SEPTEMBER MENTAL HEALTH AND DE&I UPDATE

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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.

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.

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

What is ‘wellbeing washing’ (and how can it be avoided at work)?

On the surface, it would seem that workplaces are keen to promote their mental health resources, whether that’s employing mental health first aiders, offering employee assistance programmes, or implementing a strict ‘logging off’ policy. But the real question is, are employees truly seeing these benefits, or are they falling victim to ‘wellbeing washing’?
The term ‘wellbeing washing’ refers to organisations that publicly promote their “mental health” initiatives, but don’t actually support their employees internally. In a similar vein to greenwashing, companies may join in on awareness day campaigns or charitable events, showcasing their role in looking after employee wellbeing and good mental health, but the truth is that many of these organisations aren’t practising what they preach.

Examples of wellbeing washing could look like this:

- Encouraging work-life balance, but praising employees that work overtime.
- Participating in mental health awareness days or activities without supporting employee wellbeing day-to-day.
- Buying goods for the office, like comfy bean bags, and creating a fun environment, but not having a wellness action plan in place.
- Running a mental health workshop during a lunch break.

In a 2022 study by Claro Wellbeing, it was found that seven in 10 workplaces celebrated mental health awareness days, but only one in three actually offered support that was noted as “good” or “outstanding” by employees. Of course, it’s great to see that companies are encouraging awareness of mental health, but pretending to advocate for employees’ wellbeing can actually have detrimental effects:

Reduced credibility and reputation. All talk and no action can leave employees feeling like their employers are dishonest, leading to a lack of trust. What’s more, review platforms like Glassdoor, which allow employees to share their experiences at work, mean there’s no hiding it.
More burnt-out employees. Employees feeling overworked and under pressure with few resources to turn to for support are more likely to suffer from burnout. This could lead to more sick days and lower outputs of productivity for businesses.

Higher employee turnover. Naturally, employees that are disappointed in the lack of mental health and wellbeing support are more likely to be unhappy at work as their needs are not being met. Employees are likely to look for a new job elsewhere as a result.

Recognizing wellbeing washing in the workplace

We know how concerning wellbeing washing is and the damage it can cause for both businesses and employees. But how exactly can workers recognize if this is what they're experiencing?

Here are some things to look out for:

A lack of a wellness support plan. No policies, no signposting to wellbeing support and no formal plan suggests the organisation is merely pretending that these initiatives exist.

Neglecting or overlooking the real problems. Overworked employees tend to show this by staying on later, starting early, or working through their breaks. For many, this is a clear sign that employees have too much on their plate but, for other employers, this might be praised as 'hard work'.

Too many of the 'wrong' perks. Sure, having a TV and 'chill out' space in the office is great, but if this isn't in alignment with tangible benefits that actually help employees, this could be a red flag.

Lack of communication of resources. If you simply don't know where to find wellbeing information and support that your organisation claims to offer, this is likely to be another indicator of wellbeing washing.

How can employers implement tangible benefits for employees?

Regularly survey employee satisfaction. "We have regular surveys and base any initiatives or activities we do off of these," Kat comments. "Some examples of things we've actioned based on staff suggestions include more flexible working hours/lunch breaks, training on diversity and inclusion, and healthier snacks at the office."

Make lunch breaks mandatory. Ensuring employees are actually taking their breaks (in full) regardless of their workload is an important step in valuing their time and ensuring they're refueled so that they can work to the best of their ability.

Reinforce the importance of time off. Time off is vital to prevent employee burnout, but is also incredibly important for those that may have already reached that point. Be sure to emphasize that there is no shame in asking for time off to look after your mental health. As a manager, if you notice that someone hasn't got any time off booked, why not discuss their workload with them and encourage them to book some annual leave?

https://happiful.com/what-is-wellbeing-washing-and-how-can-it-be-avoided-at-work

Five ways to support employees' mental health

Mental health is of great importance, both in the workplace and beyond. Yet with the pressures of increasingly fast-paced work environments, it can be difficult for individuals find time to prioritize their mental health.

What can businesses do to support their staff?

Appoint mental health colleagues

Mental health first aiders in the workplace are becoming more prevalent. These colleagues are trained to recognize the mental and physical signs of those experiencing mental health distress and can signpost individuals to get professional help. They provide non-judgmental support to those who need it and reduce stigma surrounding opinions of mental health within the team. A mental health first aider provides a safe space for those who need advice to talk their issues through. They can also identify signs of mental distress in those who might not feel comfortable coming forward and help them to feel supported at work.

Colleagues who undertake mental health first aid training provide an invaluable service within the workplace. Some people may feel more comfortable speaking to a peer who is trained to assess the situation compassionately than approaching a more senior member of staff.
Offer access to useful tools

There are a number of useful tools available to help with mental health, from apps and podcasts to gratitude journals and simple breathing exercises. Some tools offer specific packages tailored to the workplace, focusing on how to manage burnout, stress and more.

Employee assistance programmes (EAP) are great tools within the workplace. These systems provide advice and support to employees and their immediate families when dealing with personal issues.

Offering access to tools such as an EAP can reassure your colleagues that your company takes mental health seriously and encourage those who are struggling to seek help via a professional, confidential service. It's an important resource for employees who may not feel comfortable raising their concerns with a manager or colleague.

Hybrid working

Allowing employees to work from home for part or all of their working week can have a positive impact on mental health. Recent data from Condeco reveals that 7 in 10 workers agree hybrid working shows their company cares about emotional and mental wellbeing. Among those who are already working partially from home, this figure increases to 76 percent.

Having the flexibility to spend part of the week working from home allows greater freedom to perfect a work-life balance, while also maintaining an essential connection with work colleagues.

Encourage social bonding

Socializing with colleagues can help people uncover shared interests and experiences, developing a support network both at work and beyond. Taking these shared interests and creating staff activities and events around them will further this social bonding and create a more communicative team.

Learn the signs

There is no one obvious symptom of negative mental health, as everyone experiences and displays emotions differently. However, there are a number of warning signs that usually point towards mental distress.

There are a wealth of charities and mental health groups available across the country to help those struggling. One such group is Andy's Man Club, a charity dedicated to eliminating the stigma around mental health and helping men speak openly about their feelings. Its fantastic team runs talking groups for men over 18 to talk about anything that is bothering them in their lives.

Suicide rates are rising and are significantly high for men. The latest research from the ONS shows that the male suicide rate is 15.8 per 100,000 compared to 5.5 per 100,000 for women. The importance of talking and making sure we're there for our family, friends and colleagues has never been greater.

If an employee is missing work or seems mentally absent from their tasks, it's important to approach the situation with a level of understanding and compassion for what they might be going through. Neil suggests "speaking openly and honestly to them" as a first step. If they aren't comfortable speaking to a manager or the HR department, ask an understanding colleague or mental health first aider to approach them for a relaxed chat.

https://www.digitaljournal.com/business/five-ways-to-support-employees-mental-health/article#ixzz8CSiyhwTT

Large Employers See Increase in Mental Healthcare Needs of Workforce

Seventy-seven percent of large employers surveyed reported an increase in mental health-related needs for their workforce, and another 16% anticipate a similar surge in the future, according to a report published this month by the Business Group on Health.

The 77% of employers surveyed who reported an increase in workforce mental health needs is a significant surge from a year prior, when 44% of employers polled said they observed a rise in employee mental health concerns.

“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 Kelsey, president and CEO of Business Group on Health, in a news release.

“Companies will need to creatively and deftly navigate these and other challenges in the coming year, especially as they remain committed to providing high-quality health and well-being offerings while managing overall costs.”

Based in Washington, D.C., the Business Group on Health conducted a national survey of 152 large employers across various sectors between June 1 and July 18. The 152 companies cover more than 19 million people in the US. The survey also produced the following findings:

While mental health-related concerns are rising sharply, cancer remained the most frequently cited driver of healthcare costs, with about half of employers listing it No. 1 and 86% ranking it within their top 3.

Employers expressed a desire to focus on evaluating their partnerships and holding vendors accountable to improve on transparency of results, pricing, and contractual terms. Nearly half of employers surveyed said they will require vendors to report on health equity measures.

Perception of Telehealth’s Potential

Employers are now tempering expectations around the transformative potential of virtual healthcare services. In 2021, 85% of survey participants said they believe telehealth will have “a significant impact on how care is delivered in the future.” In 2023, that figure has declined to 64%. Employers cited the following concerns regarding virtual care:

- Lack of coordination between virtual and community-based providers creating a siloed care experience for employees (cited by 70% of survey participants);
- Quality of care (54%);
- Lack of integration between vendors (54%);
- Market oversaturation (43%);
- Unnecessary or duplicative services (32%);
- Investment in unproven virtual health solutions (19%); and
- Cost of virtual health solutions (14%).

Looking ahead, 86% of employers said they plan to collaborate with employee resource groups to promote available benefits and well-being initiatives to targeted groups, and 61% said they will require health plan and navigation partners to maintain directories of medical and mental healthcare providers. Meanwhile, 95% of large employers said they will implement at least 1 strategy to address health inequities by 2024.

https://www.hmpgloballearningnetwork.com/site/bhe/news/large-employers-see-increase-mental-healthcare-needs-workforce

Job candidates are viewed differently if they discuss mental health online

Applicants who post about anxiety and depression may appear less emotionally stable and less conscientious; the study found.

Although it's become increasingly common and acceptable for people to talk about mental health challenges on social media, potential employers may view job applicants in a negative light, according to new research released by North Carolina State University.

In particular, posts about mental health on LinkedIn could introduce personal information into the recruiting, screening and hiring processes and affect applicants later.

