impact of chronic pain and physical ailments, shedding light on areas that require more attention.

- Phenomenon of Invisible Burnout
- Importance of Employee Appreciation
- Microaggressions and Mental Health
- Co-Workers' Distress Signs
- Feelings of Isolation in Remote Work
- Impact of Leadership's Mental Health
- Support and Guidance for Leaders
- Physical and Mental Health Connection
- Rigid Work Culture's Impact
- Positive Sensory Environments
- Mental Health Stigma Challenges
- Chronic Pain and Physical Ailments

Phenomenon of Invisible Burnout

One of the most overlooked aspects of workplace mental health is the phenomenon of "invisible burnout." It's not just about being visibly tired or disengaged. It's about the internal struggle, the dwindling sense of purpose, and the suppressed feelings of inadequacy that many don't vocalize.

Many professionals excel on the surface, but deep down, they struggle with feelings of disconnect and alienation. Often, one isn't overwhelmed by tasks but by a lack of emotional connection and recognition.

Companies must cultivate a culture where employees can express their professional ambitions, emotional and psychological needs, and issues. This nuanced understanding can help redefine the overall workplace well-being.

Importance of Employee Appreciation

When an employee doesn't feel appreciated in their workplace, it can lead to feelings of depression, particularly if they feel as though they are working their heart out, meeting deadlines, and taking care of their responsibilities.

Not every action needs a pat on the back. However, it's important that employees feel recognized and appreciated in their work. If they don't, their mental health can struggle because they struggle to reaffirm their worth in their company.

It's a responsibility to ensure employees feel empowered and appreciated. So, time should be taken with each employee to go over how well they've been doing and thank them with a verbal "thank you" and some incentive reward.

You would be surprised by how much you can address simply by reaching out and offering gratitude to your employees. This can help improve the office's mood, morale, and overall emotional well-being.

Stefan Campbell, Owner, The Small Business Blog

Microaggressions and Mental Health

Microaggressions are an often-overlooked aspect of mental health in the workplace. In my journey of fostering emotional balance through chakra healing, I've found that these subtle, sometimes unintentional, remarks or actions can silently erode an individual's well-being.
I recall when a colleague innocuously commented on my choice of holistic practices, suggesting they were "just a phase." This casual remark made me question my path and passion momentarily.

Such experiences taught me the profound impact these small comments can have on one's mental health and the importance of creating a workplace that is free of judgment and full of understanding.

Clare Gilbey, Founder, Chakra Practice

Co-Workers' Distress Signs

With mental health issues in the workplace, one of the most overlooked aspects is recognizing signs and symptoms of distress among co-workers. While supervisors and managers are often trained to recognize these signs, many employees don't realize that their peers may struggle with mental health issues. This can prevent them from reaching out for help and support.
To create a supportive environment for those suffering from mental health issues, employees must be aware of the potential signs exhibited by their peers. This includes changes in mood, physical appearance, behavior, or attitude. Employees should be encouraged to speak up if they are concerned about a coworker's mental well-being.

Ryan Hetrick, CEO, Epiphany Wellness

Feelings of Isolation in Remote Work

General isolation is a growing issue. With remote and hybrid work more in vogue, it's easier than ever for workers to spend a week without human contact.

Even with family and neighbors, seeing colleagues and peers from the workplace positively affects mental health and company culture building. Even when I can't get together with my team, I hang out with the people at my co-working space.

Trevor Ewen, COO, QBench

Impact of Leadership's Mental Health

One aspect of workplace mental health that I don't see discussed broadly is the impact of one person's issues on the broader workplace, culture, and team's mental health. This is especially true when the person having issues is in leadership.

Struggling with a mental health challenge often leads people to act in ways they normally wouldn't or to say or do harmful things that cause stress for the people around them. This is a difficult situation because you don't want to blame your boss or coworker for something beyond their control, especially when you know they're struggling, too.

However, it can create a very toxic work environment when you work with someone who is always negative, hostile, lashing out, blaming others, etc. Being in that environment can also trigger mental health problems in other team members, leading to a vicious cycle.

Carlos Da Silva, Physician Assistant, PA Career Hub

Support and Guidance for Leaders

Leaders serve as supporters and encouragers for their teams' mental health, but many don't have enough to support themselves. The higher you move up the leadership ladder, the fewer people above you to offer the guidance and mental health support you need.

Work pressures and responsibilities often increase as you earn promotions while your support decreases. A study shows that 49% of CEOs deal with mental health conditions, so businesses must be built with plenty of support for all teammates, including management and top-tier leadership.

CEOs will not ask interns for mental health support, so it's important to establish strong third-party support systems like coaching, counseling, and more. Building a culture that leans into self-care is crucial so leaders feel they can rest, recover, and ask for help without guilt or shame.

Denise Hemke, Chief Product Officer, Checkr

Physical and Mental Health Connection

While workplaces everywhere actively try to improve mental health support, the physical connection is sometimes missed—especially in remote work. Chronic disease and poor physical health can negatively affect our mental health, just as poor mental health can wreak havoc on our physical health. You can't have one without the other.

Leaders can't force their employees to move their bodies, but they can offer better health coverage and benefits and educate their team about the mental-physical health connection. When ramping up mental health perks and initiatives, matching those efforts equally on the physical health front is important.

Max Wesman, Chief Operating Officer, GoodHire

Rigid Work Culture's Impact

The impact of a rigid work culture is an aspect of mental health problems in the workplace that is frequently disregarded. Realizing the importance of nurturing a flexible and encouraging environment is crucial.

Workload excess, unrealistic expectations, and a lack of balance contribute to several mental health issues. Businesses can create a more compassionate environment by encouraging open dialogue about mental health, providing resources for stress management, and instituting flexible work arrangements.

Addressing this factor benefits employees' mental health and increases their productivity and job satisfaction. The responsibility of maintaining the health of a team while maintaining a successful practice should be taken seriously.

Michael Callahan, Founder and Director, The Callahan Law Firm

Positive Sensory Environments

One overlooked aspect of mental health issues in the workplace is the impact of sensory environments. Creating a workspace that positively engages multiple senses, like incorporating soothing colors, calming scents, and soft textures, can significantly reduce stress and promote well-being.

As someone interested in embodied cognition, I believe our physical surroundings can play a vital role in influencing our mental state. By recognizing the connection between sensorimotor experiences and mental health, companies can enhance employee productivity and satisfaction while fostering a more supportive work atmosphere.

Jay Toy, General Manager, 88stacks

Mental Health Stigma Challenges

The stigma surrounding mental health is a pervasive, overlooked issue in the workplace that can have long-term effects on employee well-being.

Many people are still uncomfortable discussing mental health issues in a public setting, making employees feel ashamed of their struggles with mental health. This stigma means individuals may not feel comfortable seeking help or talking about their issues with co-workers or their supervisors.

Unfortunately, this can lead to a lack of access to resources and support for those struggling with mental health issues. The stigma surrounding mental health can also be exacerbated by workplace culture, which may contribute to feelings of isolation and alienation among employees experiencing mental distress.

Keith Sant, Head of Property Acquisitions, Texas Cash House Buyer

Chronic Pain and Physical Ailments
One of the most overlooked symptoms of poor mental health that employers miss is chronic pain and other physical ailments. While some people experience pain, injury, or physical illness separately from mental health issues, up to 50% of people with chronic pain experience depression.

When an employee takes sick days or regularly complains of physical ailments, leaders should work to put the right mental health support in place. A teammate may experience regular headaches as a side effect of depression or anxiety without understanding the connection between the two, so managers should ask the right questions and shine a light on how these two elements can affect each other.

Whether an illness is associated with mental health issues, most will overlap at some point. Even those who report relatively high levels of mental wellness can see issues arise when dealing with an ongoing illness.

Brian Nagele, CEO, Restaurant Clicks

“The Blind Spots on the Corporate Radar”: Ignored Signals and How to Address Them
We often ignore the whispers until they become screams. In the context of a workplace, overlooking certain indicators of poor mental health or low morale can lead to devastating consequences, not just for employees but also for the organization.

Here are some signs that companies absolutely shouldn't ignore: Subtle Signs and Their Solutions

Low Engagement in Meetings: Employees seem disinterested, barely contributing ideas or questions.
Approach: Spice up your meetings with interactive segments, allow room for open discussions and ensure everyone's voice is heard.

Frequent Sick Leaves: An uptick in short-term absences might indicate stress or burnout.
Approach: Consider implementing wellness programs and mental health days to give your employees a breather.

High Employee Turnover: If people leave in droves, it's a glaring sign that something is wrong.
Approach: Conduct exit interviews to better understand the issues and use this data to make organizational changes.

Drop in Productivity: Consistently failing to meet deadlines or targets can signify waning motivation.
Approach: Offer performance incentives and ensure a balanced workload.

Office Gossip and Politics: A toxic work environment leads to poor mental health.
Approach: Maintain an open-door policy for employees to voice concerns and implement a zero-tolerance policy for harassment.

Overwork and No Work-Life Balance: Employees consistently staying late is a recipe for burnout.
Approach: Encourage a balanced lifestyle by offering flexible working hours and discouraging late-night or weekend work.

Advanced Approaches

- Employee Pulse Surveys: These quick, anonymous surveys can gauge the mood and engagement level of your team.
- Mental Health First Aid Training: Equip your HR team and managers with the skills to recognize and address mental health issues.
- Holistic Well-being Programs: Incorporate activities catering to mental and physical health, like meditation sessions and fitness challenges.

https://www.legalscoops.com/mental-health-issues-in-the-workplace/

Pregnant workers have new protections. Here's what to expect from your boss.

For roughly a decade, advocates, legislators and workers pushed to pass legislation offering better workplace protections for pregnant workers. The Pregnant Workers Fairness Act passed in December and became effective on June 27, 2023.

Almost two months after workplace accommodations for pregnant workers became law, the rules surrounding what employers can and cannot do have yet to be finalized — but that doesn't mean the protections are not in place.

The Equal Employment Opportunity Commission's proposed regulations are expected to offer more clarity once finalized, but workers can still access their rights under the new Pregnant Workers Fairness Act and employers are still required to understand the law and follow it. Here's what you need to know about why workers say the law was needed, what workers' rights are under the law and employers' obligations to employees.

Why the law was needed

Other federal laws cover the rights of pregnant workers but advocates have long argued that many of them are too narrow to address the situations pregnant workers face when they seek accommodations. The Americans with Disabilities Act, for instance, does not consider pregnancy to be a disability but pregnancy-related complications, such as preeclampsia, do qualify. Under the ADA, a pregnant worker can't seek out an accommodation in the hope of preventing dangerous pregnancy-related complications.

The Pregnancy Discrimination Act, passed in 1978, prohibits discrimination against pregnant employees but it's difficult in practice for workers to receive accommodations under the law, because it requires finding another worker who received accommodations like the ones they're seeking. This can be a challenging and time-consuming process because workers may not be aware of what kinds of accommodations their coworkers are seeking or may not have access to this information in the way their employer does.

Despite those laws, 23% of mothers said in a survey last year that they had weighed whether or not to leave their job because their workplace lacked reasonable accommodations or they were worried about pregnancy discrimination.

The Pregnant Workers Fairness Act, which passed in December, has been in the works for a decade. In the intervening years, states began taking their own action. As of April, 30 states — including Alaska, Colorado, Minnesota, and Tennessee — as well as the District of Columbia, and four localities, had similar laws to the Pregnant Workers Fairness Act, some of which may offer stronger protections in certain situations than the PWFA, according to A Better Balance, a worker advocacy nonprofit. Twenty states did not have state protections like these at the time

of its state analysis, including Alabama, Missouri, Pennsylvania, Wisconsin, and Michigan. The nonprofit has a comprehensive list of state policies on pregnant workers' rights.

