

## The Top Ten Human Resource Challenges in 2023

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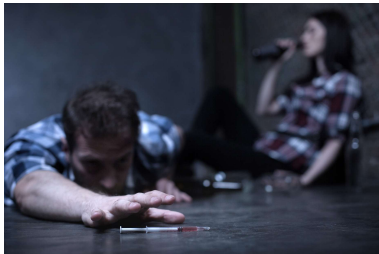
## Three Big Problems in HR

- Your employees likely **know more about their rights and the law than you do** – what they don't know attorneys are more than happy to teach them
- HR laws are written to **protect the employee** – NOT the employer
- Too many believe the great Employer Myth – *“My staff love me and would never hurt me”*



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## But love often ends.....



Stories of the  
crackhead  
boyfriend



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## A Quick Texas Update for 2023

- Despite numerous attempts, there are no currently active required paid sick leave laws in Texas
- Significant enhancement of anti-harassment laws
  - Reporting timeframe extended to 300 days
  - Requirement extended to ALL employers, regardless of number of employees
  - **HR managers and supervisors can be held individually liable**
  - Protect yourself how???
- Background checks in Desoto and Austin...rules!



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# #1 The Post-COVID HR Challenge Finding and Keeping Employees



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## Motivating Employees

- FIRST – accept the fact that things have changed
  - Pandemics, diversity, generational differences, world gone mad, work “attitudes”...*change is change*
- You want them to be excited, professional, work hard, grateful....so...**HOW DO YOU TREAT THEM?**
- “Changes”? How much has the dial really moved on what employees want from you?

Let's look!



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## What Motivates Employees

### 2004 Fam Pract Manag 11(10)

- Supervision
- Company policy and administration
- Working conditions
- Pay
- Job security

### 2022 Gallup

- Provide Meaningful and Challenging Work
- Improve Employees' Lives
- Recognition
- Pay & Benefits
- Culture

### MY, MY - HOW THINGS CHANGE

Your employees want:

- ✓ **Challenge** – not punching in and out
- ✓ Opportunity for **independent thinking** – NOT supervision
- ✓ Their **opinion** to be heard, and count
- ✓ Something more than working nine-to-five - *“help me have a happy life”*

- ✓ Work/life balance – Life/Work Balance – **NOW Life Balance**
- ✓ **BENEFITS** – NOT just money – BUT MONEY ESSENTIAL
- ✓ A **Company Culture** – NOT just a clean, safe office

And job security? Not at all...they want **YOU** to help **THEM**

*“live their dream”*



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## So WHAT must you do?

- ✓ If you pay for \$16-18 an hour employees with minimal benefits, that is what you will get
- ✓ You **MUST** create a work culture that is **FUN** and **REWARDING**
  - ✓ Train them to be exceptional
  - ✓ Involve them and listen to them – even if you ultimately disagree (you are the boss!)
  - ✓ Surprise them
  - ✓ Be flexible
  - ✓ TELL THEM you appreciate them



It is a balancing act...you do have a business to run in a profitable manner.  
**BUT...happy, productive staff WILL increase the bottom line!**



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## #2 Remote Workforces



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### Remote work issues (including outsourcing)

- Maintaining standardized operations
- **Ensuring productivity**
- Oversight – including surveillance
- Opening Pandora's Discrimination Box - allowing some employees to work remote but not others
- **HIPAA privacy and security issues**
- Sometimes can provide enhanced expertise/efficiency

Popular during COVID but is the trend reversing?  
Talk to some remote workers about how they spend their day!

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### Newest concept....