"Our findings don't mean people should refrain from posting about anxiety and depression on LinkedIn," Jenna McChesney, the first author and assistant professor of psychology at Meredith College, said in a statement. "However, people who are considering posting about these issues should be aware that doing so could change future employers' perceptions of them."

For the study, the researchers recruited 409 professionals with hiring experience to review LinkedIn pages and give their impressions of an applicant's personality traits and future work performance.

Participants were broken down into quarters. One group was shown a job candidate's page without posts related to mental health challenges, and another was shown the same page with a post that mentioned the candidate's experience with anxiety and depression. A separate group saw the original LinkedIn page and listened to an audio interview with the candidate, while yet another group saw the page with the post about anxiety and depression and listened to the interview.

Overall, regardless of the applicant's gender and the evaluator's age, when candidates wrote about experiences with anxiety and depression on LinkedIn, this influenced hiring professionals' impressions of the candidates' work-related personality traits, such as emotional stability and conscientiousness, but not expectations about work performance, such as task performance and organizational citizenship behaviors.

“We found that study participants who saw the LinkedIn post about mental health challenges viewed the job candidate as being less emotionally stable and less conscientious,” McChesney said. “Hearing the interview lessened a study participant’s questions about the candidate’s emotional stability, but only slightly. And hearing the interview did not affect the views of participants about the job candidate’s conscientiousness.”

“In other words, the perceptions evaluators had after seeing the LinkedIn profile largely persisted throughout the interview,” she added.

As both employers and employees have more discussions about mental health challenges, stress and burnout, HR professionals can contribute to the conversation by determining reasonable accommodations and helping colleagues to leave stereotypes at the door.

https://www.hrdive.com/news/effects-of-mental-health-posts-on-hiring/692578/

United States: EEOC Resolves First Ever Lawsuit Targeting Employer Using AI In Hiring

On August 9, 2023, the U.S. Equal Employment Opportunity Commission (EEOC) filed a proposed consent decree intended to resolve the agency's first-ever lawsuit targeting an employer's use of artificial intelligence (AI) in hiring. Employers should take note of what the consent decree prohibits and of the EEOC's increasing scrutiny of employers that use AI systems to engage with employees.

In Equal Employment Opportunity Commission v. iTutorGroup, Inc. et al. (E.D.N.Y. May 05, 2022), the EEOC sued three affiliated entities (collectively, iTutor) that used an online hiring platform to hire college-educated applicants for tutoring jobs performed remotely from the United States, assisting students in China. In the complaint filed by the EEOC initiating the lawsuit, the agency alleged that an online applicant for an iTutor position was rejected because she was over the age of 55. According to the EEOC, the applicant became aware that she may have been discriminated against when she later re-applied for the same position and falsely represented herself as younger.

The EEOC alleged that iTutor intentionally programmed its application software, which screened resumes with AI, to automatically reject female applicants over the age of 55 and male applicants over the age of 60. Although the consent decree allows iTutor to not admit to any liability, it requires each defendant to cease all forms of discrimination, including through AI, and to engage in other measures such as posting and distributing notices of the lawsuit and the decree as well as training employees to avoid and report unlawful discrimination.

Consent decrees are a powerful tool in the EEOC's toolkit. Federal law empowers the EEOC to enter consent decrees to resolve lawsuits with companies rather than simply entering into settlement agreements. By doing so, the agency avoids the time, cost and risk of litigation but can sue to enforce the consent decree as a court order to obtain faster compliance than it likely could with a regular settlement.

The most obvious takeaway from the EEOC's lawsuit and consent decree is that employers cannot hide behind AI systems to engage in intentional discrimination. A decision to exclude members of a protected category (e.g., on the basis of race, sex, color, national origin or age) is illegal whether made by a decision maker post-interview about a candidate or by a system programmed to screen out applicants on an unlawful basis.

Although most employers would know that intentionally targeting members of a protected group through AI software is unlawful, employers should nonetheless carefully examine any such programs that interface with applicants and employees. Companies using AI-based programs that result in members of a protected group being rejected, demoted or otherwise targeted could face similar allegations from the EEOC and be faced with the dilemma of deciding whether to invest in a costly defense or enter into a burdensome consent decree with the EEOC.

https://www.mondaq.com/unitedstates/employee-rights-labour-relations/1361612/eeoc-resolves-first-ever-lawsuit-targeting-employer-using-ai-in-hiring

The Buck Stops with You: Artificial Intelligence, Employment, & Title VII of the Civil Rights Act

Computers are nothing short of marvelous, if not yet conscious. They represent the apogee of modern life, and perhaps more specifically, modern American life: the quest for the perfect labor-saving device. From washing machines to lawnmowers, from tractors to the smartphone that's probably within reach as you read this, devices that used to be considered luxuries have become necessities. So we shouldn’t be surprised that our continual hunt for methods, tools, and technology to make our lives easier and more productive has found its way into the workplace.

One such tool is known as "artificial intelligence" ("A.I."), which, like any tool, is a good thing … until it's not. And it's not when it causes employers to violate "fair employment practice" ("FEP") laws such as Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII is the federal statute that's intended to ensure that employers don’t unlawfully discriminate among job-applicants and employees based on any one of several prohibited criteria.

Understanding Fair Employment Practice Laws

Title VII, which applies, generally speaking, to employers of only 15 or more employees, prohibits employers from making employment-related decisions that affect the terms or conditions of employment of applicants or employees on the basis of race, color, religion, sex (which now means biological sex, pregnancy, sexual orientation and gender identity) and national origin. The statute is enforced (at the administrative level) by the federal Equal Employment Opportunity Commission ("EEOC"). Similar FEP laws prohibit employment-related discrimination based on, for example, age (if that age is at least 40 years), disability and certain kinds of "genetic information".

But here's the thing: Title VII and other FEP laws can be (and often are) violated regardless of whether the employer intended to make a job-related distinction based on any of the prohibited criteria. That arresting notion stems from the fact that such laws prohibit both disparate treatment – which is intentional discrimination based on a prohibited criterion (think "Russians need not apply") – and disparate impact – which is discrimination that imposes a measurable effect on applicants and employees who have a common characteristic (such as a specified sex) – and stems from application of a discriminatory criterion that tends to favor one group at the expense of another (think "employees must be able to lift at least 75 pounds", which may tend to screen out more women than men, regardless of whether employees must do so to perform the essential functions of the job). Disparate impact, in other words, can result from application of what appears to be a neutral practice or selection device that has a disproportionate impact on a protected group.

The Power and Complexity of Artificial Intelligence

Few concepts are as poorly understood as A.I. That leads to confusion and skepticism as to what it is, how it works, and how to use it. Part of the problem is the lack of consensus about a definition. Simply put, A.I. is the ability of a computer or software to perform cognitive functions that are normally associated with humans, such as perceiving, reasoning, learning, interacting with an environment, problem-solving, and even creativity. You've probably interacted with A.I. without even knowing it. Amazon's Alexa, Apple's Siri and even some chatbots used for customer service are based on A.I. technology.

With the rise of generative models of A.I., such as ChatGPT and DALL-E (used for generating art), A.I. tools have become common household names. Businesses are also realizing that nearly all industries can benefit from A.I., which can help, for example, with automation of workflows and cybersecurity by continuously monitoring and analyzing network traffic, reduction of human error, elimination of repetitive tasks, research and development, and customer service and resource management.

Businesses are especially interested in a species of A.I. known as "machine learning", in which data is entered into software which then processes the data, with minimal human intervention, to produce a new output value. But between data-entry and such production are multiple

hidden layers of processing, association, and categorization that the user cannot even perceive. Such opacity can easily obscure processing, association, and categorization that are (or may at least seem to be) biased in favor of, or prejudiced against, certain applicants and/or employees and thus unlawfully discriminatory.

A.I. In Employment Decision-Making

A.I. has emerged as a valuable tool to assist businesses in making employment decisions such as hiring, promotion, and dismissal of employees. Employers are increasingly relying, in the course of making such decisions, on software that incorporates algorithmic decision-making, such as resume scanners that recommend applications that include certain keywords; employee-monitoring software that rates employees based on various factors; virtual assistants or chatbots that ask job candidates about their qualifications and reject those who fail to meet certain requirements; video interviewing software that evaluates candidates based on their facial expressions and speech patterns; and testing software that provides “job fit” scores for applicants or employees. All such software may use A.I., whether obviously or not.

A.I. may seem to be miraculous, but it comes with a catch: Most employers presumably take measures to avoid unlawful disparate treatment and disparate impact, but use of A.I. in making employment decisions raises a thorny question: How can employers monitor the effects of hidden layers of data-processing that may expedite time-sensitive personnel decisions but may also cause unintended "disparate impact" in employment-related decisions? That's not a hypothetical problem, as Amazon learned the hard way.

Amazon tried to implement an A.I. tool that would learn from Amazon's past hires to review applicants' resumes and recommend the most promising candidates. However, the A.I. tool displayed a prejudice against female candidates. The A.I. engine was trained to vet applicants by observing patterns in resumes submitted to the company during the previous ten years, which in the male-dominated tech industry had been submitted largely by … male candidates. Amazon understandably looked for promising traits, but the A.I. engine learned that male candidates were preferred. Amazon was able to identify the troubling practice and stop it, but its experience illustrates that machine learning can be unpredictable and result in a disparate impact on an employee or prospective employee on the basis of race, color, religion, sex, or national origin.

EEOC Guidance on Assessing Adverse Impact

The EEOC, in an attempt to help employers avoid violations of Title VII caused by A.I. tools, has released guidance for assessing adverse impact brought about by use of software, algorithms, and A.I. in employment decision-making ("EEOC Guidance"). The EEOC Guidance focuses on how A.I. can give rise to disparate impact under Title VII and tries to educate employers about the risks of using A.I. in employment decisions. The guidance does not prohibit use of A.I., but rather warns employers about the possible vice of it, in the form of possible disparate impact

under Title VII that can arise if A.I. and its decisions and recommendations are not carefully monitored and assessed.