What are your employee rights

Congress and federal agencies, employment agencies, labor organizations, private employers with 15 or more workers, and state and local governments with 15 or more workers are subject to the law, according to the EEOC.

While the rules haven't been finalized, if you think your rights have been violated, you can already take action. On June 27, the EEOC began allowing workers to file charges under the law for violations that occurred on that day or later. Workers need to take this step before they can file a lawsuit against their employer. The law protects employees and job applicants who need accommodations because of pregnancy, childbirth, or conditions related to pregnancy and childbirth. Under the PWFA, pregnant workers should be able to make requests for reasonable accommodations, such as closer parking, uniforms in their size, and additional rest time.

The PWFA is similar in many ways to the Americans with Disabilities Act. It does not require an employer to provide an accommodation if doing so would bring it "undue hardship," or in other words, it would come at great difficulty or expense to the employer.

But the law is also a bit different than the ADA. Unlike the ADA, where the employee has to be able to do the essential functions of their job or they no longer qualify for accommodations, the PWFA says that workers do not always have to be able to perform an essential function temporarily because of their pregnancy. It is expected that they will be able to resume those duties in the near future.

The EEOC'a proposed rules define the "near future," or when workers will be able to perform essential functions of their job after being temporarily unable to do so, as generally going up to 40 weeks. This does not mean workers will always have 40 weeks but that needing 40 weeks doesn't disqualify an employee for the accommodations. The regulations also say that if there are multiple options for effective accommodations, the employer should favor the worker's preferred accommodation.

Liz Morris, deputy director for the Center for WorkLife Law, said applicants and new employees who want to work remotely because of their pregnancy will also be covered in the PWFA. Applicants can request accommodations during the hiring process itself, such as making modifications to a physical test. If a pregnant applicant anticipates that they will need adjustments from an employer because of their pregnancy, the applicant can agree to a general policy without accommodations and then request them once they are employed.

The EEOC regulations also get into detail about pregnancy-related medical conditions that apply to workers under the PWFA, A Better Balance Vice President Elizabeth Gedmark said.

"…The proposed rule discusses pregnancy-related issues ranging from preterm labor to anxiety and depression while also making clear that limitations can also be 'modest, minor, and/or episodic,'" she told States Newsroom over email.

Lactation, potential pregnancy, miscarriage, infertility and fertility treatments, and having an abortion are also listed in the regulation. An employee who needs to take leave because of a limitation due to a condition related to pregnancy and childbirth should qualify for that leave under the PWFA, according to the proposed rules. The EEOC gives miscarriage and childbirth as examples of reasons for workers to take different forms of leave. The same definition of "near future" also applies. I

A Better Balance provides sample letters for employees to use when requesting work accommodations related to pregnancy.

What employers need to know

The rules are going through a public comment period through Oct. 10, and Victor Chen, director of communications at the EEOC, told States Newsroom that employers are not required to follow the proposed rules just yet. But he added that the PWFA itself provides direction for employers. He suggested employers read the EEOC's list of commonly asked questions and listen to its webinar. He said the EEOC "will move as quickly as possible to finalize the regulation" after the comment period closes.

Morris said that although the regulations aren't set in stone, "If I were an employer, I would certainly follow them for now, as they are an excellent indication of how the law will ultimately be interpreted."

The rules specify that employers can't deny work to an applicant or employee because of their need for an accommodation, make a decision for a pregnant worker without any discussion on which accommodation they will receive or force them to go on leave if there is an accommodation they could take to continue working. They also can't retaliate against workers for advocating for themselves under the law and reporting discrimination nor can they try to stop workers from enjoying their legal protections.

Michael Fallings, the managing partner of Tully Rinckey PLLC's Austin office, who specializes in federal employment law, said he thinks it will be useful for employers to have more information on how to fairly treat pregnant workers seeking reasonable accommodations.

"I think it could be helpful for employers because I think some employers are in fear of litigation at times and now that you have a law in place that says what you can or cannot do, it provides some basis for the employers," he said.

Morris said that employers should keep in mind that they need to swiftly provide accommodations and if they can't, they should think about interim accommodations. The

proposed EEOC regulations explain that an “unnecessary delay” could result in a violation of the law.

The future of the law and its regulations

The law’s regulations may be tweaked during the rulemaking process and could be eventually challenged in the courts. The Alliance Defending Freedom, which has been involved in numerous lawsuits challenging abortion rights, called the proposed regulations “federal overreach.” The ADF, a legal advocacy group, has argued that the administration doesn’t have the legal authority to include abortion in its implementation. Morris said that accommodations related to abortion are reasonable to include because the EEOC has always defined pregnancy, childbirth and related medical conditions in the courts as including abortion.

Organizations that supported or opposed the law will also have the opportunity to suggest changes to the regulations. The U.S. Chamber of Commerce advocated for the passage of the law and will provide a public comment on parts of the rule that could be changed, the group told States Newsroom, but declined to elaborate on what should be revised.

Morris said her organization also plans to submit a public comment on the proposed EEOC regulations. She wants to see some revisions on the issue of medical certification to make it even easier for employees to receive accommodations.

“A shocking number of people don’t receive prenatal care because they don’t have access to it either because of financial barriers or because they live in a remote area where it’s difficult to travel to, to receive prenatal care,” she said.

https://wisconsinexaminer.com/2023/08/28/pregnant-workers-have-new-protections-heres-what-to-expect-from-your-boss/

Use of Mental Health Services Soared During Pandemic

By the end of August 2022, overall use of mental health services was almost 40% higher than before the COVID-19 pandemic, while spending increased by 54%, according to a new study by researchers at the RAND Corporation.

During the early phase of the pandemic, from mid-March to mid-December 2020, before the vaccine was available, in-person visits decreased by 40%, while telehealth visits increased by 1000%, reported Jonathan Cantor, PhD, and colleagues at RAND, and at Castlight Health, a benefit coordination provider, in a paper published online August 25 in JAMA Health Forum.

Between December 2020 and August 2022, telehealth visits stayed stable, but in-person visits creeped back up, eventually reaching 80% of pre-pandemic levels. However, "total utilization

was higher than before the pandemic," Cantor, a policy researcher at RAND, told Medscape Medical News.

"It could be that it's easier for individuals to receive care via telehealth, but it could also just be that there's a greater demand or need since the pandemic," said Cantor. "We'll just need more research to actually unpack what's going on," he said.

Initial per capita spending increased by about a third and was up overall by more than half. But it's not clear how much of that is due to utilization or to price of services, said Cantor. Spending for telehealth services remained stable in the post-vaccine period, while spending on in-person visits returned to pre-pandemic levels.

Cantor and his colleagues were not able to determine whether utilization was by new or existing patients, but he said that would be good data to have. "It would be really important to know whether or not folks are initiating care because telehealth is making it easier," he said.

The authors analyzed about 1.5 million claims for anxiety disorders, major depressive disorder, bipolar disorder, schizophrenia, and posttraumatic stress disorder, out of claims submitted by 7 million commercially insured adults whose self-insured employers used the Castlight benefit.

Cantor noted that this is just a small subset of the US population. He said he'd like to have data from Medicare and Medicaid to fully assess the impact of the COVID-19 pandemic on mental health and of telehealth visits, also.

"This is a still-burgeoning field," he said, about telehealth. "We're still trying to get a handle on how things are operating, given that there's been so much change so rapidly."

Meanwhile, 152 major employers responding to a large national survey this summer said that they've been grappling with how COVID-19 has affected workers. The employers include 72 Fortune 100 companies and provide health coverage for more than 60 million workers, retirees, and their families.

Seventy-seven percent said they are currently seeing an increase in depression, anxiety, and substance use disorders as a result of the pandemic, according to the Business Group on Health's survey. That's up from 44% in 2022.

Going forward, employers will focus on increasing access to mental health services, the survey reported.

"Our survey found that in 2024 and for the near future, employers will be acutely focused on addressing employees' mental health needs while ensuring access and lowering cost barriers," said Ellen Kelsay, president and CEO of Business Group on Health, in a statement.

https://www.medscape.com/viewarticle/995892

What Workplaces Misunderstand About Neurodiversity

Despite dwindling support for workplace diversity, equity, and inclusion, one word is still showing up in job descriptions, employee resource groups, and manager training around DEI: neurodiversity.

Chances are high, though, that the term is being misused. I know because as I reported this column, multiple experts gently corrected me. And so, it's perhaps helpful to begin with the basics: Before employers and workers can understand how to better support their neurodivergent employees and colleagues, we need to understand what neurodiversity really is.

Making good on that support requires nothing short of an overhaul in how we hire, retain talent, and communicate. But the payoff is well worth the investment for neurodivergent workers and everyone else: Centering this community has benefits for all personality types and working styles, and ultimately helps rid our workplaces of exclusionary jargon and imprecise practices.

What we mean by neurodiversity

We are all neurodiverse. That's my takeaway from a conversation with Ellie Middleton, who has grown an audience of more than 200,000 followers on LinkedIn as an expert on how to better support disabled communities at work. She also runs the (un)masked community for neurodivergence, which publishes books, videos, and social media posts (more on the concept of "masking" later).

"All of us have different brains that work in different ways, and neurodiversity refers to all of the unique and differing ways in which people can exist, think, process, feel, and act," she says.

"There are neurotypical people, whose functioning falls within societal standards and norms, and neurodivergent people, whose functioning falls outside of those norms," including those with autism, ADHD, and dyslexia.

The list grows longer depending on whom you're talking to. Writer and advocate Susanne Paola Antonetta argues for the need to be both ever-expansive and more specific in who gets included in workplace DEI efforts. "There has become a growing awareness of the need to make neurodiversity a part of inclusivity," she says. "But 'neurodiversity' is most often considered as conditions like autism spectrum, Down's syndrome, and dyslexia. There is very little honest discussion of major disorders like schizophrenia, borderline, schizoaffective, and bipolar in the workplace. There is still a great deal of stigma in the workplace, especially for those of us who don't fit conventional narratives."

The terms to ban at work

The language of ableism is also being reconsidered by employers (don't miss this column I did on the phrases to ban at work). But those advocating for the neurodivergent population ask us to go a bit further by being more mindful about phrases we might not otherwise think twice about. Middleton cites words like insane, mad, crazy, and mental as words to replace "with terms that don't have connotations that could offend or traumatize people in the workplace." Her go-to replacement is the word "wild."

"Words that focus on suffering, victimhood, and the need for charity or correction may be considered problematic," notes Ricky Brooks, manager of global inclusion programs for the job site Indeed.

He offers a list of common offenders and the preferred replacement terms:
Problematic: Normal/healthy person
Preferred: Person without a disability
Problematic: Mental disability
Preferred: Mental health
Problematic: Hearing impaired/suffering from hearing loss
Preferred: Person who is deaf or hard of hearing
Problematic: The disabled/handicapped
Preferred: Disabled, a person with disabilities

How to improve communications for the neurodivergent (and thus everybody)
One way we offend neurodivergent populations is the same way we offend a lot of our colleagues: by not being clear or precise in communications.

A recent LinkedIn post from Middleton pleads that we stop using the following:

- Touch base
- Circle back
- Move the needle
- Let's unpack this
- Reach out

"First of all, you sound silly. But secondly, you're not being clear enough to make sense to autistic folks who need you to say what you mean and mean what you say," she writes.

This is in line with what managers need to get right anyway: modifying communication so that all staffers understand, not just those "in the know." Jakada Imani, CEO of The Management Center and co-author of Management In A Changing World: How to Manage for Equity, Sustainability, and Results, asks managers to "tear apart the preferences, traditions, and requirements" of traditional work.