#### Virtual Staff

- ✓ Also referred to as "overseas staff"
- ✓ Are readily available
- ✓ Many are **very** talented
- ✓ Some are **SUPER motivated**
- ✓ WILL save you money
- ? There can be potential issues
  - ? HR issues / tax issues
  - ? Control issues
  - ? Patient/customer issues
  - ? Communication issues
  - ? HIPAA issues

BE VERY CAREFUL PICKING  
THE COMPANY YOU WORK  
WITH HERE. A FEW ARE  
FINE, **SOME ARE NOT**  
**PRESENTING LEGAL**  
**OPTIONS.**



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## #3 Employee Manuals / Policies



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## Employee Manuals

- You MUST have a complete, state law-specific employee manual – not one “**passed down and modified through the ages**” - and you MUST keep up with the **frequent** changes
- Policies MUST be enforced fairly, consistently, and without discrimination (**NOT playing favorites is hard!**)
- If you delegate HR responsibilities, that person MUST know what they are doing

**Wow....that was a lot of  
“MUSTS”!  
You very likely need help here!**

***Be thankful you don’t  
practice in one of the  
“HR Hellholes”***

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## #4 Discrimination



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PRACTICE & SUPPORT

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## Discrimination

- You cannot discriminate based on race, color, creed, sex, national origin, disability status or history, military service status or history – but in reality, **it is dangerous to discriminate on basis of ANYTHING**
- Discrimination applies to hiring, promotion, compensation, benefits, days off, training, approved education or social activities
- Forty-six states have passed laws increasing the prohibition of discrimination – some right down to hairstyle

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## Discrimination

### COMMENTS

- **Be OVERLY cautious** of overt discrimination – EEOC states the average settlement in discrimination cases now exceeds **\$900K**
- Educate yourself a bit – **unconscious bias and discrimination are inherent human behaviors**. Learn how to minimize this behavior (get some training)!

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## Where Is Discrimination Found

Beyond the normal age, race, military status, creed, sex, national origin, disability...

- Pay equity
- Background check decisions
- Differential benefits
- **Social media "check ups"**
- **Playing favorites**
- Holiday pay / religious discrimination
- Tattoos, piercings...other "appearances"
- "Off the clock" behavior



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## #5 Harassment



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## Harassment

One of the biggest issues in employment law and society in general over the past few years.

***Not getting any better.***



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## Harassment Specifics

- The "victim" may be a **woman or a man**
- The "victim" may be the **employee or the boss** – although the latter is rare and hard to prove
- The "victim" does not have to be of the opposite sex
- **The "victim" does need not be the person harassed.** Can be anyone who says they are affected by the behavior
- **No "warning"** from the employee is required
- Becoming a huge issue with some states requiring supervisor and/or employee **training** – not a bad idea for everyone



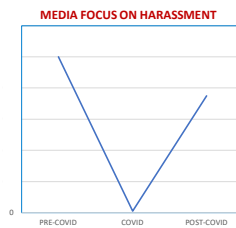
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## Types of Harassment

### Three forms of harassment

(you may know one, maybe two)

- X "quid pro quo" ("this for that") - usually sexual
- X Hostile Environment - usually not sexual (can be)
- X Workplace bullying - just meanness



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## And the BIG ONE is???

Not sexual....not hostile

It's BULLYING



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## #6 Disability



## DISABILITIES

- Cannot discriminate against any **protected employee** who meets the *knowledge, experience, skill, and education necessary to perform the job with or without reasonable accommodations*
- **DEFINITION:** Protected employees include a physical or mental impairment that limits one of life's major functions; has a record of impairment; is **perceived as having an impairment**; has an association or known relationship with a disabled person
- Johns Hopkins cites at least **27% of the workforce** can claim at least one disability – **VERY FLAWED STUDY – IT IS FAR MORE!**
- Violating this can cost you DEARLY! **THIS IS NOW ONE OF THE LARGEST AREAS OF LAWSUITS AGAINST EMPLOYERS!**



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## DISABILITIES

### EXCEPTION? What Does The Law Say???

- ✓ You must make “reasonable attempts” to accommodate
  - ✓ Should not impose “undue hardship” on the business
- Be VERY careful with both of these exemptions**

But Joe...Disability accommodation only applies to employers with 15 or more employees!!!

Way out??? **DO NOT bank on it.** Courts commonly uphold discrimination claims against employers with less than 15 employees  
<https://adata.org/guide/americans-disabilities-act-questions-and-answers>



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## Disability + Discrimination

### The current issue? Pregnancy Disability

- What is the Federal law?
  - 2023 Federal Pregnancy Accommodations Act
- State or Federal law? How about Texas?