This is not a hypothetical point. Just ask “iTutorGroup,” three integrated companies providing English-language tutoring services to students in China, which the EEOC sued in May of this year because the companies allegedly programmed their "tutor application software" to automatically reject female applicants age 55 or older and male applicants age 60 or older. The EEOC claimed that iTutorGroup rejected more than 200 qualified applicants based in the U.S. because of their age.

The employer denies the allegations, but it apparently entered into a voluntary settlement agreement with the EEOC last week in which it has agreed to pay $365,000 to more than 200 rejected applicants. That's an expensive denial.

Using A.I. Responsibly: Advice for Employers

The lesson: A.I. is an amazing tool. But, like any complex tool, it must be used with caution. An employer that has access to it would be well advised to study the EEOC's guidance on the subject and, when needed, get some good legal advice, lest the employer become not just a user of it but its victim as well.

https://www.wardandsmith.com/articles/Artificial-Intelligence-Employment-and-Title-VII-of-the-Civil-Rights-Act

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

KEY POINTS

- 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 changes are not made.

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

10 Biggest Takeaways for Employers as Federal Appeals Court Expands Scope of Anti-Bias Law

One of the nation's most conservative federal appeals just opened the door for plaintiffs to file more discrimination charges and lawsuits by expanding the scope of the nation's primary workplace anti-bias law.

The full 5th Circuit Court of Appeals – which oversees cases arising out of Texas, Louisiana, and Mississippi – ruled that employees are not limited to bringing Title VII claims only when subjected to "ultimate employment decisions" like terminations or applicant rejections.

Instead, the court said workers can bring Title VII claims against employers for all sorts of alleged bad behavior. Friday's ruling jettisons one of the strictest standards in the country and

follows the recent trend set by several other appeals courts. The decision serves as a good reminder for employers to ensure your anti-bias policies and practices are up to date and effectively administered.

What are your 10 biggest takeaways from the August 18 Hamilton v. Dallas County decision?

End of "Ultimate Employment Decision" Limitation: The key point from this decision and your main takeaway: the "ultimate employment decision" test is no longer valid in cases arising in Texas, Louisiana, and Mississippi. Previously, this test limited actionable adverse employment actions in Title VII cases to major workplace decisions like hiring, granting leave, compensation adjustments, promotions, and firing.

All Employment Terms Are Relevant: An en banc (full) panel of the 5th Circuit instead ruled that all terms, conditions, or privileges of employment should be protected under Title VII. The court concluded that discrimination in any of these aspects could lead to actionable claims.

Paternalistic Policies Could Be Significant: The case involved allegations from a group of female correctional officers who were displeased when the County implemented a gender-based scheduling policy. The officers alleged their supervisors told them that it would be unsafe for all male officers to be off at the same time during the week and that it was safer for the men to take days off on the weekends, and thus created a policy that only male officers could be given full weekends off.

Regardless of the rationale behind the decision, the court noted that days and hours of work, including shift schedules, are essential terms or conditions of employment. Changing these, especially based on a protected characteristic like gender, could be seen as discrimination.

Restrictive Standard Gave Rise to Absurd Results: One of the reasons the court scrapped the restrictive standard is that it "thwarted legitimate claims of workplace bias," providing examples from the past to demonstrate the absurd results that could occur.

One such example: a 2019 case where the court was forced to dismiss a claim from a Black plaintiff who alleged he was required to work outside in the heat without access to water while his white coworkers enjoyed working inside with air conditioning.

No Need for Economic Harm: Discrimination doesn't have to cause economic harm to be actionable, said the 5th Circuit. Non-economic actions, like changes in work schedules or even issuance of written disciplinary notices, can still be discriminatory and form the basis for valid Title VII claims.

There are Limits – But Tread Carefully: The court said that there is a floor for determining the proper Title VII standard and the anti-bias law doesn't cover "trivial" actions. However, employers should tread cautiously when building policies or making employment decisions relying on this defense. Until federal district courts further define the contours of where this

standard lies, you will want to work with your employment counsel to ensure you don't run afoul of federal law.

Trending: In Line With Other Courts: Friday's decision is another example of how courts across the country are moving toward a broader interpretation of Title VII, focusing more on the statute's text rather than relying on past, narrower precedents.

The 6th Circuit (handling cases arising out of Ohio, Tennessee, Michigan, and Kentucky) and the D.C. Circuit have both recently gone down the same road and issued similar rulings in the past two years. They join the 2nd, 4th, 9th, and 11th Circuits, which have all explicitly held that Title VII claims can be brought even if the alleged discrimination does not involve an ultimate employment decision.

Not Just Race: Remember that Title VII doesn't just bar discrimination based on race. Workers can bring claims under the statute for allegations related to race, color, religion, national origin, and sex (which has been interpreted by the Supreme Court to include sexual orientation and gender identity).

Self-Review and Compliance: In light of this ruling, it would be prudent to review your policies and practices to ensure they are not inadvertently discriminating, even in non-ultimate employment decisions.

You may also want to reinforce this new standard in managerial training sessions so your leaders understand the broad scope of these protections and adjust their practices accordingly. And of course, ensure your general training sessions with all your workforce emphasize the importance of professionalism and fair treatment of all co-workers.

Judicial Trends Matter: This decision underscores the importance for employers to stay updated on recent judicial trends. Relying on older precedents may not be a safe defense against modern interpretations of Title VII.

For example, in the coming year, the Supreme Court will issue a ruling examining whether Title VII bars only adverse employment actions that result in a materially significant disadvantage for the employee in a case involving a lateral transfer. A decision in that case could once again upend these types of cases, so you'll want to follow that case with interest and adjust as necessary.

https://www.jdsupra.com/legalnews/10-biggest-takeaways-for-employers-as-4425333/

Weight discrimination happens in 69% of workplaces

More than two thirds of employees (69%) think weight discrimination exists in their workplace, with nearly half of respondents (47%) considering it to be a problem, according to a report from diversity and inclusion training provider Pearn Kandola.

More than three in 10 workers said they had witnessed discrimination against someone else because of their weight and over a third of people (35%) who reported weight discrimination at work saw no action taken as part of their complaint.

Binna Kandola, partner at Pearn Kandola, said HR needs to take action to address weight discrimination's impact on UK employees' careers, experiences at work and pay.
Speaking to HR magazine, he said: "The first thing that needs to happen therefore is for organisations, and the HR departments, to acknowledge its existence.

"We need to ensure that those people involved in recruitment, promotion, identifying talent, etc., are all made aware of weight discrimination, how it manifests itself in the workplace and what we can all do about it."

The study found 40% of employees did not report incidents of weight discrimination as they did not consider it serious enough to report.

Zofia Bajorek, senior research fellow at the Institute for Employment Studies, said many people still feel weight discrimination is acceptable.

Speaking to HR magazine, Bajorek said: "To many, weight-based discrimination feels like it is the last acceptable form of discrimination, and there needs to be an urgent debate about what could and should be done to correct this, so that people living with obesity have the best chance to live fulfilling working lives."

Weight is not a protected characteristic under the Equality Act, however, Bajorek added: "Obesity should be viewed as a disease in its own right, and should be included within the scope of the Equality Act as a protected characteristic for the purpose of employment law.
"Obesity is currently not included under this legislation, but if an employee has a medical condition that is associated with their obesity, then they may qualify as having a disability in accordance with the Act.

"This complexity makes it very difficult for employers to understand their obligations for employees living with obesity, and this simple amendment to the Equality Act could resolve this ambiguity as well as over time, hopefully making discrimination at work on the grounds of obesity less common."

Weight discrimination also happens in recruitment processes, with 11% saying they would not hire someone who is overweight, believing they are unhealthy (31%), lazy (21%) and unmotivated (17%).
A fifth of people believe that their weight has had a detrimental impact on their career prospects.

https://www.hrmagazine.co.uk/content/news/weight-discrimination-happens-in-69-of-workplaces

57% of millennials feel uncomfortable discussing mental health at work

Over half (57%) of millennial employees do not feel comfortable disclosing mental health or psychological conditions, such as ADHD, anxiety, or depression, in the workplace, according to research from Reed.co.uk.

The research, conducted among 2,000 UK workers, found that Millennials, those born between 1986 and 1991, are less likely to open up to colleagues, while only 45% of Baby Boomers, those aged 57 to 75, said they would not want to talk about their mental health.

However, 73% of Baby Boomers have never taken a sick day due to their mental health; but 66% of Gen Z employees have done so.

Only 23% of those employees who have previously suffered from a mental health condition in the past said they felt comfortable taking a sick day when needed.

The research found a difference in attitudes between genders as well: over half of all men surveyed (54%) said they are uncomfortable discussing mental health conditions with their colleagues, whereas 49% of women said the same.

But women are more worried about negative perceptions of themselves if they were to take a day off sick for mental health reasons, with 42% citing this as the main reason stopping them from taking a day off, versus 37% of men.

The most common reason as to why talking about mental health is still perceived as slightly taboo in the workplace, cited by two-fifths (39%) of people, was that they feel they would be judged negatively if they opened up about their mental health.

Just over a third (36%) stated they would feel too exposed and vulnerable, and this rose to 43% of Gen Z, the highest of all age groups asked.