Managers should engage “with each person about what works best for them and the work,” he says, leaning into multiple platforms and formats to get their message across: “Applying a blanket formula for communicating with neurodivergent people is no way to handle communication, and often makes things worse,” Imani says. For example, “Do updates have to be a written email? Can it be a voice memo or a video?”

Multiple experts say more video communications in particular would be useful to neurodivergent staffers—and vice versa, for them to be able to share their own updates on projects.

Middleton also offers more tips:
Say what you mean: Neurodivergent people, specifically autistic people, need instructions to be very clear, concise, and specific. A quick and easy way to do this is by giving instructions that follow a three-part format: What do you need, by when, and why?

Provide information upfront: Neurodivergent people tend to get overwhelmed by not having enough information to be able to build a full picture. Make sure all information is accessible, rather than just drip-feeding information on a need-to-know basis.

Be precise: It’s important to make sure that the words that you’re using are representative of the actual importance or meaning behind what you want them to say—for example, not using the word “urgent” unless something really is.

What it means to “mask” being neurodivergent

Despite the increased support at work, members of the neurodivergent community say they know many organizations and managers still harbor bias against them. The process of hiding neurodivergent status is known as “masking.” Gloria Folaron, CEO of Leantime, a project-management tool that recently launched an AI-powered platform keeping the neurodivergent in mind, explains: “Masking is the exhausting process of making sure you aren’t seen because it isn’t safe to be—because someone will tell you, ‘If you just planned a little better,’ ‘Why can’t you just leave the house on time?’ ‘Just buy a planner already.’”

For many neurodivergent workers, employee resource groups emerge as not only safe places but effective recruitment tactics; these groups are signals that they are welcome and they will be accommodated.

Indeed, research shows that employee resource groups are on the rise—and a distinguishing perk for talent. More than half of full- and part-time workers surveyed say having ERGs at their companies and more than half also believe they benefit the business. “Open communication with your ERGs can build trust and create stronger relationships between leadership and employees,” Brooks notes. That trust can be especially critical for fostering greater understanding among the managers of neurodivergent workers, who may misread some features of neurodivergence as issues with tone or performance.

Key is to practice what is preached on a regular basis. Of the folks I interviewed above, many set their emails to default to a larger font, to prioritize access for those who need higher legibility—a telling detail that spoke volumes about the need to weave inclusion into everyday practices.

https://time.com/charter/6309300/what-workplaces-misunderstand-about-neurodiversity/

A Current Roadmap for Complying with Mental Health Parity Laws

Most employers know that if a group health plan provides mental health or substance use disorder (MH/SUD) benefits in any of six specified classifications, the plan must provide MH/SUD benefits in all specified classifications in which the plan provides medical or surgical benefits.

Additionally, the 2008 Mental Health Parity and Addition Equity Act (MHPAEA) requires plans to ensure that the financial requirements and treatment limitations imposed on MH/SUD benefits are no more restrictive than those imposed on medical or surgical benefits. While the U.S. Department of Labor's Employee Benefits Security Administration (EBSA), which enforces employer-sponsored plans' compliance with the MHPAEA, has issued multiple compliance navigation guides, the truth is that the guidance issued to date has lacked sufficient detail and failed to account for the actual circumstances necessary to be helpful to employers. Meanwhile, EBSA is investigating employer plans for compliance, publicly naming those that it deems fall short, and encouraging plan participants to demand written disclosures of details that are largely unavailable.

EBSA has issued multiple requests for comments and guidance over the past couple of decades in connection with the MHPAEA. EBSA's guidance includes 2013 final regulations, a self-compliance tool, 2019 FAQs (in which it listed examples of nonquantitative treatment limitations), and 2021 FAQs (in which it announced that it would begin investigating plans for compliance with the comparative analysis documentation requirements that became effective that year for nonquantitative treatment limitations).

One thing all of the prior guidance has in common is a failure to acknowledge that the employer has virtually no way to assess whether its group health plan complies with the mental health parity requirements. Except in rare circumstances, employers don't select network providers, don't negotiate reimbursement rates, don't determine what preauthorization requirements will apply for what covered services, don't know what's medically necessary, and don't know what claims have been approved or denied or why. For employers, the road to compliance is like driving through a construction zone without navigation and with multiple speed traps and caution signs posted in a foreign language. Employers need a roadmap and a way to navigate the many obstacles and construction zones on the route to compliance.

The recently issued proposed regulations are somewhat helpful because they provide more specific information about what data plans must collect and consider in order to design and apply nonquantitative treatment limitations. This includes evaluating historical data, comparing in- and out-of-network utilization rates and provider reimbursement rates – information the employer has to extract from the plan's third-party administrator.

While EBSA acknowledged the challenges employers face in collecting and evaluating the data needed to determine compliance, it still expects plans to show the analysis undertaken and the steps taken to mitigate differences in access to MH/SUD benefits compared to medical and surgical benefits.

EBSA's annual reports to Congress, which describe the agencies' findings in enforcement investigations and highlight the agencies' primary concerns regarding mental health parity, are potentially helpful. For example, chief among the concerns highlighted is network adequacy. The agency cites what's been reported as a growing disparity in in-network reimbursement rates between MH/SUD providers and medical and surgical providers, which drives down MH/SUD providers' network participation and therefore increases the cost of MH/SUD services for patients.

How Employers Can Navigate

It's obvious that federal agencies are still gathering the information they think is relevant and necessary to provide meaningful guidance and enforcement. For now, employers should develop and document a compliance program, using what is available to show a good-faith effort to comply with the MHPAEA, including the nonquantitative treatment limitation comparative analysis requirement.

Any such compliance program should include these steps:

Determine which vendors to contact to gather the necessary documentation and information. In addition to the insurer or third-party administrator (TPA) for the group health plan, this may include a behavioral health administrator and/or pharmacy benefit manager.

Develop a list of specific questions for the insurer/TPA and other vendors that will enable the employer to gather the information needed to determine whether the plan complies with the MHPAEA. It is helpful to reference the DOL's self-compliance tool to develop an effective list of questions and to use its framework to document the compliance review effort. One should incorporate the data elements in the recently issued proposed regulations. If the service provider has conducted and documented a compliance review itself, this will save the employer an enormous amount of time and other resources.

Document all communications with the insurer/TPA and other vendors, particularly those from whom one requests assistance gathering the data necessary to ensure MHPAEA compliance.

Analyze the data provided by the insurer/TPA and other vendors, both on a granular level and in the aggregate, using available EBSA guidance to help spot disparities. Develop follow-up questions to the insurer/TPA and other vendors regarding any coverage disparities between MH/SUD and medical and surgical benefits, the application of utilization review to MH/SUD benefits, and the reasoning behind MH/SUD claims denials.

Identify areas of concern and pursue corrective action. Retain all communications with the insurer/TPA or other vendor involved.

Update service agreements to ensure ongoing cooperation from TPAs and other service providers in evaluating compliance, correcting compliance issues, and making required disclosures.

Bear in mind that MHPAEA compliance is an ongoing trip and should be revisited annually and whenever EBSA issues meaningful additional guidance. Employers or employer groups interested in helping shape the final regulations have until Oct. 2 to submit written comments on the proposed regulations.

https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/mental-health-parity-compliance.aspx

Companies are now "quiet cutting" workers. Here's what that means.

Some companies are reassigning workers in a way that's sending them mixed messages. Emails informing employees that their current job role has been eliminated, but that they have not been fired, are leaving those staff members with feelings of confusion, fear and anger.

Dubbed "quiet cutting," this latest outgrowth of the "quiet quitting" movement effectively allows companies to cut jobs and trim costs without actually laying off workers.

The strategy is gaining traction as a restructuring move: Companies including Adidas, Adobe, IBM and Salesforce are among employers that have restructured its workforces in this way over the past year.

Financial research platform AlphaSense found that, over the last year, such reassignments have more than tripled.

Lower status, lower pay

"Quiet cutting" taps into workers' fears of layoffs at their company, amid a weakening job market. While reassigned workers remain employed, the reassignments often land them in roles with titles that are less prestigious, come with lower pay, and are more demanding.

"They recounted getting a phone call or an email from a manager basically telling them your job has been reassigned and you will be doing this from now on, and basically take it or leave," careers reporter with the Wall Street Journal, Ray Smith, who first reported on the trend, told CBS News.

According to Smith, some individuals initially felt relieved they weren't being axed.

"But on the other side, they were angry or confused, and they felt the new job they had was either lower status or lower pay or more responsibilities, or something that they didn't even have experience in," Smith said. "And so, they were really angry at the companies about this." Smith spoke to some workers who said the backhanded demotions took a toll on their mental health.

"Their identity is tied up with their titles and the work that they do — and if you're suddenly being told do something else, especially if it's a demotion ... it can send you spiraling and wondering, 'What is the message that the company is sending to me?'"

"Passive-aggressive" termination?
Quietly cut workers also feared their employers were trying to force them into roles in which they would be so miserable, they would eventually quit, according to Smith.

"It's sort of like pushing you into this corner and saying if you don't take it, you have to leave," Smith said, adding that "No company will say 'we're quietly cutting people.'"
"It is sort of a reduction in workforce, almost in a passive-aggressive way," he said.
"The bottom line is, if someone who refuses a reassignment or eventually leaves after not liking the reassignment — once they leave, the company doesn't have to pay thousands of dollars in severance costs. So, it actually saves them in costs," said Smith.

https://www.cbsnews.com/news/companies-are-now-quiet-cutting-employees/

Employers Face Questions On Diversity Programs

In the wake of the U.S. Supreme Court's June decision in Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, where the justices struck down the use of affirmative action as part of the admissions process at institutions of higher education, employers are facing concerns about workplace diversity policies in the form of dueling letters from state Attorneys General (AGs).

A group of 13 Republican AGs sent a letter to every company on the Fortune 100 list, arguing that race-based initiatives and quotas in recruiting, retention and advancement that attempt to achieve racial diversity may constitute unlawful discrimination.

The letter cautioned that companies that fail to stop using such race-based quotas will be "held accountable."

"Treating people differently because of the color of their skin, even for benign purposes, is unlawful and wrong," the AGs of Alabama, Arkansas, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, South Carolina, Tennessee and West Virginia wrote. "Companies that engage in racial discrimination should and will face serious legal consequences."

The Republican AGs highlighted some of the programs they characterized as discriminatory, including "racial preferences and quotas in selecting suppliers, providing overt preferential treatment to customers on the basis of race and pressuring contractors to adopt the company's racially discriminatory quotas and preferences."

"Well-intentioned racial discrimination is just as illegal as invidious discrimination," the letter noted. "[T]he Supreme Court's recent decision should place every employer and contractor on notice of the illegality of racial quotas and race-based preferences in employment and contracting practices. As Attorneys General, it is incumbent upon us to remind all entities operating within our respective jurisdictions of the binding nature of American anti-discrimination laws. If your company previously resorted to racial preferences or naked quotas to offset its bigotry, that discriminatory path is now definitively closed."

In response, a coalition of 21 Democratic AGs authored their own letter to the same employers, applauding the companies for their efforts to combat historic racism and contending that it was misleading of the Republican letter to suggest that the Supreme Court's decision imposed new prohibitions on the diversity-related initiatives of private employers.

"We condemn the letter's tone of intimidation, which purposefully seeks to undermine efforts to reduce racial inequities in corporate America," according to the AGs of Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington and Washington, D.C. "As the chief legal officers of our states, we recognize the many benefits of a diverse population, business community and workforce, and share a commitment to expanding opportunity for all."

The Democratic AGs attempted to reassure employers that corporate efforts to recruit diverse workforces and create inclusive work environments are legal and actually reduce corporate risk for claims of discrimination, encouraging businesses to double down on diversity-focused programs "because there is still much more work to be done."