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## #7 Embezzlement



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## Problem??? Your Eyes Are Wide Shut!

### 2022 Statistics – Just a Few

- ✗ 75% of employees have stolen at least once from their employer
- ✗ 80% of embezzlement occurs in small business
- ✗ Average time to detection – TWO YEARS

### Main Ways Employees Steal (Forbes Women 2017)

1. Product theft
2. Check tampering
3. Payroll schemes
4. Billing schemes
5. Expense padding

**In Optometry, that is contact lenses, frames (esp. sunwear) but can be far more sinister**



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### Main Ways to Avoid Someone Stealing From You!

- ✓ Most important – KNOW YOUR BUSINESS
  - ✓ MBWA
  - ✓ Know your numbers
  - ✓ Spot check your AR and AP
  - ✓ Watch your cost of goods
- ✓ Employ Deterrents
  - ✓ Open your own mail
  - ✓ Have bank statements sent to YOUR email
  - ✓ Conduct a fraud analysis – and training for EVERYONE
  - ✓ Use “Positive Pay” – or at a minimum approve everything
  - ✓ Use surveillance

**Treat and pay your staff WELL – unhappy employees are FAR LESS likely to steal from you.**



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### #8 Social Media



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### Social Media – How You CAN Use It

- ✓ You can use it to grow your business
- ✓ You can use it to communicate with existing or prospective patients (with caution)
- ✓ You can use it to enhance your business and cultural image



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### Social Media – How You CANNOT Use It

- ✓ You CANNOT use it to “find things out” about your patients
- ✓ You CANNOT use it if it involved exposure of any patient information (with exception)
- ✓ **MOST IMPORTANTLY – you cannot use it in ANY WAY as a background check, personality or social check on your existing or prospective employees**



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### I Manage This HOW???

- ✓ Most importantly – **KNOW AND FOLLOW THE LAWS RELATED TO USE OF SOCIAL MEDIA IN A BUSINESS AND ESPECIALLY HEALTHCARE ENVIRONMENT**
- ✓ Maintain a detailed social media policy
  - ✓ Whether they like it or not, do NOT allow employees access to the internet on company devices (except as needed to do their job)
- ✓ Use a Social Media Manager



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### #9 How You Pay



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### Salary vs Hourly

**ONCE AGAIN...**

**If you are paying an employee a salary, it is very likely you are breaking the law. Please come talk to us**



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### Independent Contractor vs. Employee

#### Independent Contractors

1. Not eligible for benefits
2. Pays their own taxes
3. Hired by project of short time duration
4. Not managed by the practice
- 5. No control over contractor by the business**

INDEPENDENT CONTRACTOR



#### Employees

1. Eligible for practice benefits
2. Employer pays payroll taxes
- 3. Practice controls how, when and where they do their work**

EMPLOYEE



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### Six Economic Realities Factors

- ? Is the work an integral part of the employee's business?  
*If yes, not contract labor! (need to go any further?)*
- ? Can employee's make management decisions that impact their profit or LOSS? *If no, not contract labor!*
- ? Has the employee invested substantially (similar to employer) into the resources needed to complete the work? *If no, not contract labor!*



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### Six Economic Realities Factors

- ? Are the particular employee's special skills essential to the operation and management of the business? *If yes, not contract labor!*
- ? Permanent or indefinite? *If permanent (even by renewable contract), not contract labor!*
- ? Degree of employee control – hours, locations, type of work, fees, etc. *If not total control, not contract labor!*

**Federal initiative to eliminate most all contract labor!**  
**Is there an exclusion?**



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## #10 Non-Competes



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### On Their Way OUT!

- Most states do not allow non-competes for "low wage earners" – Texas is hanging in there but really bad idea
- Many states eliminating for professional contracts - Texas is hanging in there
- **Federal initiative to eliminate almost ALL non-competes – including professional contracts and as written will be RETROACTIVE! GET READY!!!**



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