Nevertheless there are encouraging signs that conversations around mental health are opening up: nearly a third (32%) of UK workers report seeing their colleagues open up about their

mental health and receive a positive response, which has led to them feeling comfortable doing so too.

https://employeebenefits.co.uk/57-millennials-uncomfortable-discussing-mental-health-work/

Kellogg's 'woke' workplace diversity programs are illegal, group claims

A conservative legal group on Wednesday urged a U.S. anti-discrimination agency to investigate Kellogg Co (K.N) over workplace diversity policies that it says are unlawful, and accused the cereal maker of sexualizing its products.

This is the second complaint filed this week against a company by America First Legal, a nonprofit run by Stephen Miller, who was an adviser to then-President Donald Trump.

America First in a letter to the U.S. Equal Employment Opportunity Commission (EEOC) said Kellogg's hiring, training and promotion practices are designed to achieve a balance based on race and sex that violates the federal law banning workplace bias.

It also criticized marketing campaigns including boxes of Cheez-It crackers featuring drag queen RuPaul and cereal boxes celebrating LGBTQ Pride Month.

"Management has discarded the company's long-held family friendly marketing approach to politicize and sexualize its products," the group said.

Kellogg in a statement on Thursday said the company is committed to complying with employment laws and has policies in place prohibiting workplace discrimination.

"At Kellogg, our aspiration is to better reflect the diversity of our consumers and to strengthen our inclusive culture," the company said.

The EEOC typically investigates companies based on complaints filed by workers, known as charges. But the agency's five individual commissioners have the power to launch their own probes and file charges if they find that discrimination has occurred.

So-called "commissioner's charges" are rare, with only a few filed in most years. But, last year commissioners filed 29 charges when a vacancy on the commission created a 2-2 stalemate between Democratic and Republican appointees that hampered the agency's ability to bring large-scale cases through the normal process.

The U.S. Senate last month confirmed a nominee of Democratic President Joe Biden to a vacancy at the EEOC, handing Democrats a 3-2 majority.

The five current EEOC commissioners did not immediately respond to requests for comment. Many legal experts expect an uptick in legal challenges to corporate diversity programs in the wake of a June U.S. Supreme Court ruling barring race-conscious admissions policies in higher education.

America First in the letter said Kellogg, for example, has said it wants to have "25% underrepresented talent at the management level" by 2025 and runs fellowship programs that are only open to racial minorities.

"Kellogg's employment practices are unlawfully based on 'equity,' which is a euphemism for illegal discrimination," Reed Rubenstein, a lawyer with the group, wrote in the letter.
America First said it also had sent a letter to Kellogg's board of directors on Wednesday threatening shareholder litigation if the company maintains the allegedly illegal policies.
The nonprofit on Tuesday sued Target Corp (TGT.N) on behalf of an investor, saying the retailer failed to anticipate customer backlash over LGBTQ-themed merchandise that hurt its stock value.

The complaints are part of a campaign conservative legal groups and Republican legislators are waging against corporations that have enacted so-called woke policies on social issues such as race, gender and diversity.

https://www.reuters.com/legal/kelloggs-woke-workplace-diversity-programs-are-illegal-group-claims-2023-08-09/

Summary of Key Provisions of the EEOC's Proposed Rule to Implement the Pregnant Workers Fairness Act (PWFA)

Summary of Key Provisions of the EEOC's Proposed Rule to Implement the Pregnant Workers Fairness Act (PWFA)

The U.S. Equal Employment Opportunity Commission issued a Notice of Proposed Rulemaking (NPRM) to implement the Pregnant Workers Fairness Act (PWFA). The NPRM was posted by the Federal Register for public inspection on Aug. 7, 2023 and published in the Federal Register on Aug. 11, 2023.

The NPRM is available at https://www.federalregister.gov/documents/2023/08/11/2023-17041/regulations-to-implement-the-pregnant-workers-fairness-act.

The PWFA requires an employer to provide reasonable accommodations, absent undue hardship, to a qualified employee or applicant with a known limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The Commission's proposed

rule addresses each element of this requirement. As required by the PWFA, the proposed rule also provide examples of reasonable accommodations.

Coverage:

The PWFA covers employers (as well as unions and employment agencies), employees, applicants, and former employees who are currently covered by (1) Title VII of the Civil Rights Act of 1964 (Title VII); (2) the Congressional Accountability Act of 1995; [1] (3) the Government Employee Rights Act of 1991 (GERA); or (4) section 717 of Title VII, which covers federal employees. Whoever satisfies the definition of an "employer" or "employee" under any of these statutes is an employer or employee for purposes of the PWFA.[2]

Remedies and Enforcement:

The procedures for filing a charge or claim under the PWFA, as well as the available remedies, including the ability to obtain damages, are the same as under (1) Title VII; (2) the Congressional Accountability Act; (3) GERA; and (4) section 717 of Title VII, for the employees covered by the respective statutes. Limitations regarding available remedies under these statutes likewise apply under the PWFA. As with the Americans with Disabilities Act, as amended (ADA), damages are limited if the claim involves the provision of a reasonable accommodation, and the employer makes a good faith effort to meet the need for a reasonable accommodation.

Definitions:

"Known limitation" is defined in the PWFA is a "physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or the employee's representative has communicated to the covered entity whether or not such condition meets the definition of disability" under the ADA.

In the proposed rule, "known" means "the employee or applicant, or a representative of the employee or applicant, has communicated the limitation to the covered entity."

In the proposed rule, "limitation" means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The physical or mental condition that is the limitation may be a modest, minor, and/or episodic impediment or problem. The physical or mental condition also may be that a worker affected by pregnancy, childbirth, or related medical conditions has a need or problem related to maintaining their health or the health of their pregnancy.

The definition also includes when a worker is seeking health care related to pregnancy, childbirth, or a related medical condition itself. Under the proposed rule, the physical or mental condition required to trigger the obligation to provide a reasonable accommodation under the PWFA does not require a specific level of severity.

"Pregnancy, childbirth, or related medical conditions" is a phrase used in Title VII (42 U.S.C. 2000e(k)), and in the proposed rule it has the same meaning under the PWFA as under Title VII; the proposed rule also provides additional examples of related medical conditions.

Under the proposed rule, to the extent that an employer has reasonable concerns about whether a physical or mental condition or limitation is "related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions," the employer may request information from the employee regarding the connection, using the principles set out in the sections in the proposed rule about the interactive process and supporting documentation.

However, for the most part, the Commission anticipates that determining whether a limitation or physical or mental condition is related to, affected by, or arises out of pregnancy, childbirth, or related medical conditions, will be a straightforward determination that can be accomplished through a conversation between the employer and the employee as part of the interactive process and without the need for the employee to obtain documentation or verification.
The PWFA has two definitions of "qualified."

First, the PWFA uses language from the ADA: "an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position" is qualified.

Second, the PWFA allows an employee or applicant to be "qualified" even if they cannot perform one or more essential functions of the job if the inability to perform the essential function(s) is "temporary," the worker could perform the essential function(s) "in the near future," and the inability to perform the essential function(s) can be reasonably accommodated.

The terms "temporary," "in the near future," and "can be reasonably accommodated" are not defined in the PWFA.

The proposed rule defines the term "temporary" as lasting for a limited time, not permanent, and may extend beyond "in the near future."

The proposed rule defines "in the near future" as generally forty weeks. The proposed definition in this section does not mean that the essential function(s) must always be suspended for forty weeks, or that if an employee seeks the temporary suspension of an essential function(s) for forty weeks it must be automatically granted.

The actual length of the temporary suspension of the essential function(s) will depend upon what the employee requires, and the employer always has available the defense that it would create an undue hardship. However, the mere fact that the temporary suspension of one or more essential functions is needed for any time period up to and including generally forty weeks will not, on its own, render a worker unqualified under the PWFA.

The proposed rule also discusses the meaning of the PWFA's requirement that the inability to perform the essential function(s) can be reasonably accommodated. For some positions, this may mean that one or more essential functions are temporarily suspended, with or without reassignment to someone else, and the employee continues to perform the remaining functions of the job. For other jobs, some of the essential functions may be temporarily suspended, with

or without reassignment to someone else, and the employee may be assigned other tasks to replace them. In yet other situations, one or more essential functions may be temporarily suspended, with or without reassignment to someone else, and the employee may perform the functions of a different job to which the employer temporarily transfers or assigns them, or the employee may participate in the employer's light or modified duty program. Throughout this process, as with other reasonable accommodation requests, an employer may need to consider more than one alternative to identify a reasonable accommodation that does not pose an undue hardship.

"Essential function" is a term from the ADA, and the proposed rule uses the same definition as in the ADA. In general terms, it means the fundamental duties of the job.

"Reasonable accommodation" is a term from the ADA, and the PWFA uses a similar definition as in the ADA. Generally, it means a change in the work environment or how things are usually done.

The proposed rule provides specific examples of possible reasonable accommodations under the PWFA, including:

- Frequent breaks;
- Sitting/Standing;
- Schedule changes, part-time work, and paid and unpaid leave;
- Telework;
- Parking;
- Light duty;
- Making existing facilities accessible or modifying the work environment;
- Job restructuring;
- Temporarily suspending one or more essential function;
- Acquiring or modifying equipment, uniforms, or devices; and
- Adjusting or modifying examinations or policies.
-

"Undue Hardship" is a term from the ADA, and the PWFA uses a similar definition as in the ADA. Generally, it means significant difficulty or expense for the operation of the employer. The proposed rule outlines some factors to be considered when determining if undue hardship exists. These are the same factors as under the ADA.