Properly read, the Supreme Court's decision "provides no basis to conclude that a company's efforts to reach and recruit from a broad and diverse applicant pool is now prohibited," according to the letter. "Leading companies have long set diversity-related goals and operated successful and lawful diversity, equity and inclusion programs under the guidance of Title VII. Properly formulated and administered programs are not unconstitutional."

Aspirational diversity goals and concerted recruitment efforts to increase the diversity of a company's workforce are not hiring quotas, the AGs added.

"Rest assured that we are committed to fighting against discrimination and to expanding opportunities for all," the Democratic AGs wrote. "We will vigorously oppose any attempts to intimidate or harass businesses who engage in vital efforts to advance diversity and expand opportunities for the nation's workforce."

Why it matters

The letters illustrate the challenge faced by employers in the wake of the U.S. Supreme Court's decision, with Republican AGs urging companies to end the use of race-based initiatives and quotas, while the Democratic AGs are countering that diversity goals and recruitment efforts are not discriminatory.

https://www.jdsupra.com/legalnews/employers-face-questions-on-diversity-3407008/

From Bezos and Zuckerberg getting buff to the celebrity Ozempic craze, 'fatphobia' in the workplace is more rampant than ever

Wait, Mark Zuckerberg is ripped? Isn't he the scrawny CEO who famously invented Facebook from the Harvard dorm room that he seemingly never left?

Not anymore. The obsession with being fit and thin in the workplace is on the rise, with tech moguls like Zuckerberg and Jeff Bezos showing off their washboard abs, and the use of drugs like Ozempic for weight loss becoming increasingly common dinner conversation. At the same time, a range of studies and statistics show that discrimination against individuals on account of their weight prevails.

The dichotomy of obsessive fitness behaviors and weight discrimination illuminates how "fatphobia"—the aversion, hostility, or disdain for people who are overweight—persists, resulting in unequal opportunities for success in the workplace.

Roughly 42% of people in the U.S. are obese, according to the Centers for Disease Control and Prevention, and a new paper published in the American Journal of Public Health compares the prevalence of weight discrimination in the U.S. to that of racial discrimination.

Weight discrimination affects women the most in the workplace: 11% of human resource executives said applicants' weight had been a factor in their decision to hire them, the Wall Street Journal reported in July on a spring survey. Women considered obese earn $5.25 less per hour than women considered a normal weight, according to a 2014 Vanderbilt University study. The weight-wage penalty is less consistent among men, but across the board, employees who are overweight or obese are paid less and more often overlooked for promotions.

State and city governments are taking action to reduce its effects in the workplace.

The stigma around weight

Obesity is a medical condition, considered a disease by many organizations, involving having too much body fat. Obesity increases the risk for other diseases and health problems like heart disease, diabetes, and certain types of cancer, according to Mayo Clinic.

There are many reasons a person may have trouble losing weight. Some are genetically predisposed to obesity, while others have underlying health conditions that cause them to gain weight.

Still, fatphobia runs rampant. People with obesity are often blamed for their weight and are stigmatized as lazy or lacking in willpower. And the common perception persists that body shaming can be justified if it motivates people to adopt healthier behaviors.

New York City passed a bill in May, banning weight and height discrimination in employment opportunities, housing opportunities, and access to public accommodations, alongside race, gender, age, religion, and sexual orientation. The new law will go into effect in November 2023. "It shouldn't matter how tall you are or how much you weigh when you're looking for a job, are out on the town, or trying to rent an apartment," New York City Mayor Eric Adams said at a bill-signing ceremony. "This law will help level the playing field for all New Yorkers, create more inclusive workplaces and living environments, and protect against discrimination."

Similar bills are being considered in New Jersey and Massachusetts. Michigan, Washington State, and some cities like Washington, D.C., already prohibit it.

Buff CEOs and Ozempic

Meanwhile, over-the-hill leaders in the corporate sector are setting a standard of physical fitness difficult to achieve without major resources.

“I think the pandemic and work from home really created the opportunity for C-suite executives to focus on their fitness,” Mark Cuban, a businessman and owner of the Dallas Mavericks, told the Wall Street Journal.

Other tech and finance elites and Hollywood celebrities are using certain drugs to promote weight loss.

The most popular of these is Ozempic, a drug used to help lower blood sugar in people with Type 2 diabetes. Ozempic contains an ingredient called semaglutide, which stimulates insulin production and reduces appetite. It is most often prescribed for people who are obese or overweight.

“This is a Hollywood drug,” Patti Stanger, star and producer of reality show The Millionaire Matchmaker, told the Wall Street Journal. “Everybody I know is on it,” she added.

The FDA has not approved Ozempic for weight loss, but people are getting their hands on it nonetheless. Without insurance, the drug costs about $900 a month. Its sister drug, Wegovy, has been approved for weight loss and without insurance costs over $1,300 for a 28-day supply. Elon Musk tweeted in October that he was taking Wegovy and fasting in order to lose weight. A few months earlier, he had experienced an onslaught of fat shaming after a picture of him surfaced, standing shirtless on his yacht next to muscular celebrity talent agent Ari Emanuel.

https://fortune.com/well/2023/08/01/fatphobia-obesity-weight-loss-discrimination-workplace-ozempic-zuckerberg-bezos-musk/

United States: Service Animals And Emotional Support Animals In The Workplace

What should an employer do when an employee asks to bring an animal to work in connection with a health issue? The answer depends in part on whether the animal is a service animal or an emotional support animal (sometimes called a "comfort animal" or "companion animal").

According to the Americans with Disabilities Act (ADA), a service animal is an animal that has been trained to perform a specific task to assist a person with a disability. Typically, service animals are dogs. Under some circumstances, however, a service animal can be a mini-horse.

No other species may serve as service animals. The ADA, and many state laws, require employers to consider allowing a service animal in the workplace as an accommodation for a disability. Under Colorado law, employers must allow service animals in the workplace unless the employer can show an undue burden. See C.R.S. § 24-34-803(3).

There is no definition in the ADA for emotional support animal. The term, however, is commonly understood to mean an animal which provides comfort to someone with an emotional disability. Any domesticated animal may qualify as an emotional support animal. The ADA does not specifically require employers to allow emotional support animals in the workplace.

The ADA, and many state laws, require employers to make reasonable accommodations to allow employees with disabilities to do their jobs. The ADA requires the employee and employer to engage in an interactive process, basically a good faith discussion, regarding accommodations. The employer needs not make an accommodation which is unreasonable or that causes an undue hardship on the business. The employer needs not eliminate an essential function of the job and needs not agree to the accommodation the employee requests if there is another equally viable accommodation.

With this in mind, how should an employer handle a request by an employee to bring an emotional support animal to work? Our recommendation is to treat it as a request for an accommodation, beginning with the interactive process. In some situations, having an animal in the workplace could be an undue hardship, such as where health regulations prohibit animals.

Obviously, a dangerous animal could impose an undue hardship. Employers are well within their rights to inquire about whether the animal is dangerous or otherwise likely to cause problems in the workplace. However, outright rejection of a request for an emotional support animal is usually not the best approach and could result in liability for failing to accommodate a disability.

https://www.mondaq.com/unitedstates/discrimination-disability--sexual-harassment/1354448/service-animals-and-emotional-support-animals-in-the-workplace-

Companies Should Nail Down Precise Business Reasons for Workplace Policies

Employers will need to think carefully about how to defend some of their corporate policies, such as ones about cameras at a worksite, social media use and appropriate workplace conduct, in light of a recent decision by the National Labor Relations Board (NLRB).

Legitimate business interests will need to justify any such policies under the new standard outlined in the NLRB's Stericycle decision, Cary Reid Burke, an attorney with Seyfarth in Atlanta, said during a SHRM Government Affairs webcast on Aug. 10.

It will depend on the type of worksite, but "just saying '[the rule is needed for] safety' on its own is not going to be a panacea. There's going to have to be more specificity undergirding that," Burke said.

Background
With the Stericycle decision, the NLRB overturned the standard it established more than five years ago in Boeing. The new standard holds that if an employee could reasonably interpret a workplace rule to restrict or prohibit their Section 7 rights under the National Labor Relations Act (NLRA), that rule will be presumed unlawful, and the employer will have a higher burden to rebut that presumption.

Section 7 gives workers the right to form, join or assist labor unions, to bargain collectively, to discuss their pay and benefits, and to engage in other concerted activities for mutual aid or protection—or to refrain from those activities.

In this case, Stericycle, a waste management service in Baltimore, had implemented several new employee policies, including:

Limiting the use of personal electronic devices to break times only.

Requiring personal phone and email usage to be infrequent, brief and limited to urgent communication with family members.

Banning employees from taking pictures, video or audio recordings at the worksite without a supervisor's permission.

Prohibiting employee conduct that maliciously harms or intends to harm the business reputation of the company.

Prohibiting activity that constitutes a conflict of interest or adversely reflects upon the integrity of the company or its management.

Prohibiting employees from disclosing retaliation complaints and the terms of their resolution.
An employer can rebut an NLRB charge of unfair labor practice by showing a legitimate business interest in having the challenged policy, but now "it's a harder test to pass than the Boeing test," which allowed for a category of policies that were always presumed lawful, Burke said.

The employer's intent in maintaining a work rule is immaterial, the NLRB wrote. Instead, the board clarified it will interpret the employer's rule from the perspective of an employee who is subject to the policy, is economically dependent on the employer and is contemplating engaging in protected concerted activity.

"A code of conduct or a communication policy will certainly be impacted by this decision. Other impacted policies would be nondisclosure agreements, confidentiality agreements, any policies requiring respectful conduct or policies regulating social media use," John Kuenstler, an attorney with Barnes & Thornburg in Los Angeles, said in an email. "Depending on how they are written, drug and alcohol, anti-harassment, anti-discrimination, and leave of absence policies should not be impacted by the ruling."

Also, while rules for nonmanagerial workers are covered under the Stericycle decision, "rules covering managers/supervisors, agricultural, domestic workers or independent contractors fall outside the reach of the NLRA and this ruling," Pamela Krivda, an attorney with Taft Law in Columbus, Ohio, said in an email.

Many employers are surprised to find the NLRA applies to both nonunionized and unionized worksites, Burke said. The NLRA does not apply to federal or state governmental units, railroads, or airlines.

Give Examples and Disclaimers
Employers should take a hard look at their policies and consider what they are trying to protect and what the goal of a rule is, Burke said. "Really ask yourself, 'Is a rule necessary, and is it appropriate? Can it be drafted more narrowly?' " he said.

Employers should also "immediately review their policies and handbooks to determine if any of their existing policies could reasonably be interpreted by employees as chilling their right to engage in concerted activities, and consider adding disclaimers that the policies are not intended to restrict employees' rights under the NLRA," Kuenstler said in an email.

It may be helpful to provide illustrative examples of what conduct is acceptable and what conduct violates the employer's policy, Burke said. He added that managers should involve HR and inside legal counsel, if possible, before firing someone or taking disciplinary action based on a corporate policy.

In addition, employers need to understand that "the NLRB can challenge a rule even if the rule has not been applied to anyone. Merely maintaining the rule, applicable to employees, is enough for the board to take legal action if an employee files an unfair labor practice charge about it," Krivda said in an email.

However, the statute of limitations holds that employees must bring a charge under the NLRA within six months after their last adverse action, Burke said.

https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/nlrb-corporate-policies.aspx

PSYCHEDELIC THERAPY AS EMPLOYEE HEALTH BENEFIT IS BECOMING POSSIBLE AND THE FIRST RESULTS ARE IN

No fewer than 50 companies have shown interest in offering psychedelic therapy to their employees through healthcare plan startup Enthea.

The North American lifestyle is not for everyone. Working extensively long hours in order to climb up the corporate ladder while struggling to stay awake during incredibly long commute times and praying not to lose your nerve during rush hour can be life-draining as it is. For those wrestling with mental health disorders, this constant routine can only make things worse and have a detrimental impact on work-life balance, job performance and productivity, communication with coworkers and daily functioning.

Approximately, 19% of U.S. workers rate their mental health as fair or poor, and this segment reports about four times more unplanned absences caused by poor mental health conditions compared to workers reporting good, very good or excellent mental health.

Some employers offer the traditional healthcare benefits covering psychiatric and counseling services, telehealth, wellness programs and therapeutic interventions. However, these options prove to be ineffective for those struggling with severe affective disorders such as treatment-resistant depression, PTSD, and major depressive disorder to name a few, and according to a study published by NIH, “evidence that antidepressants are more effective in more severe conditions is not strong, and data on long term outcome of depression and suicide do not provide convincing evidence of benefit.”

On the other hand, some non-traditional treatments such as psychedelic-assisted therapy are not covered by employers even though studies have consistently been providing evidence that psychedelics are promising treatments for multiple severe mental health conditions including anxiety, treatment-resistant depression, addiction and post-traumatic stress disorder, without the adverse reactions that conventional medications can cause.

A Some studies have found that a single 25mg dose of psilocybin, paired with psychological support has led to a 57% sustained remission of depression and a 64% robust clinical response. Additionally, psychedelics have the potential to foster neuroplasticity in the brain, facilitating enhanced connectivity among various brain regions. This, in turn, leads to a profound alteration in consciousness, perception, as well as introspection and personal insight.

Although the potential of psychedelic medicines to treat psychiatrics disorders is encouraging, traditional health insurance providers are unlikely to offer coverage for these treatments as part of employer-sponsored health care plans until they are approved by the FDA – in most cases. As a result, the costs to these types of treatments, even if some of them are becoming legal options in certain states such as Oregon, are presenting barriers to access for most people.

But it isn't all doom and gloom. Some employers are beginning to change their perspectives towards psychedelic-assisted therapy and are finding ways to include legal options in their healthcare plans. Enthea, a startup third-party administrator of health insurance plans offering psychedelic healthcare as a workplace benefit, told Fast Company that about 50 firms have shown interest in adding this option to their employees' health plans.

Such is the case of Dr. Bronner's. In 2022, Enthea partnered with natural soap brand, making the company the first employer to add ketamine-assisted psychotherapy (KAT) to its existing health insurance plans. The health benefits included ketamine sessions and counseling services focused on treating mental health conditions.

Enthea also plans on adding MDMA-assisted therapy and psilocybin-assisted therapy once they become approved by the FDA. MDMA for the treatment of PTSD may be approved by the end of this year while psilocybin-assisted therapy still needs the completion of it's largest Phase 3 clinical trial for treatment-resistant depression, expected to be completed by 2025.

Last week, Enthea released their one-year results from their psychedelic-assisted therapy benefit program administered for Dr. Bronner's and the results look very promising.

According to the company, 7% of Dr. Bronner's overall health plan members underwent a KAT treatment regimen only offered by FLOW Integrative, a ketamine clinic based in San Diego. The treatment includes medical and psychiatric evaluation, preparatory sessions, ketamine IV infusions, and integration therapy sessions aiming to help patients to integrate their experiences and incorporate the desired changes into their lives. What was the end result post-treatment?

Well, patients diagnosed with various mental health conditions reported significant symptom reductions which would typically prevent employees from performing at their fullest capacity. Astonishingly, patients diagnosed with PTSD, major depressive disorder, and generalized anxiety disorder reported that their symptoms have improved by 86%, 67%, and 65% respectively.

“Many members of the All-One family at Dr. Bronner’s who have been struggling with mental health challenges have availed themselves of ketamine-assisted therapy, and have relayed their deep heartfelt thanks for the incredible healing impact it has made,” said David Bronner, CEO of Dr. Bronner’s. “Enthea makes the experience seamless for our staff as well as on our side, and I can’t recommend them highly enough. May all who are in need benefit from this healing medicine and therapy!”

Enthea reports that employers who offer psychedelic-assisted therapy as part of health coverage can expect a positive impact on productivity from employees, a reduction in medical expenses, increased employee retention and reduced turnover. Additionally, companies may benefit by becoming a more attractive workplace for younger workers, who often seek employers with more generous and innovative benefit offerings.

“Key to Enthea’s mission is to make psychedelic-assisted therapies affordable, accessible, and equitable for as many as possible through its Provider Network – so that it’s not only available to the affluent but to all who would benefit,” the company wrote. “Enthea provides a turn-key operation that makes it easy for employers to include these treatments as part of their health care coverage to employees and their families.”

Psilocybin became legalized in Oregon on November 3, 2020, when Measure 109 passed with 56% of the vote. This made Oregon the first state in the U.S. to legalize the adult use of psilocybin mushrooms, allowing it to create a psilocybin services program that permits adults 21 and older to get access to psilocybin-assisted therapy for the treatment of mental health conditions such as depression, anxiety, and PTSD.

The program made the drug legal January 1st, 2023, and legal psilocybin-assisted therapy centers have already started opening their doors. In 2022, Colorado decriminalized psilocybin mushrooms through Proposition 122, allowing adults 21 and older to possess and use magic mushrooms for personal use. Although Measure 122 passed in 2022, the initiative will take full effect in 2024 and licensed facilities will be allowed to administer psilocybin to those in need. According to a poll created by University of Berkeley 61% of Americans support legalization of psychedelics and about a dozen states in the US have put forward legislation that would see multiple psychedelic substances receive downgraded criminalization designations.

“It’s starting to become far more mainstream,” says Enthea’s cofounder and CEO, Sherry Rais. Ketamine therapy is a popular off-label treatment that has shown efficacy in treating a range of mental health conditions like depression, anxiety, and PTSD by stimulating synaptic growth and “re-wiring” the brain. Esketamine, also known as Spravato, which is an intranasal ketamine-derivative spray, was granted FDA approval in 2019 to treat patients with treatment-resistant depression.

Encouraged by the Dr. Bronner's health program results, Enthea is now planning to add telemedicine/at-home treatment model for ketamine assisted-therapy by partnering with leading mental wellness provider, Nue Life. This partnership will enable patients to reduce travel expenses and wait times while allowing them to get safe and convenient ketamine treatment and integration therapy in the comfort of their own homes.

“Enthea and Nue Life are working in tandem to provide cutting-edge mental health solutions, no matter the environment,” said Juan Pablo Cappello, CEO & Co-Founder of Nue Life Health. “We are excited to be Enthea's first partner for at-home treatment and to be providing cutting-edge ways to capture patient data so Enthea can achieve its mission of equity and access while being able to demonstrate outcomes.”

https://psychedelicspotlight.com/psychedelic-therapy-as-employee-health-benefit-is-becoming-possible-and-the-first-results-are-in/

EEOC Settles First-Ever AI Discrimination Lawsuit

We've reached another milestone in the artificial intelligence revolution: The federal agency charged with enforcing anti-bias laws just recorded its first-ever settlement in a case involving AI discrimination in the workplace.

The Equal Employment Opportunity Commission's (EEOC) Aug. 9 legal filing in a New York federal court revealed that a tutoring company agreed to pay $365,000 to resolve charges that its AI-powered hiring selection tool automatically rejected women applicants over 55 and men over 60.

An applicant who was rejected from a position at iTutorGroup thought something was fishy when they allegedly submitted their same resume again, but this time included a younger birthdate and secured an interview. They took their complaint to the EEOC, which filed a lawsuit against the employer on behalf of more than 200 applicants, alleging age and gender discrimination. The lawsuit claimed the company illegally screened out women applicants over 55 and men over 60.

iTutor denied the allegations and continues to deny any wrongdoing, despite entering into a voluntary settlement with the EEOC last week. Besides paying $365,000 to a group of more than 200 rejected applicants, iTutor agreed to adopt antidiscrimination policies and conduct employee trainings to ensure compliance with equal employment opportunity laws. The company also must consider anew all the applicants who were purportedly rejected because of their age.

There are two reasons why this settlement is significant in nature. This is a first-of-its-kind settlement. The EEOC has launched a broader initiative to ensure AI workplace tools comply with antidiscrimination laws, and this settlement is a groundbreaking achievement for the agency as it begins this new push. It is certainly not the last one we'll see over the coming months and years.

We expect to see more legal actions and more settlements because the use of AI in employment settings is exploding. Approximately 79 percent to 85 percent of employers now use some form of AI in recruiting and hiring, and that number will surely increase. Given this exponential rise, employers are bound to have questions about compliance best practices.

10 Pointers to Ensure Compliance

In order to ensure you don't go down the same path as the company that recently settled its EEOC discrimination claim, here are 10 points you should consider adopting.

Conduct Diverse Testing: Before fully implementing any AI tools in the HR arena, you should rigorously test them, using diverse data sets. Such a practice ensures that the software won't inadvertently discriminate against certain demographic groups.

Regularly Review Your AI-Powered HR Tools: You should continue to periodically review AI tools to make sure things stay compliant. Ensuring that no inherent biases exist in the software is a crucial step in upholding your company's commitment to diversity. As the EEOC has clearly stated, you can't pass the buck and blame your software vendor if their AI product ends up committing discriminatory or biased acts with your applicants or employees.

Conduct Bias Audits: New York City recently became the first jurisdiction to require employers using AI in the employment context to conduct AI bias audits, and it won't be the last. Even if your organization isn't subject to the NYC law (or any of the soon-to-be-adopted laws to follow), conducting an AI bias audit (with the help of your legal counsel) could be an invaluable tool in rooting out unintentional discrimination at your workplace.

Train Your HR Teams: Your HR department should get a crash course on the use of AI in human capital management so they can be your front line when it comes to ensuring fairness. Make sure they have the knowledge and skills to utilize whatever AI tools you adopt without inadvertently perpetuating biases. Besides your regular antidiscrimination training, you should ensure they receive support related to the application and interpretation of AI in all HR functions.

Establish Clear Workplace Policies: A critical step is developing a thorough workplace AI policy. An explicit and well-communicated policy can act as a foundation for fair HR practices.

Keep Open Communication: You should foster an environment where applicants and employees are aware of the use of AI in the HR environment, and they feel comfortable voicing concerns about perceived biases. A guidance document issued by the EEOC highlights how an applicant's or employee's knowledge of the use of AI in the disability law context could create a pathway to ensure that you provide necessary, reasonable accommodations.

Don't Eliminate All the Humans: Your HR professionals should play a vital role in workplace decision-making. We're being somewhat facetious by even suggesting you can remove all human interaction and replace them with robots. But to the extent that you are incorporating AI technology to supplement and support your HR efforts, you need to make sure you retain a healthy dose of human judgment in your workplace decision-making.

Incorporate Feedback Loops: No matter how advanced your predictive analytics, it's hard to predict the real-world dynamics that can arise once you deploy your AI systems. Try to encourage feedback from internal stakeholders – and external candidates and other third parties – regarding their experiences with your AI-driven processes. This will allow you to identify and rectify potential biases or other issues that might arise.

Seek Out Expertise: Given the complexities of AI and its intersection with workplace law, you should partner with legal counsel who understands the many issues that need to be considered – data privacy, confidentiality, trade secrets, bias audits, copyright law, labor law, and overall best practices, just to name a few.