Additionally, to address that under the PWFA an employer may have to accommodate an employee's temporary inability to perform an essential function, the proposed rule adds additional factors that may be considered when determining if the temporary suspension of an essential function causes an undue hardship. These additional factors in the proposed rule include consideration of the length of time that the employee or applicant will be unable to perform the essential function(s); whether there is work for the employee or applicant to accomplish; the nature of the essential function, including its frequency; whether the employer has provided other employees or applicants in similar positions who are unable to perform

essential function(s) of their positions with temporary suspensions of those functions and other duties; if necessary, whether there are other employees, temporary employees, or third parties who can perform or be temporarily hired to perform the essential function(s) in question; and whether the essential function(s) can be postponed or remain unperformed for any length of time and, if so, for how long.

The proposed rule also identifies a limited number of simple modifications that will, in virtually all cases, be found to be reasonable accommodations that do not impose an undue hardship when requested by an employee due to pregnancy.

These modifications in the proposed rule are: (1) allowing an employee to carry water and drink, as needed, in the employee's work area; (2) allowing an employee additional restroom break; (3) allowing an employee whose work requires standing to sit and whose work requires sitting to stand, and (4) allowing an employee breaks, as needed, to eat and drink. The predictable assessments provision in the proposed rule does not alter the meaning of the terms "reasonable accommodation" or "undue hardship."

Likewise, it does not change the requirement under the PWFA that employers must conduct an individualized assessment when determining whether a modification is a reasonable accommodation that will impose an undue hardship. Instead, the proposed paragraph informs covered entities that for these specific and simple modifications, in virtually all cases, the Commission expects that individualized assessments will result in a finding that the modification is a reasonable accommodation that does not impose an undue hardship.

The "interactive process" is a method from the ADA to help the employer and the worker figure out a reasonable accommodation; the PWFA anticipates that employers will use it for requests to accommodate known limitations related to pregnancy, childbirth, or related medical conditions. Generally, it means a discussion or two-way communication between an employer and an employee or applicant to identify a reasonable accommodation.

Supporting Documentation. Under the proposed rule, an employer is not required to seek supporting documentation from a worker who seeks an accommodation under the PWFA. If an employer decides to require supporting documentation, it is only permitted to do so under the proposed rule if it is reasonable to require documentation under the circumstances for the employer to determine whether to grant the accommodation.

When requiring documentation is reasonable, the employer is limited also to requiring documentation that itself is reasonable. The proposed rule and appendix set out examples of when it would not be reasonable for the employer to require documentation. The proposed rule also defines "reasonable documentation" as documentation that describes or confirms (1) the physical or mental condition; (2) that it is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and (3) that a change or adjustment at work is needed for that reason.

Requesting an Accommodation:
Under the proposed rule, a request for an accommodation has two parts. First, the employee or applicant (or their representative) must identify the limitation that is the physical or mental condition and that it is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. Second, the employee or applicant (or their representative) must indicate that they need an adjustment or change at work. Under the proposed rule, a request for a reasonable accommodation under the PWFA does not need to be in writing or use any specific words or phrases. Instead, employees or applicants may request accommodations in conversation or may use another mode of communication to inform the employer.

Prohibited Acts:
The PWFA prohibits an employer from denying a qualified employee or applicant with a known limitation a reasonable accommodation, absent undue hardship. The proposed rule sets out additional considerations for covered entities and employees in complying with this provision.

Under the proposed rule:
An unnecessary delay in responding to a request for a reasonable accommodation may result in a violation of the PWFA if the delay results in a failure to provide a reasonable accommodation. This can be true even if the reasonable accommodation is eventually provided, when the delay was unnecessary.

If an employee declines a reasonable accommodation, and without it the employee cannot perform one or more essential functions of the position, then the employee will no longer be considered qualified. However, because the PWFA allows for the temporary suspension of one or more essential functions in certain circumstances, an employer must also consider whether one or more essential functions can be temporarily suspended before a determination is made pursuant to this section that the employee is not qualified.

If the request for documentation was not reasonable under the circumstances for the employer to determine whether to grant the accommodation, an employer cannot defend the denial of an accommodation based on the lack of documentation provided by the worker.

If there is more than one effective accommodation, the employee's or applicant's preference should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between potential reasonable accommodations. An employer's "ultimate discretion" to choose a reasonable accommodation is limited by certain other considerations set out in the proposed rule.

The PWFA prohibits an employer from requiring a qualified employee or applicant to accept an accommodation other than one arrived at through the interactive process.

The PWFA prohibits an employer from denying employment opportunities to a qualified employee or applicant if the denial is based on the employer's need to make a reasonable accommodation for the known limitation of the employee or applicant.

The PWFA prohibits an employer from requiring a qualified employee with a known limitation to take leave, either paid or unpaid, if another effective reasonable accommodation exists, absent undue hardship.

The PWFA prohibits an employer from taking an adverse action in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation for a known limitation.

Prohibition on Retaliation and Coercion:

The PWFA prohibits retaliation against any employee, applicant, or former employee because that person has opposed acts or practices made unlawful by the PWFA or has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the PWFA.

The PWFA prohibits coercion, intimidation, threats, or interference with any individual in the exercise or enjoyment of rights under the PWFA or with any individual aiding or encouraging any other individual in the exercise or enjoyment of rights under the Act. The proposed rule also provides that the PWFA's retaliation and coercion provisions prohibit harassment based on an individual's exercise or enjoyment of rights under the PWFA or aid or encouragement of any other individual in doing so.

Relationship to Other Laws:
The PWFA does not limit the rights of individuals affected by pregnancy, childbirth, or related medical conditions under a Federal, State, or local law that provides greater or equal protection. The PWFA provides a "[r]ule of construction" stating that the law is "subject to the applicability to religious employment" set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1(a). The relevant portion of section 702(a) provides that "[Title VII] shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." The proposed rule provides that when this PWFA provision is asserted by a respondent employer, the Commission will consider the application of the provision on a case-by-case basis.

https://www.eeoc.gov/summary-key-provisions-eeocs-proposed-rule-implement-pregnant-workers-fairness-act-pwfa

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. One female colleague quipped: "Totally sexist until I see a story on Kingagers."

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.

Think about it. Would you call European Central Bank President Christine Lagarde a queenager? US Vice President Kamala Harris? Taiwan President Tsai Ing-wen? President of the European Commission Ursula von der Leyen? No.

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

Workplace Diversity Efforts Remain Legal But Face Increased Scrutiny in Wake of Supreme Court's Affirmative Action Decision

In the wake of the U.S. Supreme Court's momentous ruling this summer on the use of affirmative action in college admissions, many companies may wonder what it means for their affirmative action and Diversity, Equity and Inclusion (DEI) programs. At the moment, from a purely legal perspective, the answer is nothing directly.

The Decision and Its Impact

On June 29, 2023, the U.S. Supreme Court held in Students for Fair Admissions, Inc. v. President and Fellows of Harvard College that affirmative action programs that consider race as a "plus factor" in college admissions are unconstitutional under the Equal Protection Clause. The court stated that universities may still consider how race has affected an individual applicant's life insofar as the discussion is tied to a "quality of character or unique ability that the particular applicant can contribute to the university." But admissions offices may no longer consider race by itself as a factor impacting college admission.

Notably, the Equal Protection Clause generally only applies to government entities. The court, however, allowed the case to proceed against Harvard, a private institution, under Title VI of the Civil Rights Act of 1964, which states "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Because "discrimination that violates the Equal Protection Clause… committed by an institution that accepts federal funds also constitutes a violation of Title VI," the court "evaluate[d] Harvard's admissions programs under the standards of the Equal Protection Clause."

Therefore, companies that receive federal funds should examine their equal employment opportunity policies and consult with counsel in light of this ruling. Further, even for companies who do not accept such funds, this case may have a significant societal impact and could result in legal challenges to affirmative action and DEI policies.

Affirmative Action in the Workplace

Companies use affirmative action programs to provide underrepresented minorities equal or expanded access to opportunity. The Equal Employment Opportunity Commission's guidelines on voluntary affirmative action encourage companies to "correct the effects of past discrimination and to prevent present and future discrimination" by taking actions such as growing their applicant pools to diversify the workplace.

But affirmative action programs do not only correct and prevent discrimination. Rather, diversity in background and experience also sparks diversity of thought, which supporters argue fosters better, more complete ideas, and thus, often, a more successful workplace.

While the decision in Students for Fair Admissions has no immediate legal impact on workplace affirmative action programs, it is possible the Supreme Court takes up a case regarding such programs in the future. Further, the court's noted hostility to race-conscious decision-making may encourage employees who oppose affirmative action to raise internal complaints or challenge such programs in court.

Until legal authority weighs in on affirmative action in the workplace, though, companies may continue with their current programs as long as they comply with federal, state and local laws.

Diversity, Equity and Inclusion
After the decision in Students for Fair Admissions, companies may also be second-guessing their DEI efforts, which often take the form of company trainings, educational messages and events that are intended to create greater understanding of unique and diverse cultures and perspectives.

Like affirmative action programs, the court ruling does not directly affect the legality of DEI programs. However, the ruling may embolden people of certain protected classes to criticize company DEI efforts and threaten reverse discrimination suits (claims by non-minority protected classes, such as white and/or male employees, that they face discrimination based on their non-minority status).

When considering adding, removing or altering DEI activities, it is important for companies to remember the general goals of DEI programs and the needs of their own workforce. Generally, DEI programs can help employees feel heard and respected, educate employees who otherwise would not know about certain populations or may be afraid to ask questions, foster greater collaboration among diverse employees, attract top talent, and increase workplace morale by creating space for recreational events and festivities to enjoy unique cultures. Companies may also consider programs specific to their needs.

DEI efforts are not, however, without their critics. In Texas, for example, Gov. Greg Abbott signed a bill prohibiting DEI offices in public colleges and universities. The legislation stated that such offices promote "differential treatment of or provid[e] special benefits to people on the basis of race, color, or ethnicity." Critics also claim that a focus on equity ignores merit and qualifications.