Stay Up to Speed: The world is changing at a frenetic pace, especially when it comes to the intersection of AI and human capital management.

https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/eeoc-settles-ai-discrimination-lawsuit.aspx

EEOC Reminds Employers of Limits on Workplace Proselytizing

The U.S. Supreme Court recently held that the First Amendment's guarantee of free speech protects a business from antidiscrimination laws when that company acts in accordance with its owner's professed beliefs. The 303 Creative LLC case is the latest in a series of recent court decisions that move the pendulum away from the ability of governments to take action against people and companies that assert free speech rights regarding their religious practices as the basis for their conduct.

A recent settlement in a case filed by the Equal Employment Opportunity Commission demonstrates the limits of protections of religion when those protections result in alleged discrimination against employees with different beliefs. The lawsuit involved a North Carolina home service and repair company. The EEOC alleged that the company owner required employees to attend daily Christian prayer meetings. When several employees objected or refused to attend, the lawsuit claimed that they were reprimanded and eventually fired. The EEOC sued the employer, alleging violation of Title VII's prohibition against religious discrimination.

Earlier this month, the EEOC announced that the lawsuit had been settled. The defendant agreed to pay $50,000 and to enter into a three-year consent agreement with the EEOC that includes training, new policies, and monitoring of its employment practices. The settlement serves as an example to employers that the Supreme Court's tilt toward protection of religious speech, beliefs and practices, does not always extend to a business owner's right to coerce employees to participate in the owner's religion.

https://www.jdsupra.com/legalnews/eeoc-reminds-employers-of-limits-on-5239753/

Corporate Diversity Complaints Place EEOC in Thorny Spot

America First Legal letters request EEOC action

Commissioners have option to file individual charges

A US civil rights agency finds itself in a difficult position after getting hit by requests from ex-Trump administration officials to investigate Activision Blizzard Inc., Kellogg Co., and other major corporations because their diversity policies allegedly violate federal anti-discrimination law.

The America First Legal Foundation, led by former senior Trump adviser Stephen Miller, recently sent letters to the US Equal Employment Opportunity Commission about what it called "unlawful employment practices" that include diversity, equity, and inclusion policies.

The group over the past year has accused more than a dozen companies—including Morgan Stanley, PricewaterhouseCoopers, McDonald's, and Starbucks—of having discriminatory DEI programs that aim to increase workplace representation of women and minorities at the expense of white, heterosexual men.

If EEOC steps into the fray, attorneys say the commission would traverse a complex path in investigating corporate policies aimed at avoiding the type of workplace discrimination the agency was created to combat.

"I do think there's some internal conflict within the EEOC," said Michael Elkins, an employment attorney and founder of MLE Law. "Certainly, the EEOC has promoted diversity and inclusion programs. And now, they are being asked to scrutinize these programs to see if they violate the terms of Title VII."

AFL's latest volley comes in the wake of a split US Supreme Court decision that affirmative action policies at Harvard University and the University of North Carolina were discriminatory against White and Asian applicants. But the justices didn't weigh-in on employer policies designed to improve workforce diversity. The organization has also actively targeted companies' environmental, social, and governance initiatives in federal court.

"What is clearly the goal with these efforts is to create a chilling effect on what employers do, including for perfectly legal actions," former EEOC Commissioner Chai Feldblum said of AFL's letters.

'Patently Illegal'

In its plea to the EEOC about Activision, AFL alleged the video game maker's "hiring, training, and promotion" policies are "patently illegal" because they violate Title VII of the 1964 Civil Rights Act's prohibition against race, sex, religion, and color discrimination.

“Activision has mandated that internal and external talent recruitment teams create ‘diverse slates’ of job candidates, thereby limiting, segregating, or classifying applicants for employment in a way that deprives or tends to deprive or limit the employment opportunities of white, Asian, and Jewish males with the company,” the group wrote.

It also targets the company’s “employee network groups” for women, racial and ethnic minorities, LGBTQ+ workers, and others, saying they are also discriminatory.
“These groups are used for job training and other similar purposes,” the letter said. “No such group exists for heterosexual white males.”

Activision in recent years has been the target of enforcement action from the EEOC and California regulators, which alleged it cultivates a “frat boy culture” of harassment and discrimination against women. The company earlier this year touted its progress in hiring more female employees.

Activision declined to comment on AFL’s letter Friday.

AFL’s request regarding Kellogg makes similar accusations, saying its “employment practices are unlawfully based on ‘equity,’ which is a euphemism for illegal discrimination.” Those practices, it said, include pledges to employ “25% under represented talent” and attain a 50/50 “gender parity goal” for managers by 2025.

“We are committed to compliance with all applicable employment laws, and we have policies in place that prohibit workplace discrimination,” said Kellogg company spokesperson Kris Bahner. Kellogg has faced roughly a dozen employment discrimination lawsuits in federal courts over the past five years, according to Bloomberg Law’s Litigation Analytics.

What EEOC Can Do

The EEOC launches the vast majority of its investigations based on discrimination complaints, known as charges, submitted by employees. This administrative process must be completed before a federal lawsuit can be filed in court.

But each of the five commissioners on the agency’s leadership panel can also initiate “commissioner charges” to begin a probe. That option has rarely been exercised in the past, but was used by commissioners 29 times in fiscal year 2022, a jump from only three times in 2021. In 2022, Republican Andrea Lucas filed 12 charges, the most of any commission member. The specifics of the charges are not disclosed by the EEOC.

“A commissioner could decide that there is reasonable basis to believe that discrimination is occurring, and based on that can file a charge and send it to an EEOC district office to begin an investigation,” said Feldblum, a Democratic appointee who served on the agency during the Obama administration.

“I would be surprised if the EEOC thought to investigate a very general charge that any DEI program is problematic,” she added.

Current commissioners have publicly expressed differing views about the future of corporate diversity initiatives following the Supreme Court’s affirmative action decision.

“While mourning the very real losses to the education of our nation’s youth, it’s important to recognize that workplace DEIA initiatives will survive,” Democratic EEOC Commissioner Jocelyn Samuels wrote in an op-ed for Bloomberg Law.

In her own op-ed, Lucas said employers with DEI programs face risks in light of the Supreme Court re-emphasizing its “rejection of diversity, nebulous ‘equity’ interests, or societal discrimination as justifying actions motivated — even in part — by race, sex, or other protected characteristics.”

“Companies continuing down this path after today may violate federal antidiscrimination laws,” she wrote.

The commission has received notice from AFL but cannot comment further due to confidentiality rules, said EEOC spokesperson Victor Chen. He pointed to a statement from Chair Charlotte Burrows, a Democrat, who said the Supreme Court’s decision does not address employer diversity efforts.

Publicity Play
AFL has also attempted to target companies through the EEOC’s commissioner charge process on the issue of abortion.

In the summer of 2022, AFL sent letters to the commission asking it to probe policies set by Lyft Inc. and Dick’s Sporting Goods Inc. to fund travel benefits for employees who were unable to obtain abortions in the states where they lived following the Supreme Court’s Dobbs v. Jackson Women’s Health Organization decision. AFL wrote that the policies violated Title VII by failing to provide equivalent benefits to pregnant workers who chose not to have abortions.

Bloomberg Law reported in November that Lucas had filed commissioner charges against at least three companies that provided their employees with abortion travel benefits. The companies were not identified and the outcome of Lucas’s charges remains unknown.

Even if no commissioner charges emerge from the new round of AFL letters criticizing corporate DEI programs, they could still draw public attention that might help the group achieve its aims. Elkins said the publicity could put the organization’s concerns on the radar of employees who could actually approach the EEOC themselves, avoiding the need for commissioner charges altogether.

“It’s entirely possible that what this letter might do in the publicity attended to it is support a situation where an employee or group of employees actually file charges,” he said.

https://news.bloomberglaw.com/daily-labor-report/corporate-diversity-complaints-put-eeoc-in-thorny-spot-over-bias

United States: EEOC Issues Updated Guidance In Visual Disabilities In The Workplace And The ADA

The EEOC recently issued an updated version of its Visual Disabilities in the Workplace and Americans with Disabilities Act technical assistance document. The document addresses when employers may ask employees questions about a visual impairment, possible reasonable accommodations for applicants or employees with visual disabilities, how to handle safety concerns, and harassment prevention. The term "visual disabilities" refers to any disabilities related to an individual's vision. The phrase "vision impairments" refers to various vision-related conditions, including blindness, low vision, limited visual fields, photosensitivity, color vision deficiencies, or night blindness.

The document explains that many individuals with vision impairments can successfully and safely perform their jobs, with or without reasonable accommodation, and that these individuals should not be denied employment opportunities for which they are qualified based on stereotypes or incorrect assumptions that they may cause safety hazards, may increase employment costs, or may have difficulty performing certain job duties. Individuals who wear ordinary glasses or contact lenses are not considered disabled under the ADA. In addition, an employer cannot require an individual to take a vision test with uncorrected vision or meet a vision standard with uncorrected vision unless that test or standard is job-related and consistent with business necessity.

The document also discusses an employer's ability to ask questions related to visual disabilities.

Regarding job applicants:
Employers may not ask whether an applicant has or had a vision impairment or treatment related to any vision impairment before making a job offer. Employers can ask questions pertaining to the applicant's ability to perform job functions with or without reasonable accommodation. For example, an employer can ask whether the applicant can read labels on packages that need to be stocked.

Applicants are not required to disclose a current or past visual disability before accepting a job offer.

If an applicant has an obvious vision impairment or if an applicant voluntarily discloses a vision impairment, and the employer reasonably believes that the applicant will require an

accommodation to perform the job, the employer may ask the applicant whether one is required and what type.

After making a job offer, an employer may ask questions about the applicant's health, including visual disabilities, so long as the employer is asking the same questions to other individuals entering the same job.

As for employees:
An employer may ask an employee about a visual disability only when it has a reasonable belief that the employee's ability to perform the essential job functions is impaired or that the employee will pose a direct threat in the workplace.

An employer may ask an employee about a vision impairment to support the employee's request for a reasonable accommodation needed because of a vision impairment, to enable the employee to participate in a voluntary wellness program, to comply with federal safety statutes or regulations, or to verify the employee's use of sick leave related to a vision impairment if the employer requires all employees to provide such information (such as doctors' notes) to justify their use of sick leave.

The document also discusses some examples of reasonable accommodations, including:
Assistive or accessible technology or materials (such as text-to-speech software; optical character recognition; systems with audible, tactile, or vibrating feedback; website modifications for accessibility; written materials in more accessible or alternate formats; low vision optical devices; digital apps or recorders; smartphone or tablet apps with built-in accessibility features; an interactive, tactile, graphical display; a desktop, handheld, or wearable video magnifier, or a closed-circuit television system for reading printed materials; computer screen magnification tools; adjustable computer operating system settings; prescription versions of workplace equipment; wayfinding tools or tracking devices; anti-glare shields, light filters, or wearable absorptive filters; large print or high-contrast keyboards; talking products; color identification technology; accessible maps)

Modification of employer policies or procedures, testing, or training (such as workplace etiquette modifications, policy modifications to allow use of personal use items, dress code modifications, allowing the use of an assistance animal, modifying work schedules, making remote work available, time off, alteration of marginal job functions, reassignment to a vacant position)

Work area adjustments (such as a workspace with brighter or lower lights, audible or tactile signs and warning surfaces)

Sighted assistance or services (such as screen-sharing technology, qualified readers, sighted guides, noise-cancelling headphones, braille labeler)

Finally, employers should make clear that they will not tolerate harassment based on disability or any other protected basis. Employers can do this through a written policy, employee handbooks, staff meetings, and periodic training. Employers should immediately conduct a thorough investigation of any report of harassment and take swift and appropriate corrective action.

https://www.mondaq.com/unitedstates/health--safety/1356764/eeoc-issues-updated-guidance-in-visual-disabilities-in-the-workplace-and-the-ada

7 key accommodations disabled workers are due

Although there is increased awareness and effort by many employers to improve inclusivity in the workplace, it remains the case that many individuals with disabilities are forced to leave their jobs or are terminated because their employers are unwilling to address reasonable accommodation requests.

A reasonable accommodation is a modification or adjustment that enables employees with disabilities to perform their duties effectively, ensuring they have an equal opportunity to succeed in the workplace. By adopting reasonable accommodations, inclusive policies, and fostering a supportive work environment, businesses and organizations can harness the strengths of their diverse workforce and create a culture of acceptance and understanding.

Providing reasonable accommodations also ensures compliance with the laws protecting persons with disabilities, including the Americans with Disabilities Act and similar state statutes. Sadly, though, many employers fall short, and employees bear the brunt by simply asking for what's right.

If you are a person with a disability and think you've been wrongfully terminated due to your accommodation request, here are key reasonable accommodations your employer should have been willing to provide.

INTERACTIVE PROCESS
When an employee requests a reasonable accommodation, it is required that employers engage in an interactive process. This process involves a collaborative discussion between the employer and the employee with a disability to determine the most appropriate accommodation that meets the individual's needs while not causing undue hardship to the organization. This interactive dialogue ensures that both parties are on the same page and allows for a solution that works best for everyone involved.

FLEXIBLE WORK ARRANGEMENTS
Offering flexible work arrangements is an effective way to accommodate employees with disabilities. This could include adjusting work hours to accommodate medical appointments,

allowing telecommuting options, or providing a part-time schedule to help employees manage their health needs while still contributing effectively to the organization.

PHYSICAL ACCESSIBILITY
Creating a physically accessible workplace is required to ensure that employees with disabilities can move around comfortably. This might involve installing ramps, elevators, wider doorways, and accessible restroom facilities. Moreover, providing designated accessible parking spaces close to the workplace entrance is essential for employees with mobility challenges.

ASSISTIVE TECHNOLOGIES
Employers must consider providing assistive technologies to employees with disabilities to help them perform their job tasks efficiently. These technologies may include screen readers, voice recognition software, adaptive keyboards, and other specialized tools tailored to individual needs.

JOB RESTRUCTURING AND REDESIGN
In some cases, job tasks can be adjusted to suit the abilities of an employee with a disability. Employers must explore job restructuring or redesigning to ensure that essential functions are still performed while removing unnecessary barriers for an employee with a disability.

TEMPORARY ACCOMMODATIONS
When an employee has a temporary disability, employers must consider providing temporary accommodations to help them through their recovery process. This could include temporarily reassigning tasks or providing modified equipment during their healing period.

MENTAL HEALTH SUPPORT
Reasonable accommodations must also extend to employees with mental health conditions. Employers can support them through flexible work hours, providing a quiet workspace, or offering additional mental health resources like counseling services.

Note: The law does not attempt to identify all possible accommodations, but rather states the processes an employer must engage in to determine whether an accommodation is required. Employers have a legal and moral obligation to provide reasonable accommodations for employees with disabilities, ensuring that they can fully participate in the workforce and contribute their skills and talents. An employer must engage with the employee in an interactive process in an effort to find an accommodation that would allow the employee to continue their employment.

https://www.fastcompany.com/90933783/7-key-accommodations-disabled-workers-are-due

5 ways to help employees who are mental health caregivers

The mental health crisis, exacerbated by the COVID-19 pandemic, significantly affects the workplace, extending beyond individual struggles.

Many employees silently bear the dual role of working professional and mental health caregivers to loved ones facing challenges.

Recent research from New York Life's Group Benefit Solutions unveils this hidden challenge, indicating a staggering 48% of workers are navigating this dual role — a critical trend affecting our workforce.

In the face of these stark findings, it's essential for employers to not only recognize the mental health struggles their employees grapple with personally, but also the challenges they face as caregivers to loved ones.

Support mental health caregivers
Our research uncovered the layers of these individuals' struggles, illuminating the scale and complexity of their experiences.

Armed with this understanding, we've developed a set of strategic recommendations for employers and HR leaders, aiming to guide them toward creating a supportive, understanding and inclusive work environment for resilient employee caregivers.

1. Evaluate current available benefits
Since mental health challenges can be complex and deeply personal, employers might consider offering a range of mental health benefits and resources such as counseling sessions, support groups and assistance programs that help employees with their current challenges and also assist them with finding other specific services.

It's also important to acknowledge that dealing with finances can have a negative impact on mental well-being. In fact, our research found that 47% of spouses and partners cite the family economic situation as the leading cause of mental health challenges.

After taking inventory of all that is currently available, employers can assess the need and opportunity to add additional mental health and financial wellness resources for their employee population.

2. Work toward flexibility
Consider offering paid time off for caregiving needs, along with flexible work arrangements. We know that when employees feel compelled to show up for work while navigating personal challenges, they are not showing up as their best selves.

Our research underscores the profound impact of caregiving on mental well-being, with caregivers reporting significant workplace challenges. A substantial 48% felt distracted and 47% experienced overwhelming feelings, while a worrying 55% noted a lack of motivation and 53% reported cognitive difficulties, all resulting from their caregiving responsibilities towards loved ones' mental health.

By offering flexible work arrangements and paid time off specific to caregiving needs, employers can better enable employees to find a more effective work/life balance. This could help ensure that when employees are at work, they are focused and productive.

3. Improve awareness

Drive ongoing awareness of available mental health resources. Even if employers have robust mental health resources available, they are only effective if they are being used by the people that need them.

Our research found that only 54% of caregivers surveyed are familiar with the mental health resources offered by their employers.

To address these awareness gaps, employers should consider deploying communications and reminders throughout the year promoting these resources, rather than highlighting them only at benefits enrollment time. Additionally, employers can consider multiple ways to promote available support beyond the benefits intranet site, such as highlighting resources during company or team meetings.

4. Train and educate

Create training and education specific to mental health needs. Mental health-related training and education may often go overlooked when preparing training curriculums for employees. Our research found that just 26% of surveyed workers say their company offers training to help them identify mental health needs, while 22% say their employer helps prepare them for conversations with loved ones about mental health challenges.

Implementing management training, for example, focused on effective ways to help employees manage mental health challenges could help to reduce the stigma often associated with speaking about mental health in the workplace. It could also help employees feel more comfortable to discuss caregiving needs with managers before they begin to impact work performance.

5. Find advocates

Develop advocates for mental well-being throughout your organization.

Our research found that more than a quarter (29%) of caregivers surveyed believe there is no one at their company who is equipped to help them find the mental health resources they need. Identifying and designating experts and advocates around mental health benefits can help

ensure that the right resources are available, employees are aware of those resources, and support is being reinforced throughout the organization.

For example, human resources and benefits teams can serve as advocates at the company level, making sure the right mental health resources and programs are made available and regularly communicated to employees.

Effective communication about mental health resources must involve more than just HR; it should include local leaders too. Our research reveals a crucial role for managers: 40% of caregivers are most likely to discuss their own mental health concerns with their manager. Team leads and managers can be equipped to effectively discuss mental health needs with their employees and reinforce and drive awareness around available support during one-on-one discussions.

Prioritizing care
In mitigating the ripple effect of mental health caregiving on workplace performance, employers play a crucial role. By prioritizing resources and cultivating an understanding environment, they can help employees navigate the often-choppy waters of dual responsibilities.

Proactive initiatives can alleviate the impact, enabling employees to perform at their best and feel supported, while still providing essential care to their loved ones.

https://www.hrmorning.com/articles/mental-health-caregivers/

The Fifth Circuit Has Broadened Its Definition of What Constitutes An "Adverse Employment Action" For Purposes of a Discrimination Claim. What Will That Mean For Employers?

Seyfarth Synopsis: Confronted with pleadings that unequivocally showcases the Dallas County Sheriff's Department's discriminatory scheduling policies, the Fifth Circuit finds that the strict application of its precedent regarding the definition of an "adverse employment action" is simply incompatible with the text of Title VII. Hamilton V. Dallas County. What follows next remains to be seen as unanswered questions fills the void left by decades of overturned precedent.

Last November we blogged on this case to alert you that the Fifth Circuit's definition of what constitutes an "adverse employment action" for purposes of a discrimination claim might be broadened. Today we blog to tell you that has happened.

Facts of the case: The Dallas County Sheriff's Department gives its detention officers two days off per week. Prior to April 2019, the schedules were based on seniority, with most officers preferring to take their two days off during the weekend. Sometime in April 2019, the Sheriff's

Department enacted a scheduling policy that prohibited its female detention officers from taking the full weekend off, allowing them to only take two weekdays off or one weekday and one weekend day off. By contrast, it allowed the male officers to take the full weekend off. When the female officers asked their sergeant how scheduling was determined, the sergeant minced no words in confirming that the scheduling policy was indeed gender-based. He insisted that it would be safer for the male officers to be off during the weekends as opposed to during the week. Notably, the male and female officers performed the same tasks and the number of inmates during the week was the same as the number on weekends. The female officers reported the scheduling policy to their sergeant, lieutenant, chief, and human resources to no avail.

The litigation: After filing a charge of discrimination with the Equal Employment Opportunity Commission and receiving Notice of Right to Sue Letters, the female officers filed this Title VII and the Texas Employment Discrimination Act ("TEDA") lawsuit on February 10, 2020. Dallas County moved to dismiss the lawsuit. The trial court judge dismissed the lawsuit on the basis that the female officers failed to state a plausible claim for relief because they did not suffer an adverse employment action. Although the trial court acknowledged that the County's scheduling was an unfair, facially discriminatory policy that could plausibly make the female officers' jobs objectively worse, it was bound to dismiss because "binding precedent of this [c]ircuit compel[led]" it to hold that the female officers did not suffer an adverse employment action.

On appeal, the Fifth Circuit affirmed the trial court's dismissal of the lawsuit, holding that the dismissal was correct under the Fifth Circuit's definition of adverse employment action. Despite clearly being discriminated against, the female officers had not shown that they suffered an adverse employment action – a dispositive factor in attaching liability – because the Fifth Circuit has consistently defined "adverse employment action" to include only ultimate employment decisions such as hiring, granting leave, discharging, promoting, or compensating.

The appellate court was bound by a rule it developed a long time ago in Dollis v. Rubin, 77 F.3d 777 (5th Cir. 1995) in which it adopted language from a Fourth Circuit case regarding a different provision of Title VII: "Title VII was designed to address ultimate employment decisions, not to address every decision made by employers that arguably might have some tangential effect upon those ultimate decisions." Even though its definition was at odds with that of several of its sister circuits, the Fifth Circuit panel was stuck with precedent.

Considering that this was a case of undisputed gender discrimination, the Fifth Circuit decided that the case was an ideal vehicle to reconsider its prior precedent, which can only be done by the entire court in this circumstance. For that reason, the full Fifth Circuit agreed to review the ultimate employment decision requirement. On August 18, 2023, the Fifth Circuit vacated its 1995 decision in Dollis v. Rubin and set a new standard: a plaintiff does not need to show an ultimate employment decision, which the opinion described as a phrase that appears nowhere in the statute and that thwarts legitimate claims of workplace bias, to bring a plausible claim of discrimination under Title VII. "Satisfied that our 'ultimate employment decision' standard lies

on fatally flawed foundations, we flatten it today." Instead, employees or job applicants only need to show that they were subjected to workplace bias "because of a protected characteristic, with respect to hiring, firing, compensation, or the 'terms, conditions, or privileges of employment.'"