While companies may fear blowback to their DEI programs, there may also be legal risk to not participating in DEI. Federal, state and local employment discrimination laws prohibit workplace discrimination based on protected class. DEI policies and training programs may reduce decision-maker bias and reduce policies that could create a disparate impact in the workplace among protected classes.

Therefore, companies should focus their attention on building allyship, fostering respect and eliminating bias. To do so, it may be beneficial to emphasize that everyone has both conscious and unconscious biases, and that such attitudes are not exclusive to majority populations.

Companies wary of complaints from employees who believe that efforts to achieve workplace diversity and equity are “taking something away from them” may mitigate such concerns by emphasizing belonging among all employees.

https://www.jdsupra.com/legalnews/workplace-diversity-efforts-remain-5410501/

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

1 in 4 Black Women Believe They've Been Denied a Job Interview Due to Hairstyle

A growing number of states are outlawing hair discrimination in the workplace, but hairstyle bias continues to be a barrier to employment for many Black women, according to the 2023 CROWN Workplace Research Study.

The survey of 2,990 female respondents in the U.S revealed that:
25 percent of Black women believe they have been denied a job interview because of their hair.
Approximately 2 in 3 Black women (66 percent) have changed their hair for job interviews.
Among them, 41 percent changed their hair from curly to straight.

Black women are 54 percent more likely than Hispanic or white women to feel that they have to wear their hair straight to a job interview to be successful.

44 percent of Black women under age 34 feel pressured to use a headshot with straight hair. The report also showed that Black women's hair is 2.5 times more likely than white women's hair to be perceived as unprofessional—a statistic that Tiyale Hayes, the study's lead researcher, found most surprising.

"I see firsthand how proud Black women feel in the salon as the stylist and customers compliment them on their hair as they exit," Hayes said. "When these same women walk into the office, they are seen as less professional than others. That is shocking to me."

The report was co-commissioned by LinkedIn and Dove, the company that founded the CROWN Coalition—a nonprofit that launched the CROWN Act. As of this month, 23 states have passed legislation supporting the CROWN Act. Hair discrimination is not prohibited at the federal level in the U.S.

Additional Survey Findings
During employment, Black women with coily or textured hair are twice as likely as Black women with straighter hair to experience microaggressions in the workplace, the CROWN survey indicated. Further, more than 20 percent of Black women ages 25 to 34 have been sent home from work because of their hair.

The study aligns with previous research detailing hair bias, including a 2015 study revealing that employees with hair textures that have a proximity to white and Eurocentric hair are often shown preference over those with Afro-textured hair that is coarser and more tightly curled. Breanna Jackson, an HR coordinator at educational-services company Point Quest Group in Elk Grove, Calif., said she remains apprehensive about how her hair will be perceived in professional and nonprofessional environments.

"As an HR professional, it deeply saddens me to acknowledge that Black women have been sent home from work solely because of their hair," she said.

Jackson alluded to the 2023 CROWN study's finding that 20 percent of Black women have encountered instances of hair discrimination that led to employment termination. She said the report highlights "a distinct lack of empathy and understanding from management, particularly towards Black women."

Tips to Mitigate Hair Discrimination at Work
Several lawsuits have been filed against companies for alleged hair discrimination:
In 2023, a federal jury ordered an Alabama company to pay a former employee more than $800,000 for retaliating against her after she complained of discrimination over her hairstyle.
A Black man in California sued his former employer in 2021, alleging that the company denied him a job because he refused to cut his dreadlocks.

In 2021, the U.S. Equal Employment Opportunity Commission (EEOC) sued a drug and medical testing supplies distributor on behalf of a woman who was fired after the company's owner allegedly said that her hairstyle was unacceptable.

Clarke Wheeler, a federal policy manager at Black Mamas Matter Alliance in Atlanta, said in an EEOC-led webinar in May that workplace bias such as hair discrimination and racial microaggressions can perpetuate chronic stress that leads to sleep issues, anxiety, depression and other health complications in Black women.

"Historically, Black women have been … subjected to workplace discrimination and mistreatment," she said. "This has been, and continues to be, detrimental to Black women's health as well as their overall safety and human dignity."

Janice Gassam Asare, a DE&I consultant and public speaker in New York City, said that education is vital for addressing and mitigating hair discrimination in the workplace.

"In a lot of cases, I find that there is a lack of understanding regarding how pervasive hair discrimination actually is," she said. "Education is desperately needed to close these gaps." Enlisting experts to host conversations that highlight hair discrimination and organizing panel discussions where employees share their experiences with hair discrimination, both in and out of the workplace, can also be effective, Asare said.

In addition to education, she suggested having a workplace equity specialist who has expertise in hair discrimination evaluate workplace policies to ensure that there are not any ambiguous policies that could lead to hair discrimination.

"An example would be a policy that requires professional hairstyles and attire without clear expectations about what this means," Asare said. "Ambiguity around appearance policies can unintentionally lead to hair discrimination."

https://www.shrm.org/resourcesandtools/hr-topics/behavioral-competencies/global-and-cultural-effectiveness/pages/1-in-4-black-women-believe-they-have-been-denied-job-interview-due-to-hairstyle.aspx

Corporate Diversity Complaints Place EEOC in Thorny Spot

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% underrepresented 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.

https://news.bloomberglaw.com/business-and-practice/corporate-diversity-complaints-put-eeoc-in-thorny-spot-over-bias

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

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

US appeals court adopts lower bar for proving workplace bias claims

Summary

- Requirement that bias claims involve 'ultimate decisions' tossed out
- No other appeals court had adopted such a high bar
- Court revives lawsuit over sex-based scheduling for jail guards
-

Aug 21 (Reuters) - A U.S. appeals court has thrown out its unique decades-old precedent that made it more difficult for workers to prove discrimination claims.

The en banc 5th U.S. Circuit Court of Appeals on Friday revived a lawsuit claiming Dallas County, Texas, required female jail guards, but not men, to work at least one day each weekend, overruling its longstanding precedent that federal anti-discrimination law only prohibits bias in "ultimate employment decisions" such as hiring, promotions and setting pay.

That precedent imposed a stricter standard than Title VII of the Civil Rights of Act 1964 itself, which applies to any “terms, conditions, or privileges of employment," the New Orleans-based court said.

"It is no wonder ... that no other court of appeals applies so narrow a concept," Circuit Judge Don Willett wrote for the 5th Circuit.

Jay Ellwanger, a lawyer for the plaintiffs, said the ruling makes clear that Title VII prohibits all workplace discrimination.

The Dallas County District Attorney's Office did not immediately respond to a request for comment.

The nine female correctional officers who sued Dallas County were backed by the U.S. Department of Justice, which filed an amicus brief last year. The DOJ urged the 5th Circuit to adopt a rule that Title VII applies to any "terms and conditions" of employment.

Dallas County has acknowledged that it had a sex-based scheduling policy for jail guards, but has maintained that scheduling is not an ultimate employment decision that can support a Title VII claim.

A three-judge 5th Circuit panel last year reluctantly affirmed a judge's dismissal of the case, but said the en banc court should revisit its standard. The full 5th Circuit agreed to hear the case last October.

On Friday, Circuit Judge Edith Jones in a concurring opinion said it was unnecessary to overrule the court's standard for proving Title VII claims because Dallas County had admitted that its scheduling policy was based on sex.

And the ruling failed to explain "the precise level of minimum workplace harm a plaintiff must allege" to prevail on discrimination claims, she said.

"The majority's incomplete ruling ... leaves the bench, bar, and employers and employees with no clue as to what this court will finally declare to be the minimum standard for Title VII liability," Jones wrote.

Jones was joined in the concurrence by Circuit Judges Jerry Smith and Andrew Oldham.
The case is Hamilton v. Dallas County, 5th U.S. Circuit Court of Appeals, No. 21-10133.

https://www.reuters.com/legal/legalindustry/us-appeals-court-adopts-lower-bar-proving-workplace-bias-claims-2023-08-21/

EEOC Adopts New Strategic Plan

Plan Effective Through Fiscal Year 2026

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.jdsupra.com/legalnews/eeoc-adopts-new-strategic-plan-7270316/

Lifestyle factors in the association of shift work and depression and anxiety

In the fast-paced modern world, many individuals find themselves working non-traditional hours to accommodate the demands of various industries. Shift work, characterized by unconventional work hours that extend beyond the typical 9-to-5 routine, has become a norm for many occupations, from healthcare to transportation. However, a new study conducted by experts from the University of Waterloo and the University of Oxford sheds light on a potentially dark side of this work pattern. The research delves into the connections between shift work and mental health outcomes, particularly focusing on the prevalence of anxiety and depression among shift workers.

Shift Work's Influence on Mental Health
Shift work has often been hailed for its ability to meet the demands of a 24/7 world, but researchers have started to question its impact on workers' mental well-being. The study, published in BioScience, involved a cohort of 175,543 participants who provided valuable insights into the relationship between shift work and mental health. David E. Ausband and L. David Mech, experts in the field of wolf conservation, have taken a unique step in examining the human experience of shift work and its potential ramifications.

The Research Approach
The study journeyed through the lives of participants, analyzing a multitude of factors to ascertain whether shift work correlates with an increased risk of depression and anxiety. It considered variables such as shift work type, frequency, and the number of years spent working unconventional hours. The researchers closely observed the habits and routines of these

individuals to determine whether lifestyle choices played a role in mediating the potential negative effects of shift work on mental health.