TAKEAWAYS With this expansion of the Fifth Circuit's definition of "adverse employment action", employers in the Fifth Circuit may face more litigation because unhappy employees or former employees will no longer be as restricted in pursuing their discrimination claims. Therefore, employers should confirm that any policies and practices which are expressly or implicitly discriminatory are supported by legitimate reasons even if applying the policy would not result in an adverse employment action under the prior Fifth Circuit definition.

https://www.jdsupra.com/legalnews/the-fifth-circuit-has-broadened-its-6720536/

A Problem With Workplace Health and Well-Being Programs
Can training make much of a difference in an unhealthy work environment?

Many organizations offer training programs to help employees enhance their mental health. These programs often overlook important external factors that may be negatively affecting employee well-being.

Thus, training programs may not work or may even backfire if the appropriate structural
Many initiatives in organizations focus on offering training to employees to help them enhance their mental health and well-being. However, these initiatives are not likely to have a strong or enduring impact unless organizations also make structural changes to the organizational practices and policies that may be responsible for compromising employees' health and well-being in the first place.

Factors outside employees have a major influence on their health and well-being, and addressing internal psychological issues without addressing external structural factors may prove ineffective or even counterproductive.

For instance, mindfulness training is currently very popular—despite the fact that I recently did a talk on mindfulness for a group of about 30 young business students, and to my very great surprise, only a couple of them had ever heard of it. Mindfulness has been shown to have lots of benefits in organizations. One review of the literature suggested that although the results are not conclusive, "mindfulness appears to have an overall beneficial impact upon mental health" and can reduce anxiety, stress, and anger, and enhance job satisfaction, physical health and subjective well-being. However, mindfulness can also make employees more alert to the negative features of their workplace, such as unfair compensation practices, an unsupportive workplace culture, or abusive leadership.

In fact, one study found that mindfulness worsened the negative association between abusive supervision and employee well-being. That is, mindful employees who worked for bad leaders had lower levels of well-being than their less mindful counterparts. This study demonstrates the general principle that training initiatives to promote health and well-being can be ineffective and actually backfire in the absence of a healthy organizational infrastructure.

In general, individually-focused health-promotion initiatives have a hard time making a difference in unhealthy environments. This does not only apply in the workplace. It's hard to succeed in a personal effort to reduce your alcohol consumption when you have a home environment featuring a fully stocked bar. At work, the best results are achieved when healthy training initiatives occur in healthy work environments. To best promote employee health and well-being, initiatives such as training should occur in tandem with organization development efforts to create healthy organizational infrastructures. The best results occur when internal and external forces are pushing in the same direction.

Efforts to promote workplace health and well-being can be targeted at building resources at three different levels: individual-level efforts involve things like training and development. Group-level initiatives involve things like building social support and leadership, and organizational-level efforts involve things like changing job design or culture. Interventions to promote health and well-being can be targeted at any one, or all, of these levels. And although interventions at all levels may provide some value, those at the organizational level may be particularly impactful because they serve as the foundation within which the others can "take hold."

For example, a study out of Germany that examined the drivers of one specific form of workplace well-being, employee engagement, found that although resources at all three levels were associated with employee engagement, those at the organizational level had the greatest impact. The authors concluded that interventions that are targeted at the organizational level, such as how work is organized, are most promising for developing healthy workplaces.

One profession that has considered the interaction of individual (training) and organizational (culture) influences on employee well-being is medicine. American researchers have noted that burnout among medical residents is a serious problem, affecting more physicians than any other profession in the USA. To combat this problem, training that attempts to foster personal resilience (meditation, mindfulness) is frequently offered to residents. However, this training occurs within a professional culture that places major demands on residents who must work 80-hour weeks caring for patients, learning, and documenting their activities, with little or no time to address personal needs.

Residents thus receive mixed messages about well-being. The importance of their health and well-being is implied by the training they are offered, but the actual work practices they are expected to engage in reveal that their health and well-being is not a priority. The researchers conclude that "wellness programs should include a combination of personal resilience

training and initiatives to address organizational issues that contribute to burnout" (emphasis added).

Well-intentioned training initiatives to promote the health and well-being of employees are a valuable part of workplace wellness efforts. However, such initiatives can represent superficial, band-aid solutions that fail to address the more fundamental structural pains associated with poor work design, unsupportive human resource policies, and outdated organizational practices. Training is not a magic bullet. In the absence of a supportive organizational infrastructure, with policies and practices that support employee wellness, training is unlikely to have much effect and may even backfire by fostering cynicism among employees who recognize that the organization fails to truly walk the talk of employee health and well-being.

https://www.psychologytoday.com/us/blog/dont-forget-the-basil/202308/a-problem-with-workplace-health-and-well-being-programs

How Artificial Intelligence Might Prevent You From Getting Hired

If you applied for a new job in the last few years, chances are an artificial intelligence (AI) tool was used to make decisions impacting whether or not you got the job. Long before ChatGPT and generative AI ushered in a flood of public discussion about the dangers of AI, private companies and government agencies had already incorporated AI tools into just about every facet of our daily lives, including in housing, education, finance, public benefits, law enforcement, and health care. Recent reports indicate that 70 percent of companies and 99 percent of Fortune 500 companies are already using AI-based and other automated tools in their hiring processes, with increasing use in lower wage job sectors such as retail and food services where Black and Latina workers are disproportionately concentrated.

AI-based tools have been incorporated into virtually every stage of the hiring process. They are used to target online advertising for job opportunities and to match candidates to jobs and vice versa on platforms such as LinkedIn and ZipRecruiter. They are used to reject or rank applicants using automated resume screening and chatbots based on knockout questions, keyword requirements, or specific qualifications or characteristics. They are used to assess and measure often amorphous personality characteristics, sometimes through online versions of multiple-choice tests that ask situational or outlook questions, and sometimes through video-game style tools that analyze how someone plays a game. And if you have ever been asked to record a video of yourself as part of an application, a human may or may not have ever viewed it: Some employers instead use AI tools that purport to measure personality traits through voice analysis of tone, pitch, and word choice and video analysis of facial movements and expressions.

Many of these tools pose an enormous danger of exacerbating existing discrimination in the workplace based on race, sex, disability, and other protected characteristics, despite marketing

claims that they are objective and less discriminatory. AI tools are trained with a large amount of data and make predictions about future outcomes based on correlations and patterns in that data — many tools that employers are using are trained on data about the employer's own workforce and prior hiring processes. But that data is itself reflective of existing institutional and systemic biases.

Moreover, the correlations that an AI tool uncovers may not actually have a causal connection with being a successful employee, may not themselves be job-related, and may be proxies for protected characteristics. For example, one resume screening tool identified being named Jared and playing high school lacrosse as correlated with being a successful employee. Likewise, the amorphous personality traits that many AI tools are designed to measure — characteristics such as positivity, ability to handle pressure, or extroversion — are often not necessary for the job, may reflect standards and norms that are culturally specific, or can screen out candidates with disabilities such as autism, depression, or attention deficit disorder.

Predictive tools that rely on analysis of facial, audio, or physical interaction with a computer are even worse. We are extremely skeptical that it's possible to measure personality characteristics accurately through things such as how fast someone clicks a mouse, the tone of a person's voice, or facial expressions. And even if it is possible, predictive tools that rely on analysis of facial, audio, or physical interaction with a computer increase the risk that individuals will be automatically rejected or scored lower on the basis of disabilities, race, and other protected characteristics.

Beyond questions of efficacy and fairness, people often have little or no awareness that such tools are being used, let alone how they work or that these tools may be making discriminatory decisions about them. Applicants often do not have enough information about the process to know whether to seek an accommodation on the basis of disability, and the lack of transparency makes it more difficult to detect discrimination and for individuals, private lawyers, and government agencies to enforce civil rights laws.

How Can We Prevent the Use of Discriminatory AI Tools in Hiring?
Employers must stop using automated tools that carry a high risk of screening people out based on disabilities, race, sex, and other protected characteristics. It is critical that any tools employers do consider adopting undergo robust third-party assessments for discrimination, and that employers provide applicants with proper notice and accommodations.

We also need strong regulation and enforcement of existing protections against employment discrimination. Civil rights laws bar discrimination in hiring whether it's happening through online processes or otherwise, so regulators already have the authority and obligation to protect people in the labor market from the harms of AI tools, and individuals can assert their rights in court. Agencies such as the Equal Employment Opportunity Commission have taken some initial steps to inform employers about their obligations, but they should follow that up by creating standards for impact assessments, notice, and recourse, and engage in enforcement actions when employers fail to comply.

Legislators also have a role to play. State legislatures and Congress have begun considering legislation to help job applicants and employees ensure that the uses of AI tools in employment are fair and nondiscriminatory. These legislative efforts are diverse, and may be roughly divided into three categories.

First, some efforts focus on providing transparency around the use of AI, especially to make decisions in protected areas of life, including employment. These bills require employers to provide individuals not only with notice that AI was or will be used to make a decision about their hiring or employment, but also with the data (or a description of the data) used to make that decision and how the AI system reaches its ultimate decision.

Second, other legislation requires that entities deploying AI tools assess their impact on privacy and nondiscrimination. This kind of legislation may require impact assessments for AI hiring tools to better understand their potential negative effects and to identify strategies to mitigate those effects. Although these bills may not create an enforcement mechanism, they are critical to forcing companies to take protective measures before deploying AI tools.

Third, some legislatures are considering bills that would impose additional non-discrimination responsibilities on employers using AI tools and would plug some gaps in existing civil rights protections. For example, last year's American Data Privacy and Protection Act included language that prohibited using data — including in AI tools — "in a manner that discriminates in or otherwise makes unavailable the equal enjoyment of goods or services on the basis of race, color, religion, national origin, sex, or disability." Some state legislation would ban uses of particularly high-risk AI tools.

These approaches across agencies and legislatures complement one another as we take steps to protect job applicants and employees in a quickly evolving space. AI tools have an increasingly important and prevalent role in our everyday lives, and policymakers must respond to that immediate threat.

https://www.aclu.org/news/racial-justice/how-artificial-intelligence-might-prevent-you-from-getting-hired

Growing employee mental health needs to pose financial challenges for employers: Report

As the world continues its journey of recovery from the pandemic, it is of utmost importance for employers to prioritize mental health assistance and resources for their workforce.

About 77% of major employers saw a rise in the mental health needs of their employees, reflecting a substantial increase of 33 percentage points compared to the previous year.

The 2024 Large Employer Health Care Survey conducted by the Business Group on Health unveiled that major employers observed an escalation in the mental health requirements of their employees. This marks a considerable increase from the previous year when merely 44% of employers indicated a growth in their employees' mental health needs.

The feelings of isolation and loneliness that individuals endured throughout the pandemic have had a profound impact on their mental well-being. As a result, employers are currently contending with the aftermath of these effects.

The notable rise in mental health requirements has resulted in heightened expenses for employers, who are now confronted with the task of furnishing appropriate assistance and resources to cater to their employees' needs.

The escalating need for mental health services is impacting not only employers and first responders but also families who have experienced the loss of loved ones due to suicide. An article from KFF Health News shared the account of Deborah and Warren Blum, who suffered the heartbreaking loss of their 16-year-old child to suicide. In a departure from the conventional reluctance to discuss suicide in obituaries, Deborah Blum candidly addressed her child's mental health challenges in the notice of death.

The mounting mental health requirements of employees and the related financial implications have become an urgent issue for major employers. As the nation navigates its recovery from the pandemic, it becomes imperative for employers to place significant emphasis on providing mental health assistance and resources to their workforce.

By recognizing and proactively tending to these needs, employers can play a pivotal role in enhancing the overall well-being and productivity of their employees.

https://www.peoplematters.in/news/wellness/growing-employee-mental-health-needs-to-pose-financial-challenges-for-employers-report-38813