Startling Findings
The results of the study are both revealing and concerning. Among the 175,543 participants, 16.2% reported being engaged in shift work. Over a median follow-up period of approximately 9 years, 2.3% of workers developed depression and 1.7% experienced anxiety. The findings established a clear link between shift work and an increased risk of both depression and anxiety, even after adjusting for various influencing factors.

Role of Lifestyle Factors
Delving deeper, the researchers explored whether lifestyle factors could play a role in mediating the association between shift work and mental health outcomes. The study examined lifestyle components such as smoking, physical activity, alcohol consumption, dietary habits, sleep duration, sedentary behavior, and body mass index (BMI). The analysis revealed that certain lifestyle factors, such as smoking, sedentary time, BMI, and sleep duration, played a significant role in mediating the connection between shift work and mental health conditions. Together, these lifestyle factors accounted for a substantial portion of the associations.

Implications and Future Directions
The findings of this study have wide-ranging implications for both the workforce and public health policies. It highlights the urgent need for organizations to consider the mental health impacts of shift work and implement measures that prioritize the well-being of their employees. Additionally, the research emphasizes the potential benefits of promoting healthy lifestyles among shift workers. By encouraging healthier habits, employers and policymakers may mitigate some of the negative mental health consequences associated with shift work.

The study's revelations emphasize that the effects of shift work on mental health cannot be ignored. As workplaces continue to evolve, it becomes imperative to balance the benefits of non-traditional work hours with their potential drawbacks on workers' mental well-being. The research not only underscores the need for enhanced awareness but also paves the way for a future where the mental health of shift workers is a top priority.

https://myvetcandy.com/lifestyle-factors-in-the-association-of-shift-work-and-depression-and-anxiety/

Women are always the wrong age

Women in every age bracket reported facing workplace age discrimination.

Julie O'Neill spent nearly three decades as a top anchor for Cincinnati's WCPO news station, but early last year, her career took a gut-wrenching turn.

Despite her longtime coverage of the Cincinnati Bengals, O'Neill was passed over in favor of a younger, male colleague to report on the team's 2022 Super Bowl appearance. Soon after, she said, she began receiving complaints from the station's news director about a decline in her performance. Puzzled, she began recording footage of her segments, hoping to identify and correct any stumbles.

The exercise left her only more confused. Her delivery seemed as strong as ever, she told me, and even her co-anchor was perplexed by the feedback. Tensions between O'Neill and her bosses continued to escalate, she said, finally reaching a head in September when she was called into a meeting with management. In the meeting, O'Neill was told she would no longer be cohosting the network's morning show and that her station contract would not be renewed after December 31. O'Neill recalled the station's general manager citing her recent on-air mention of a colleague's recovery from COVID-19 — which the colleague had posted openly about on social media — as the "disrespectful" final straw.

"Until all the criticism started, I had had stellar performance reviews and was never, ever accused of being disrespectful or making people uncomfortable," O'Neill said. At the time, she had a sneaking suspicion that her age and gender might have played a role in the abrupt turn of events, but it was an older, male mentor who made her see the connection as crystal clear.

"He said to me, 'When do you turn 55, Julie?'" she said. "And I said, January 9. 'That's interesting,' he said. 'Nine days after your contract was up, you were put out of the 18-to-54 demographic'" — the target age bracket for network-TV ad buys. (WCPO did not comment on Julie's dismissal, but leadership has said, "We do not agree with many statements that have been made. As usual, we don't talk about personnel matters publicly.")

The station's leadership never said that O'Neill's age was a factor in its decision-making. But she believes they didn't have to. In her view, "they made it clear that I was not the future," she said.

No 'prime' age for women

O'Neill's account seems shocking but may be an all-too-familiar story for many women in leadership roles. A new, qualitative survey of 913 women across four disparate industries — law, faith-based nonprofits, higher education, and healthcare — found a dismaying amount of age-based discrimination against women in top jobs. The research, recently published in Harvard Business Review, found that many of the women surveyed reported being at the receiving end of age-related judgment that implied they were unfit for the job.

Perhaps the most discouraging finding of the survey was that the ageist behavior wasn't just directed toward one age cohort. For women under 40, ageism often showed up in the form of "role incredulity" — higher-ups (who were frequently, if not exclusively, men) registering surprise at their seniority, sometimes even calling them by condescending nicknames such as "kiddo" or dispensing pats on the head. (Previous studies have also found that women of

childbearing age are routinely passed over for jobs or promotions because they could become pregnant.)

Women over 60, on the other hand, reported being ignored altogether, their skills overlooked and their experience discounted in favor of "fresh, new ideas." Many of the ageist dismissals echoed across age groups: Women who were up for jobs, promotions, or bonuses were told they either lacked experience or had too much of the wrong kind. Many also described hearing ageist remarks used to discredit other women who were up for professional opportunities.

When you get a woman in her 40s or 50s who has progressed in her career and is probably more willing to speak her mind, I think it's intimidating to the insecure men in our workforce.

Amy Diehl, a gender-equity researcher and one of the coauthors of the new report, wasn't surprised by the prevalence of ageism against the oldest and youngest women she and her colleagues surveyed. But she was taken aback by the extent to which middle-aged women like O'Neill reported experiencing age-related discrimination at work.

"When men get to their 40s or 50s, they're considered to be in the prime of their careers," Diehl told me. Women of the same age, however, continue to bump up against "age-related constraints."

It is a grim irony that successful women in midlife, in particular, are so often made to feel as though they will be difficult or distractible while at the height of their professional prowess. The researchers believe that this happens precisely because middle-aged women feel they have less to lose by flexing their hard-earned expertise. Their confidence, and competence, makes them threatening.

"When you get a woman in her 40s or 50s who has progressed in her career and is probably more willing to speak her mind, I think it's intimidating to the insecure men in our workforce," Diehl said. "They would rather diminish that woman, not promote her, keep her in her place. It's not that they don't want her in the workplace — they just want her in a role that's going to support the men in the workplace and not compete with them. And certainly not give them a contrary opinion."

In the survey, middle-aged women described a wide variety of put-downs from higher-ups: concerns about "menopause issues" or vague accusations of being "difficult to manage." Others reported being told that their phase of life put them at risk of "family-related issues" getting in the way of their job performance — a line of commentary directed against professional women across ages.

"You're too young and then, in a moment in time, you're considered to be too old," Diehl said. "There really is no sweet spot for women."

'Call it 'sexism' because that's what it is'

While age discrimination itself may not strike many as surprising, the fact companies are so blatant about it is shocking, especially in light of recent cultural shifts. Over the past several years, activist movements such as #MeToo and Black Lives Matter have helped raise mainstream public consciousness over systemic sexual harassment and racism.

"Diversity," "equity," and "inclusivity" have entered the lexicon of corporate accountability. Companies have dutifully launched workplace-sensitivity seminars and adjusted their hiring practices; some have even set up entire human-resources departments dedicated to DEI. Whether or not these initiatives have proved successful in leveling the professional playing field, a majority of American workers say they appreciate the effort.

Even as businesses have invested in building fairer work environments — or have, at the very least, invested in elaborate lip service to the cause — age discrimination against women workers not only persists but also is often perpetuated in plain view. Gendered ageism may even be the last acceptable form of workplace discrimination — and that's even truer for women who are not white or who encompass multiple marginalized identities.

The concept of aging is something that is socialized into our fabric to be acceptable to point out. How did this happen? The likeliest answer is also the simplest. Age is universal; everyone has one. Just as it's become commonplace to debate differences and compare the (real or perceived) attributes of people who grew up in different eras, people feel generally OK discussing age out in the open.

"The concept of aging is something that is socialized into our fabric to be acceptable to point out," Amber L. Stephenson, another coauthor of the study, told me. "We are just so much more comfortable taking shots at different age stages or career stages, in comparison with other types of bias."

But the researchers are emphatic that in our appearance-focused, age-obsessed society, using a woman's age against her in a professional setting is a mask to express the gender biases we have yet to truly shake as a culture.

"Instead of 'gendered ageism,' we can just call it 'sexism' because that's what it is," Diehl said.

Leanne M. Dzubinski, the third coauthor on the study, agreed: "When we put it together — that so many women, no matter what age they are, are always being told that they're not the right age — then what we see is it's actually just an excuse for sexism, period."

'They would rather keep her in her place'

Research has found repeatedly that the public imagination of a "leader" remains static — and regressive. Men are more likely than women to be perceived as leadership material and overwhelmingly more likely than women to hold leadership positions across virtually every industry.

This is not to suggest that all is hunky-dory for men in the workforce. Much has been written about the steady decline in employment among 25- to 54-year-old American men, and recent surveys have also indicated that men aren't immune to workplace ageism. In one 2019 poll of 400 US workers ages 40 and older, more men than women reported experiencing or witnessing age discrimination on the job. Research has also found that older job seekers face age discrimination regardless of gender, despite a 56-year-old federal law that purportedly protects against older-age discrimination in employment. And, as always, race and identity stigmas play a significant role in predicting whether women will be hired, promoted, or recognized for their achievements.

It's undeniable that workplace age discrimination occurs across gender lines, but the qualitative experiences surfaced by Diehl, Stephenson, and Dzubinski help paint a picture of how an open culture around age discrimination can ultimately end up fueling good, old-fashioned sexism. The researchers urge women at the receiving end of superficial or immaterial workplace criticisms to recognize that age-related feedback — or negative character-based appraisals such as "being difficult" — are more likely to reflect on the shortcomings of their superiors than on their performance.

O'Neill, the Cincinnati anchor, offers herself as a case in point. After departing from WCPO, she refused to sign the nondisclosure agreement that would entitle her to a job severance package and, instead, recently published a memoir about her career. Its 13th chapter details her final jarring months at the news station where she'd worked for 27 of her 31 years in broadcasting. This summer, O'Neill filed an age-discrimination lawsuit against her former employer. Its allegations include her account of her termination and the lead-up to it. When asked to comment, the station said it does not comment on pending litigation.

"People might look at my experience and say, 'It's not personal. It's just business,'" she told me. "I say all business is personal because it involves people. And maybe that sounds a little idealistic, but I don't care. That's the beauty of being 55."

https://www.businessinsider.com/discrimination-at-work-women-all-ages-jobs-hiring-employer-bosses-2023-8

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/

Is Your Office Ageist? How to Spot Age Discrimination at Work and What to Do About It

A whopping 38 percent of hiring managers admitted to reviewing resumes with an ageist slant, per a new survey.

Ageism is often called the "last acceptable bias," and at least in corporate America, that's certainly the case.

According to a 2021 AARP survey, 78 percent of older workers say they've seen or experienced age discrimination at the office, the highest level since the organization began tracking it in 2003. More seasoned employees are often disparaged, thought to be unambitious or slow to learn new skills — and that's just simply not the case, says Janine Vanderburg, who leads the anti-ageism nonprofit, Changing the Narrative.

But the bias persists in the workplace. Sometimes it's blatant, like when managers spout off about "needing new blood," she says. More often, it's a bit more subtle, though damaging all the same, Vanderburg says. Whether you've been at the same company for years or are on the hunt for a new gig, there are steps you can take to protect yourself.

What is age discrimination?
According to the Equality and Human Rights Commission, age discrimination "is when you are treated differently because of your age in one of the situations that are covered by the Equality Act." As it pertains to the workplace, the Equal Employment Opportunity Commission says age discrimination "involves treating an applicant or employee less favorably because of his or her age."

Discrimination can occur when the victim and the person who inflicted the discrimination are both over 40.

What are examples of age discrimination at work?
It can manifest in many different ways, says Ashton Applewhite, an anti-ageism advocate and author of This Chair Rocks. "Maybe you're not being offered training opportunities, you're not being invited to social events — or the social events are all beer pong — or you're being passed over for promotions," she says.

You might be left out of meetings or not given the challenging assignments you used to be first in line for, Vanderburg says. Or maybe you continue to deliver strong results and have a history of glowing reviews, when all of a sudden, your evaluations begin to tank. Perhaps higher-ups start talking about needing more millennials around to attract a younger clientele — aka "We need to get the older people out of here," Vanderburg says.

When it comes to ageism, there are definitely bad actors out there. (Consider the IBM execs caught referring to their older employees in emails as “dinobabies,” a “new species” they hoped to make “extinct” at the tech company.) But even when ageism isn’t so overt, the bias is implicit because we live in a society that venerates youth, Vanderburg says. She’s often invited to speak at organizations looking to diversify and add more graying workers to their ranks, and often hears from higher-ups who are shocked by the unintentionally hostile environment they’ve cultivated.

“If you have job announcements with photos of only people in their twenties and you’re putting in language that says you’re looking for ‘digital natives,’ you’re sending a message,” she says. “So many people are surprised when they hear that. I think there’s simply a lack of awareness in many cases.”

In the U.S., people 40 and older are protected from age-related discrimination in hiring, promotion, termination, and harassment. That’s great in theory, but hard to enforce in practice, Applewhite says. Since 2009, when a Supreme Court ruling raised the legal standard for proving age discrimination, lawsuits have become more rare — and successful suits even rarer. Federal lawmakers are trying to level the playing field with a new bill, while some states, like Colorado, have moved to protect older jobseekers by banning employers from asking applicants how old they are during the hiring process. But experts say there’s still a long way to go when it comes to rooting out ageism in offices.

How to find an “age-friendly” employer

In a survey that came out just last year, an astounding 38 percent of hiring managers admitted that they’ve reviewed resumes with an ageist slant; four in five said they have concerns about hiring both older and younger applicants. The fact is that if you’re looking for work in your 60s and 70s, the cards are stacked against you — but there are plenty of things you can do to improve your odds, says Chris Farrell, author of Unretirement: How Baby Boomers Are Changing the Way We Think About Work, Community, and the Good Life.

The first step is finding “age-friendly employers,” Vanderburg says. A good place to start is the AARP, which has since 2012 asked companies to sign a pledge agreeing to give workers over 50 a fair shot in the hiring process. Today more than 1,000 businesses have joined the program, including CVS and Bank of America.

There are a few other ways to identify a welcoming employer. Look for companies that already have a multi-generational workforce — and who don’t ask for graduation dates in the hiring process or use phrases like “digital native” or “high energy” in job descriptions, Vanderburg says. They may also offer pre-retirement plans that help workers scale back when the time comes, or encourage two-way mentoring, so older workers can share their experience and learn from a younger colleague. Another thing to keep an eye out for is an organization’s diversity, equity, and inclusion (DEI) policy, Applewhite says, because the ones that embrace older workers won’t just consider gender or race, but age as well. “It’s blindingly obvious that age is a criterion for diversity, and more and more it’s being seen as part of DEI,” she says.

How to fight ageism as an employee and job applicant

To preempt age discrimination, it's very helpful to prove you haven't "retired in place." That means being engaged, volunteering for projects, staying up to date on the latest tech in your field, and demonstrating that you want to learn. It isn't fair, but the "old dogs, new tricks" bias is still out there, so it's crucial that you show you're eager to grow and master new skills, says career coach Dori Gillam.

If you do feel like you're being victimized, the next step is to thoroughly document any instances of ageism and take that log to your H.R. department. If they're unresponsive and things don't change, you could file a complaint with the Equal Employment Opportunity Commission and consider taking legal action.

Now, if you're a Baby Boomer looking for employment, you've already got your work cut out for you, but there are lots of things you can do to get your foot in the door. The first is to polish that resume: Today, older workers have to face bias both from real, live recruiters and the algorithms trained to weed out older applicants, Farrell says. That's why it's important not to list when you graduated (unless you've earned a degree recently), and although it's tempting, don't say that you've spent decades in the industry.

"If you're older, you prize the experience that you've developed over time, right? So you want to put that you have over 25 years of experience," Vanderburg says. "Just don't do it, because that's just sending a signal. Instead, focus on listing your strengths, accomplishments, and whatever skills you've developed in recent years."

Another simple thing to do is ditch that AOL, Hotmail, or Yahoo address now and get a Gmail account. Having one of these older email platforms on your application dates you, Gillam says, as does listing "Microsoft Office" or "Outlook" under your skills, because most hiring managers today assume most people already know how to use these tools.

If you land that second or third-round interview, be prepared to talk about what you bring to the table as an older worker. Studies show that longer-tenured employees have better interpersonal skills, tend to stay in jobs longer, and take fewer days off, all strengths you can discuss. Some employers fear that someone in their 50s or 60s will resent having a younger boss, so "being able to provide examples of when you've learned from younger people can go a long way too," Vanderburg says.

Although the fight against ageism can feel like an uphill battle, Applewhite says, things are starting to shift. The workforce is getting older whether managers like it or not, and "awareness is growing that age discrimination harms us all."

https://katiecouric.com/lifestyle/workplace/overcoming-ageism-at-work-applying-for-jobs/

Are workers quitting due to racism? Studies suggest a tipping point

Subtle racism and exclusion in the workplace are key reasons for BIPOC attrition, multiple studies show.

Dive Brief:
An August 2023 DEI report from research firm Savanta underscores continued diversity, equity and inclusion-related tensions in the U.S. and parts of Europe. Notably, of the markets surveyed, the U.S. reported the highest rate of discrimination. Whereas 22% of U.K. respondents and a quarter of German survey takers said they had experienced discrimination, 33% of U.S. workers reported experiencing discrimination. The margin is small, however; about a third of French, Dutch and Swedish workers also reported discrimination.

Savanta's data indicate that workplace discomfort is disproportionately experienced by LGBTQ+ workers, Black people, Indigenous people and workers of color. The majority of transgender, genderqueer and non-binary talent said they have experienced workplace discrimination. In the same vein, about half said they've been overlooked for a promotion or new role.

Likewise, for BIPOC workers in the U.K. and U.S., 44% said they have faced discrimination in the workplace and 46% said they have been passed over for job or promotional opportunities due to their identity.

Dive Insight:
This report aligns with recent findings that indicate shifting employer attitudes toward DEI, but also how lack of C-suite buy-in can undercut long-term diverse hiring goals.

In a 2023 report, 45% of Black workers said they would switch jobs if it meant they could be part of a more inclusive workplace culture. Sanja Licina, an organizational psychologist and president of a firm who contributed to that research, called the findings "a wake-up call to any company that has or is pursuing a DEI program."

The culture development expert added in a press release: "Chances are good that, despite even your best efforts, you're not getting it fully right and that's creating a flight risk for key employees."

HR firm Buck released a report this summer that linked lackluster DEI efforts directly to worker attrition through the lens of benefits offerings. About a third of workers surveyed said their company lacked "benefits for diverse populations." Sure enough, 35% of Black workers surveyed by Buck said they felt this way.

Buck's researchers also found that a worker's likelihood of wanting to leave their job is proportional to whether "they think diversity in cultures and backgrounds is not respected," and DEI commitment is subpar.

Specifically, financial wellbeing and employer benefits therein were highlighted as opportunity for growth in the Buck report. While 72% of respondents said they want more work-life balance, 76% of Black workers, and 78% of both Asian employees and Hispanic and Latino employees reported that desire.

Overall, data indicate that proper care paid to BIPOC workers is a crucial factor in diverse talent retention.

https://www.hrdive.com/news/workers-quitting-due-to-racism-bipoc-discrimination/692302/